



2026:AHC:181518

AFR

Reserved on 13.08.2026

Delivered on 01.09.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 59726 of 2015 (Leading)

Ankit Pathak And 139 Others

.....Petitioner(s)

Versus

State Of U.P. And 20 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Siddharth Khare
Counsel for Respondent(s)	:	A.S.G.I., Arun.Kumar.Pal U.O.I., C.S.C.

With

WRIT - A No. - 68831 of 2015 (Connected C1)

Safdar Ali And 19 Others

.....Petitioner(s)

Versus

State Of U.P. And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Jai Prakash Tripathi, Parmatma Nand Ojha, Shalvin
Counsel for Respondent(s)	:	C.S.C., Sabhajeet Singh

With

WRIT - A No. - 55967 of 2016 (Connected C2)

Anand Kumar Pandey And 186 Ors.

.....Petitioner(s)

Versus

State Of U.P. And 31 Ors.

.....Respondent(s)

Counsel for Petitioner(s)	:	Avnish Kumar Rai, Sadhna Upadhyaya, Samarath Singh, Sant Sharan Upadhyay
Counsel for Respondent(s)	:	A.S.G.I., C.S.C., Hemendra Kumar Mishra, Santosh K Mishra

With

WRIT - A No. - 877 of 2025 (Connected C2)

Ved Prakash And 3 Others

.....Petitioner(s)

Versus

State Of U.P. And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Dev Prakash Sharma, Priyanka Devi
Counsel for Respondent(s)	:	C.S.C., Ravi Prakash Srivastava

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Impugned in the present proceedings by way of the present writ petitions is the circular dated 26.02.2014 issued by the Mission Director, National Rural Health Mission, UP, Lucknow (in short 'NRHM'), in so far as it prohibits extension of the petitioners to work on the vacant post of Health Worker (Male) beyond 31.03.2014 and a direction in the nature of mandamus commanding the respondents to undertake proceedings in accordance with the communication of the Mission Director, NRHM dated 09.07.2014 and the communication of Additional Director, Malaria and Vector Borne Disease dated 14.07.2014 for according joining them to work on the post of Health Worker (Male).

Facts:

2. Facts of the case as worded in the writ petitions are that the State of Uttar Pradesh issued a Government Order dated 23.07.1981 floating a scheme known as Multi-purpose Worker Scheme. According to the said scheme, there was a provision for engagement of a Health Worker (Male) and Health Worker (Female) on a population of 5,000 in every rural area. Further four Health Workers (Male) and four Health Workers (Female), one Health Supervisor (Male) and one Health Supervisor (Female) were to be engaged for supervision of the work of Health Workers. As many as 14371 posts of Health Worker (Male) was created.

3. A Government Order dated 13.02.1986 came to be issued notifying the eligibility qualifications and training which was for a period of 1-1/2 year which was to be imparted to the Health Worker (Male). On 30.07.1997, a notification came to be issued, which was published in U.P. Gazette dated 06.09.1997, notifying UP Health and Family Welfare Department Health Workers and Supervisors (Male and Female) Service Rules, which came to be amended by First Amendment Rules 1998, notified on 10.09.1998. As per the Rules, the cadre strength of Health Worker (Male) was 9935 and Health

Worker (Female) was 26345.

4. The Government of India with the aim and object to improve health and hygienic conditions pan India, framed a scheme known as National Rural Health Mission (NRHM), 2005. The said scheme was wholly financed by Government of India as additional grant to improve health and hygienic condition within the State. The implementation of the said program was to be done by State Government at the State level and at District level through the formation of a State Health Society and District Health Society registered under the Societies Registration Act. In line with the NRHM scheme of the Central Government, the State Government by Office Order dated 06.09.2005 constituted the State Health Mission under the Chairmanship of the Chief Minister of the State and the Principal Secretary, Family Welfare Department as a Member Secretary. On 19.05.2005, a circular came to be issued by Director General, National Program Supervision and Evaluation, Directorate of Family Welfare, UP, Lucknow proposing the constitution of District Health Mission to the State Government with a request for issuance of a Government Order. Thereafter, on 03.01.2011, an Office Memorandum came to be issued by the Government of India approving engagement of Multi-purpose Health Worker (Male) on contract basis in 235 identified backward districts having high disease burden for a period of 3 years which is extracted hereinbelow-

“F.No.A-1033/15/2010-Trg/NRHM IV/RBS

Government of India

Ministry of Health & Family Welfare

Nirman Bhavan, New Delhi

Date: the 03rd January, 2011

OFFICE MEMORANDUM

In view of the shortage of Multi Purpose Health Workers (MPHW) male at the Sub Centres, the Government of India has approved engagement of MPHW (Male) on contract basis in 235 identified backward districts, having high disease burden, for a period of three years. Financial Assistance for strengthening MPHW (Male) Training Centres will also be provided to rejuvenate the existing MPHW (Male) Training Centres/Schools and starting new schools in under served districts.

The Central Government support under the scheme would be on a declining basis of 85%, 75% and 65% respectively for the period of three years. The remaining cost will be shared by the concerned State Government. State Government shall also create the requisite number of posts and fill them up on regular basis within next three years for maintaining the continuity of these workers from their own resources.

National Institute of Health & Family Welfare (NIHFW) and State Institute of Health & Family Welfare (SIHFW) would be the nodal institutes for coordinating MPHW (Male) Training activities at National and State Level respectively. The targets for Training of MPHW (Male) will be fixed by the respective State/UTs Governments for each year. The number of MPHW (Male) to be recruited by the State/UT Government every year shall be restricted to the training capacity available with concerned State/UT Government.

The guidelines for implementation of MPHW (M) Programme in the above 235 districts have been prepared and are enclosed which inter-alia cover various aspects including eligibility and selection criteria, job responsibilities, training, role of various stakeholders and financial assistance for strengthening MPHWS training centers.

You are requested to initiate necessary action for recruitment and training of MPHW (Males). The requirement of funds for the above activities may be projected in the Plan Implementation Programme (PIPs) of your State under NRHM.

Sd/- Illegible

(REKHA CHAUHAN)

Under Secretary to the Govt. of India

Enclosure: Guidelines for MPHW (Male)

To,

Health Secretaries of concerned states/UTs

CC

Mission Directors of NRHM”

5. That on 05.09.2012, the Mission Director, NRHM issued a circular letter circulated amongst all District Magistrate and Chief Medical Officers of the State for selection and appointment of Multi-purpose Health Worker (Male) for the financial year 2012-2013 on contract basis

detailing the procedure of selection and training, extract whereof is quoted hereinunder.-

'प्रेषक,

मिशन निदेशक,

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन,

उ०प्र०, लखनऊ।

सेवा में,

1. समस्त जिलाधिकारी, उ०प्र०।

2. समस्त मुख्य चिकित्साधिकारी, उ०प्र०।

पत्र सं० एस०पी०एम०यू०/एन०वी०बी०डी०सी०पी०/एम०पी०डब्ल्यू/3/2012-13/1297 दिनांक: 5/9/12

विषय- राष्ट्रीय वेक्टर जनित रोग नियन्त्रण कार्यक्रम के अन्तर्गत वर्ष 2012-13 हेतु संविदा पर एम०पी०डब्ल्यू (पुरुष) के चयन एवं प्रशिक्षण के सम्बन्ध में।

महोदय/महोदया,

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन के अन्तर्गत वर्ष 2012-13 में राष्ट्रीय वेक्टर जनित रोग नियन्त्रण कार्यक्रम हेतु भारत सरकार द्वारा 7351 एम०पी०डब्ल्यू (पुरुष) को रू० 6000.00 (रू० छः हजार मात्र) प्रति माह के मानदेय की दर से दिनांक 31.03.2013 तक संविदा पर रखने हेतु स्वीकृति प्रदान की गयी है।

2. राष्ट्रीय वेक्टर जनित रोग नियन्त्रण कार्यक्रम के अन्तर्गत संविदा पर नियुक्ति किये जाने हेतु महानिदेशक, चिकित्सा एवं स्वास्थ्य उ०प्र० द्वारा उपलब्ध करायी गयी जनपदवार एम०पी०डब्ल्यू (पुरुष) की संख्या की सूची संलग्नक-1 पर दी जा रही है।

3. उपर्युक्त सूची में निर्दिष्ट संख्या के अनुरूप राष्ट्रीय वेक्टर जनित रोग नियन्त्रण कार्यक्रम के अन्तर्गत एम०पी०डब्ल्यू (पुरुष) का संविदा पर चयन जिलाधिकारी की अध्यक्षता में निम्नानुसार गठित चयन समिति द्वारा किया जायेगा-

i. मुख्य चिकित्साधिकारी-सदस्य सचिव

ii. अपर मुख्य चिकित्साधिकारी (वी०बी०डी०)-सदस्य

iii. जिला मलेरिया अधिकारी (जिला वेक्टर जनित रोग अधिकारी)-सदस्य

iv. राज्य सरकार के नियमों के अनुसार अनुसूचित जाति/जनजाति एवं अल्प संख्यक/पिछड़ा वर्ग के अधिकारी-सदस्य

4. जिलाधिकारी अतिव्यस्त होने पर मुख्य विकास अधिकारी को चयन समिति का अध्यक्ष नामित कर सकते हैं।

5. अभ्यर्थियों के चयन में जनपद के अभ्यर्थियों को वरीयता देने के साथ यथासम्भव राज्य सरकार के आरक्षण नियमों का पालन किया जायेगा। उक्त हेतु मुख्य चिकित्साधिकारी द्वारा विज्ञापन स्थानीय प्रमुख समाचार पत्रों में प्रकाशित कराया जायेगा। चयन हेतु समय सारणी निम्नवत है-

- समाचार पत्रों में प्रकाशन-08.09.2012 तक
- आवेदन करने की अन्तिम तिथि-15.09.2012 को सायं: 5:00 बजे तक
- साक्षात्कार की तिथि-17.09.2012 से 19.09.2012 तक
- चयन घोषणा-20.09.2012 चयन हेतु नियम एवं शर्तें तथा आवेदन पत्र का प्रारूप पत्र के साथ संलग्न है।

6. चयनित एम०पी०डब्ल्यू (पुरुष) का तत्काल (अधिकतम एक सप्ताह) के अन्दर योगदान प्राप्त कर उन्हें 10 दिवसीय जिला स्तरीय प्रशिक्षण दिया जायेगा। जिला मलेरिया अधिकारी जिला स्तरीय प्रशिक्षण के नोडल अधिकारी होंगे। जिन जनपदों में जिला मलेरिया अधिकारी कार्यरत नहीं है वहां पर अपर मुख्य चिकित्साधिकारी (वेक्टर जनित रोग) जिला स्तरीय प्रशिक्षण के नोडल अधिकारी होंगे। प्रशिक्षण को सुचारू रूप से पूर्ण करने वाले चयनित एम०पी०डब्ल्यू० (पुरुष) को मुख्य चिकित्साधिकारी द्वारा दिनांक 31.03.2013 तक के लिए अनुबंधित किया जायेगा।

7. जनपद स्तर पर 10 दिवसीय प्रशिक्षण के सुचारू संपादन के लिये जिला मलेरिया अधिकारी/अपर मुख्य चिकित्साधिकारी (वेक्टर जनित रोग) की एक दिवसीय राज्य स्तरीय कार्यशाला आयोजित की जायेगी। अपर निदेशक/राज्य कार्यक्रम अधिकारी के द्वारा ही उपर्युक्त 10 दिवसीय प्रशिक्षण की समय-सारणी बनायी जायेगी तथा इस प्रशिक्षण हेतु समस्त प्रशिक्षण सामग्री तैयार करवायी जायेगी। प्रशिक्षण की समय-सारणी एवं प्रशिक्षण सामग्री का प्रारूप जिला मलेरिया अधिकारियों/अपर मुख्य चिकित्साधिकारियों (वेक्टर जनित रोग) को अपर निदेशक/राज्य कार्यक्रम अधिकारी के द्वारा राज्य स्तरीय कार्यशाला में उपलब्ध करा दिया जाये।

8. प्रशिक्षण हेतु रू० 50.00 प्रति दिन प्रति एम०पी०डब्ल्यू० (पुरुष) की दर से 10 दिन हेतु रू० 500.00 की धनराशि अनुमन्य है, जिससे प्रशिक्षक का मानदेय एवं प्रशिक्षण सामग्री, स्टेशनरी, जलपान आदि की व्यवस्था की जायेगी।

9. संविदा पर अनुबन्धित किये गये एम०पी०डब्ल्यू० (पुरुष) की सूचना इस कार्यालय को अनुबन्धित किये जाने के एक सप्ताह के अन्दर मुख्य चिकित्साधिकारी द्वारा निम्नलिखित प्रारूप पर ई-मेल generalmanagemp@gmail.com पर प्रेषित की जाये, जिससे अनुबन्धित किये गये एम०पी०डब्ल्यू० (पुरुष) की सूची को एन०आर०एच०एम० की वेबसाइट पर अपलोड किया जा सके तथा उनके मानदेय की धनराशि जनपदों को अवमुक्त की जा सके-

क०	अनुबन्धित	स्थायी पता	पद नाम	शैक्षिक योग्यता	अनुबन्ध का	कार्य स्थल	टिप्पणी
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सं०	कर्मि का नाम	तथा मोबाइल नम्बर/ई-मेल			दिनांक		

10. राज्य स्तरीय कार्यशाला/जनपदीय स्तरीय प्रशिक्षण के प्रभारी अधिकारी अपर निदेशक/राज्य कार्यक्रम अधिकारी, मलेरिया एवं वी०बी०डी० होंगे। अपर निदेशक/राज्य कार्यक्रम अधिकारी, वी०बी०डी० राज्य स्तरीय कार्यशाला/जनपदीय स्तरीय द्वारा प्रशिक्षण की विस्तृत कार्ययोजना तैयार की जायेगी तथा उसके अनुसार कार्यवाही भी सम्पादित करायी जायेगी। प्रशिक्षण के मद की धनराशि अपर निदेशक/राज्य कार्यक्रम अधिकारी, वी०बी०डी० द्वारा प्रशिक्षण की विस्तृत कार्ययोजना प्राप्त होने के उपरान्त जनपदों को अवमुक्त की जायेगी।

11. राष्ट्रीय वेक्टर जनित रोग नियन्त्रण कार्यक्रम के अन्तर्गत वर्ष 2012-13 हेतु संविदा पर एम०पी०डब्ल्यू० (पुरुष) के चयन में कोई उत्कोच या अवैध धनराशि का आदा-प्रदान (रिश्वत) पूर्णतः गैर कानूनी एवं दण्डनीय अपराध है अतः इस प्रकार का घृणित कार्य न किया जाये। जिलाधिकारी/अध्यक्ष, जिला स्वास्थ्य समिति द्वारा इस पर निगरानी रखी जाये तथा इस प्रकार का कृत्य संज्ञान में आने पर नियमानुसार कार्यवाही करते हुये इसकी सूचना शासन एवं इस कार्यालय को भी दी जाये।

संलग्नक-यथोक्त

भवदीय,

[हस्ताक्षर]

5/09/12

(मुकेश कुमार मेश्राम)

मिशन निदेशक

पत्र सं० एस०पी०एम०यू०/एन०वी०बी०डी०सी०पी०/एम०पी०डब्ल्यू०/3/2012-13/1297-2-10 तदिनांक

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1. प्रमुख सचिव, चिकित्सा स्वास्थ्य एवं परिवार कल्याण, उ०प्र० शासन।
2. महानिदेशक, चिकित्सा एवं स्वास्थ्य सेवाएं, उ०प्र०, लखनऊ।
3. महानिदेशक, परिवार कल्याण, उ०प्र०, लखनऊ।
4. क्षेत्रीय निदेशक, स्वास्थ्य, भारत सरकार, लखनऊ।
5. समस्त मण्डलायुक्त, उ०प्र०।

6. अपर निदेशक/राज्य कार्यक्रम अधिकारी, मलेरिया, जवाहर भवन, लखनऊ, उ०प्र०।
7. समस्त अपर निदेशक, चिकित्सा स्वास्थ्य एवं परिवार कल्याण, उ०प्र०।
8. वित्त नियंत्रक, एस०पी०एम०यू०, एन०आर०एच०एम०, लखनऊ, उ०प्र०।
9. महाप्रबन्धक, एम०आई०एस०, एस०पी०एम०यू०, एन०आर०एच०एम० को इस आशय से कि पत्र की प्रति एन०आर०एच०एम० की वेबसाइट- upnrhm.gov.in पर अपलोड करने का कष्ट करें।
10. समस्त मण्डलीय परियोजना प्रबन्धक,

[हस्ताक्षर]

05.09.12

(डॉ० अनिल कुमार मिश्र)

महाप्रबन्धक, राष्ट्रीय कार्यक्रम"

6. In order to give effect to the said scheme, selection proceedings stood undertaken in several districts of the State for appointing Multi-purpose Health Worker (Male) by conducting selection proceedings through Chief Medical Officer of the concerned districts. Only those applicants/candidates would apply who had passed Intermediate Certificate Examination with Science subject and they were to get monthly emolument of Rs. 6,000/-. The petitioners herein came to be appointed/engaged as Multi-purpose Health Workers (Male) on different dates in the year 2012-2013. For ready reference and for the sake of illustration one of the appointment orders issued in favour of writ petitioner No. 1, Ankit Pathak is being quoted hereinunder.-

"कार्यालय मुख्य चिकित्सा अधिकारी कानपुर नगर

पत्रांक मु०चि०अ०/संविदा/2012-13/2991

दिनांक 30.3.2013

नाम :- अंकित पाठक

पिता का नाम :- श्री रमाकान्त पाठक

निवासी गल्ला मण्डी पहाड़पुर चुंगी कानपुर नगर

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन के अन्तर्गत वेक्टर जनित कार्यक्रम हेतु संविदा स्टाफ के पद एम०पी० डब्लू पुरुष (वेक्टर जनित रोग) पर मासिक रकम/मानदेय रु० 6000/- पर सामु० स्वा० के०/प्रा० स्वा० के० भीतरगांव के उपकेन्द्र भीतरगांव कानपुर नगर में की जाती है। राष्ट्रीय ग्रामीण स्वास्थ्य मिशन के अन्तर्गत वेक्टर

जनित कार्यक्रम में दिये गये निर्देशों के अनुसार आपको अपनी ड्यूटी करनी होगी और आपातकालीन परिस्थितियों में भी चिकित्सालय में अपनी सेवायें प्रदान करनी होंगी। किसी भी कार्य दिवस में अनुपस्थित रहने पर अनुपस्थित दिवस का वेतन की धनराशि से नियमानुसार कटौती की जायेगी।

आपकी सेवा संतोषजनक न पाये जाने की स्थिति में एक माह का नोटिस देकर आपका अनुबन्ध समाप्त किया जा सकता है। संविदा पर आपकी तैनाती रिक्त पदों के अन्तर्गत की गई है, जैसे जैसे नियमित पद धारक उपलब्ध होते जायेंगे। संविदा अनुबन्ध समाप्त होती जायेगी।

संविदा कर्मी को राष्ट्रीय स्वास्थ्य कार्यक्रमों के साथ साथ तैनाती स्थल के सामु० स्वा० के० के सभी दायित्वों के निर्वाहन में सक्रिय रूप से भाग लेना होगा, यदि आप ऐसे कार्यक्रमों में भाग नहीं लेती है तो इसे कदाचार माना जायेगा। इस प्रकार के कदाचार पर या किसी आपराधिक कार्यकलाप के अन्तर्गत पाये जाने पर सुनवाई का युक्ति युक्त अवसर देने के पश्चात अनुबन्ध समाप्त कर दिया जायेगा। संविदा कर्मी को सेवा में जिला चिकित्सा बोर्ड से अपना चिकित्सीय परीक्षण कराना होगा। चिकित्सकीय परीक्षण में उपयुक्त पाये जाने पर ही संविदा अनुबन्ध वैध मानी जायेगी, एवं सम्बन्धित सम० पी० डब्लू पुरुष का चरित्र सत्यापन स्थानीय स्तर पर कराया जायेगा तथा इस संबंध में किसी प्रतिकूल निष्कर्ष की दशा में अनुबन्ध प्राधिकारी द्वारा संविदा बिना कोई कारण बताये तुरन्त रद्द कर दी जायेगी।

संविदा पर अनुबन्ध कर्मी को रू० 100/ के नाम जयसूडीशियल एवं फिटनेस प्रमाण पत्र सहित कार्यालयस जिला मलेरिया अधिकारी 11/340 सूटरगंज मलेरिया कार्यालय ग्वालटोली, कानपुर नगर में उपस्थित हो, जिससे अनुबन्ध पत्र पूर्ण कर दोनों पक्षों द्वारा हस्ताक्षर कर अनुबन्ध की कार्यवाही पूर्ण की जा सके। आपको यह भी अवगत कराना है कि उक्त अनुबन्ध 31 मार्च 2013 तक के लिये किया जाना है एवं कार्य की समीक्षा के उपरान्त ही कार्यकाल को आगे बढ़ाया जा सकेगा। इस अनुबन्ध के निष्पादन पर होने वाला व्यय संविदा कर्मी द्वारा वहन किया जायेगा।

संविदा कर्मी सेवा में विनियमितीकरण, स्थायीकरण/पेंशन सम्बन्ध सुविधाओं के हकदार नहीं होगी और इस हेतु आप किसी मांग एवं बोनस आदि की हकदार नहीं होगी। विभाग द्वारा समय समय पर राष्ट्रीय ग्रामीण स्वास्थ्य योजना के अन्तर्गत जो भी कार्य आपको आवंटित किये जायेंगे उसे भी आप सम्पादित करेंगे। अतः आप अपनी तैनाती के स्थान पर पत्र प्राप्ति के 3 दिन के अन्दर अपनी योगदान आख्या सामु० स्वा० के०/प्रा०स्वा० के० के कार्यालय में प्रस्तुत करना सुनिश्चित करें। इस हेतु आपको किसी प्रकार का यात्रा भत्ता देय नहीं होगा।

ह/-अपठनीय

मुख्य चिकित्सा अधिकारी

कानपुर नगर।

पत्रांक - मु० चि० अ०/संविदा/2012-2013

प्रतिलिपि :- निम्नलिखित को सूचनार्थ व आवश्यक कार्यवाही हेतु प्रेषित -

1. मिशन निदेशक, चिकित्सा स्वा० एवं प०क० कानपुर मण्डल कानपुर।

2. महानिदेशक, परिवार कल्याण महानिदेशालय उ० प्र० लखनउ।
3. अपर निदेशक, चिकित्सा स्वास्थ्य एवं परिवार कल्याण कानपुर मण्डल कानपुर।
4. अपर मुख्य चिकित्सा अधिकारी वेक्टर वार्न कानपुर नगर।
5. अधीक्षक साम० स्वा० के० भतीरगांव कानपुर।

ह/-अपठनीय

मुख्य चिकित्सा अधिकारी

कानपुर नगर।"

7. The writ petitioners who had been engaged as Multi-purpose Health Worker (Male) had to enter into agreement with the employers. One of the same for the sake of illustration is being reproduced hereinunder.-

"राष्ट्रीय वेक्टर जनित रोग नियंत्रण कार्यक्रम, जनपद फतेहपुर

अनुबन्ध पत्र

मुख्य चिकित्सा अधिकारी, सदस्य सचिव, जिला स्वास्थ्य समिति जनपद फतेहपुर एवं नाम श्री अनूप तिवारी निवासी ग्राम व पो० विजयीपुर खागा, फतेहपुर पता ग्राम व पो० विजयीपुर खागा, फतेहपुर जिसकी तैनाती एम०पी०डब्लू०(पुरुष) के पद पर संविदा के आधार पर की जानी है, के मध्य अनुबन्ध।

यह अनुबन्ध "प्रथम पक्ष" के रूप में मुख्य चिकित्सा अधिकारी, सदस्य सचिव जिला स्वास्थ्य समिति जनपद फतेहपुर एवं "द्वितीय पक्ष" के रूप में नाम श्री अनूप तिवारी निवासी ग्राम व पो० विजयीपुर खागा, फतेहपुर पता ग्राम व पो० विजयीपुर खागा, फतेहपुर जिसकी तैनाती एम०पी०डब्लू०(पुरुष) के पद पर संविदा के आधार पर की जानी है, के मध्य किया गया है, जहाँ मुख्य चिकित्सा अधिकारी, सदस्य सचिव, जिला स्वास्थ्य समिति जनपद फतेहपुर नाम श्री अनूप तिवारी निवासी ग्राम व पो० विजयीपुर खागा, फतेहपुर पता ग्राम व पो० विजयीपुर खागा, फतेहपुर को एम०पी०डब्लू०(पुरुष) के पद पर नियमित नहीं वरन संविदा पर नियुक्ति हेतु सहमति प्रदान करते हैं और नाम श्री अनूप तिवारी निवासी ग्राम व पो० विजयीपुर खागा, फतेहपुर मुख्य चिकित्सा अधिकारी, सदस्य सचिव जिला स्वास्थ्य समिति जनपद फतेहपुर द्वारा निर्दिष्ट किये गये उत्तरदायित्वों का निर्वहन करने हेतु निम्नलिखित नियम व शर्तों के अधीन सहमति प्रदान करते/करती हैं -

1. यह नियुक्ति पूर्णतया परियोजना के उद्देश्य के अधीन संविदा पर है।
2. यह परियोजना भारत सरकार के द्वारा नियत अवधि तक के लिए वित्त पोषित है।

1. यह कि द्वितीय पक्ष की नियुक्ति .../.../01.09.2012 से 31.03.2013 की अवधि तक के लिए की गयी है।

2. यह कि द्वितीय पक्ष को निर्धारित मानदेय के अतिरिक्त किसी प्रकार का डी0ए0, एच0आर0ए0 आदि अनुमन्य नहीं होगा।

3. यह कि द्वितीय पक्ष भली-भाँति जानता/जानती है कि यह नियुक्ति उपर्युक्तानुसार अनुबन्ध आधारित संविदा पर निर्धारित अवधि के लिए की गयी है। यह अनुबन्ध प्रस्तर - 3 में वर्णित अवधि के उपरान्त स्वतः समाप्त समझा जायेगा और इसके लिए राज्य/जिला स्वास्थ्य समिति द्वारा किसी प्रकार की सूचना, भुगतान अथवा सेवा छंटनी प्रतिपूर्ति धनराशि आदि देय नहीं होगी।

4. यह कि निम्नलिखित परिस्थितियों में द्वितीय पक्ष की सेवाएं अनुबन्ध अवधि की समाप्ति के पूर्व भी किसी भी समय तत्काल प्रभाव से समाप्त की जा सकती है -

6.1 उपर्युक्त नियम एवं शर्तों का उल्लंघन किया जाना।

6.2 भारत सरकार द्वारा राज्य स्वास्थ्य सोसाइटी को वित्त पोषण बन्द होना।

6.3 भारत सरकार द्वारा दिये गये निर्देशों के अधीन।

6.4 द्वितीय पक्ष का समय की पाबन्दी न रखना, कार्य कुशलता की कमी, अनुशासनहीनता/किसी भ्रष्ट आचरण /अपराध में लिप्त पाया जाना।

5. यह कि द्वितीय पक्ष जानता है कि यह नियुक्ति उपर्युक्तानुसार अनुबन्ध आधारित संविदा पर निर्धारित अवधि के लिए की गयी है अतः उस पद पर स्थायीकरण का कोई विधिक अधिकार नहीं होगा।

6. भविष्य में यदि उसके द्वारा धारित पद की रिक्तियां विज्ञापित होती हैं तो वह उस पद पर राजकीय सेवा में नियमित नियुक्ति का किसी प्रकार का दावा प्रस्तुत नहीं करेगा/करेगी। यदि द्वितीय पक्ष निर्धारित अवधि के पूर्व पद छोड़ना चाहेगा तो वह एक माह की नोटिस अथवा मानदेय देकर पद छोड़ सकता/सकती है। अनुबन्ध की निर्धारित अवधि से पूर्व किसी भी स्थिति में यदि सेवाएं समाप्त होती है तो अनुबन्ध की शेष अवधि के लिए उसे कोई मानदेय/प्रतिपूर्ति धनराशि देय नहीं होगी।

7. यह कि द्वितीय पक्ष सोसाइटी द्वारा संचालित की जा रही परियोजना सम्बन्धी गोपनीय सूचनाओं अथवा कार्यक्रमों के विषय में किसी भी व्यक्ति को कोई सूचना अथवा जानकारी नहीं देगा/देगी।

8. यह कि द्वितीय पक्ष की नियुक्ति उसके द्वारा दिये गये अभिलेखों जैसे - शैक्षिक योग्यता आदि व अन्य प्रमाण पत्रों के आधार पर की गयी है जो उसने अपने आवेदन पत्र के साथ संलग्न किये हैं। यदि उसके द्वारा दी गयी कोई सूचना असत्य पायी जाती है तो ऐसी स्थिति में उसकी नियुक्ति समाप्त समझी जायेगी और वह किसी सूचना, मानदेय अथवा नोटिस का हकदार नहीं होगा/होगी।

9. यह कि द्वितीय पक्ष राज्य स्वास्थ्य सोसायटी द्वारा समय-समय पर जारी किये गये नियमों/दिशा-निर्देशों

अथवा कार्यालय आदेशों के अधीन कार्य करेगा/करेगी जो कि उसकी नियुक्ति एवं अनुबन्ध सम्बन्धी नियम व शर्तों का भाग होगा।

10. यह कि द्वितीय पक्ष की राज्य स्वास्थ्य सोसायटी के अधीन सेवाओं की निरन्तरता उसके मानसिक व शारीरिक स्वास्थ्य पर निर्भर करेगी।

11. यह कि द्वितीय पक्ष की दैनिक कार्यावधि सामान्यतः प्रत्येक माह के सभी कार्यदिवसों के लिए प्रातः 9.30 बजे से सायं 6.00 बजे तक होगा। यह कार्यावधि राज्य स्वास्थ्य सोसायटी द्वारा आवश्यकतानुसार संशोधित की जा सकेगी।

12. यह कि द्वितीय पक्ष साप्ताहिक अवकाशों के अतिरिक्त राज्य सरकार द्वारा समय-समय पर घोषित जनावकाशों का उपभोग कर सकेगा/सकेगी। उसे एक वर्ष की अनुबन्ध अवधि में 08 आकस्मिक अवकाश एवं 07 चिकित्सा अवकाश अनुमन्य होंगे। उसे अनुबन्ध अवधि में अन्य किसी प्रकार का अवकाश देय नहीं होगा। उसे उपर्युक्त अवकाश अनुबन्ध अवधि के अनुपात में अनुमन्य किये जायेंगे।

13. यह कि द्वितीय पक्ष मुख्य चिकित्सा अधिकारी, सदस्य सचिव जिला स्वास्थ्य समिति जनपद फतेहपुर के निर्देशों के अनुरूप संतोषजनक कार्य करेगा/करेगी।

14. यह कि द्वितीय पक्ष नाम श्री अनूप तिवारी निवासी ग्राम व पो0 विजयीपुर खागा, फतेहपुर पता ग्राम व पो0 विजयीपुर खागा, फतेहपुर को तनखाह के रूप में ₹0 6000/- प्रतिमाह की दर से भुगतान किया जायेगा तथा निर्धारित मानदेय के अतिरिक्त किसी प्रकार का डी0ए0, एच0आर0ए0 आदि अनुमन्य नहीं होगा।

15. यह कि द्वितीय पक्ष राज्य स्वास्थ्य सोसाइटी के विरुद्ध किसी प्रकार का अभियोजन योजित नहीं करेगा/करेगी।

16. यह कि द्वितीय पक्ष वर्तमान पद पर नियुक्ति समाप्त होने के पश्चात् भी राज्य स्वास्थ्य सोसाइटी को विधिक एवं ऑडिट सम्बन्धी मामलों में आवश्यकतानुसार सहयोग प्रदान करता रहेगा/रहेगी।

17. यह कि सेवा अवधि के दौरान राज्य स्वास्थ्य सोसाइटी द्वारा उपलब्ध कराये गये संसाधनों एवं अग्रिमों को वापस करना द्वितीय पक्ष की व्यक्तिगत जिम्मेदारी होगी।

18. यह कि द्वितीय पक्ष अनुबन्ध अवधि के दौरान किसी भी प्रकार के चुनाव में प्रतिभाग करने का अधिकारी नहीं होगा/होगी।

उपर्युक्त नियम व शर्तें स्वीकार्य होने की स्थिति में कृपया संलग्न कार्यालय प्रति पर स्वीकृति के रूप में हस्ताक्षर कर दें एवं हस्ताक्षरित प्रति को कार्यालय के उपयोगार्थ जमा कर दें।

दोनों पक्षों को इस अनुबन्ध पत्र की उपरोक्त शर्तें स्वीकार हैं तथा पूर्ण विवेक से सोच-समझकर हस्ताक्षरित

किया गया।”

8. With respect to the financial year 2013-14, the State Government as well as the Mission Director, NRHM made recommendations to the Central Government for allocation of supplementary grant for the year 2013-14, which came to be sanctioned by the Government of India vide communication dated 19.07.2013. On 03.08.2013, a circular came to be issued by the Mission Director, NRHM extending the term of the Multi-purpose Health Worker for the period from 01.04.2013 to 30.09.2013. In line with the same on 22.10.2013, Government of India also sent a communication addressed to the Mission Director of several States including the State of Uttar Pradesh. In continuation of the Office Memorandum dated 03.01.2011 requiring submission of the compliance report on the conditionability contained in the Office Memorandum dated 03.01.2011 with regard to respective State Government creating requisite number of posts and filling up on regular basis within 3 years from 2011 to 2014. On 22.11.2013, the Director, NRHM sent a communication addressed to the Mission Director, UP intimating sanction being continued till 31.03.2014 with the financial support upto 75% subject to the condition that the State should fill up the post on regular basis and would comply with the other conditionability.

9. Thereafter, on 26.02.2014, the Mission Director, NRHM issued a circular addressed to all the Chief Medicals Officer of the State referring to extension accorded by the Central Government till 31.03.2014 and directing that the contract of Multi-purpose Health Workers should not be extended beyond 31.03.2014. The circular dated 26.02.2014 of the Mission Director, NRHM Uttar Pradesh is being reproduced hereinunder:-

“प्रेषक,

मिशन निदेशक

राष्ट्रीय ग्रामीण स्वास्थ्य मिशन

उत्तर प्रदेश, विशाल काम्प्लेक्स 19ए, विधान सभा मार्ग लखनऊ।

सेवा में,

समस्त मुख्य चिकित्साधिकारी,

उत्तर प्रदेश।

पत्र संख्या- एसपीएमयू/नियोजन/44/2013-14/5993-75 दि० 26.02.2014

विषय: एनएचएम के अन्तर्गत वर्ष- 2013-14 में संचालित महत्वपूर्ण गतिविधियों को वर्ष-2014-15 में अनवरत संचालित किये जाने के सम्बन्ध में

महोदय,

कृपया भारत सरकार के संलग्न पत्र संख्या-डीओ नं०-10(36)/2013-एन०आर०एच०एम० 1 दिनांक 03.02.2014 का सन्दर्भ ग्रहण करने का कष्ट करें। पत्र द्वारा अवगत कराया गया है कि एन०एच०एम० के अन्तर्गत वर्ष- 2013-14 में संचालित की जा रही महत्वपूर्ण एवं अति आवश्यक योजनाओं को वर्ष- 2014-15 में भी पूर्वानुसार प्रदान की गयी स्वीकृतियों एवं मानकानुसार अनवरत चलाया जाना है भारत सरकार द्वारा कतिपय गतिविधियों यथा जेएसएसके०, जेएसएसवाई०, इन्फ्रास्ट्रक्चर कार्य, एम०सी०एच० विंग के कार्य फैसिलिटी वेरु न्यू बोर्ड केयर, आर०बी०एस०के० के क्रियान्वयन, निःशुल्क औषधियों की व्यवस्था, नेशनल एम्बुलेन्स सर्विस आदि अनवरत चलाये जाने तथा आशा को परफॉरमेन्स बेस्ड इन्सेन्टिव पूर्ववत् दिये जाने हेतु निर्देशित किया गया है।

भारत सरकार द्वारा यह भी सूचित किया गया है कि जिन संविदा कर्मियों को मात्र दिनांक 31 मार्च, 2014 तक के लिये ही स्वीकृति प्रदान की गयी है को छोड़कर अन्य संविदा चिकित्सक व विभिन्न वर्ग के कर्मी वर्ष- 2014-15 की स्वीकृतियां प्राप्त होने तक परफॉरमेन्स के आधार पर पूर्व निर्धारित शर्तों के अनुसार कार्य करते रहेंगे।

आप अवगत है कि भारत सरकार द्वारा मल्टी परपज वर्कर (एम०पी०डब्लू०) के पदों हेतु मात्र दिनांक 31.03.2014 तक की ही स्वीकृति प्रदान की गयी है अतः 31.03.2014 के उपरान्त एम०पी०डब्लू० का पुनःअनुबन्ध न किये जाये। साथ ही जनपद में कार्यरत ब्लाक कार्यक्रम प्रबन्धक के दिनांक 31.03.2014 के उपरान्त पुनःअनुबन्ध/नवीन तैनाती के सम्बन्ध में शीघ्र ही निर्देश पृथक से निर्गत किये जायेंगे जिसके अनुसार कार्यवाही की जाये। आपसे अनुरोध है कि भारत सरकार के उपरोक्त निर्देशों के क्रम में ससमय समस्त कार्यवाही करना सुनिश्चित करे।

संलग्नक-यथोक्त।

भवदीय

हस्ताक्षर-अस्पष्ट

25.2.2014

अमित कुमार घोष

मिशन निदेशक

पत्र संख्या-एस०पी०एम०यू०/नियोजन/44/2013-14 दिनांक-

प्रतिलिपि- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

- 1- प्रमुख सचिव चिकित्सा, स्वास्थ्य एवं परिवार कल्याण उ०प्र० शासन को सूचनार्थ।
- 2- महानिदेशक, चिकित्सा एवं स्वास्थ्य उत्तर प्रदेश लखनऊ।
- 3- महानिदेशक परिवार कल्याण उत्तर प्रदेश लखनऊ।
- 4- समस्त जिलाधिकारी, उत्तर प्रदेश।
- 5- निदेश राज्य स्वास्थ्य एवं परिवार कल्याण संस्थान उ०प्र० लखनऊ।
- 6- समस्त मण्डलीय अपर निदेशक चिकित्सा स्वास्थ्य एवं परिवार कल्याण उ०प्र०
- 7- वित्त नियंत्रक एवं समस्त महाप्रबन्धक, उपमहाप्रबन्धक, एस०पी०एम०यू०
- 8- समस्त मण्डलीय/जिला कार्यक्रम प्रबन्धक, एनआरएचएम उ०प्र०।

हस्ताक्षर-अस्पष्ट

25.2.2014

अमित कुमार घोष

मिशन निदेशक

सत्यप्रतिलिपि"

10. On 09.07.2014, the Mission Director, NRHM, Lucknow issued a letter addressed to the Director General, Medical and Health Services, Uttar Pradesh requiring the State Government to take appropriate action for allocation of budget in order to extend financial benefits to the Multi-purpose Health Workers beyond 30.09.2014, the letter dated 09.07.2014 is extracted hereinunder.-

"प्रेषक,

मिशन निदेशक

राष्ट्रीय स्वास्थ्य मिशन

उत्तर प्रदेश, लखनऊ।

सेवा में,

महानिदेशक,

चिकित्सा एवं स्वास्थ्य सेवायें,

उ०प्र० लखनऊ।

पत्रांक-संख्या-एसपीएमयू/एनवीडीसीपी/6/2014-15/709 दिनांक-9-7-2014

विषय: राष्ट्रीय वेक्टर जनित रोग नियंत्रण कार्यक्रमों के अन्तर्गत संविदा पर कार्यरत एम०पी०डब्लू (पुरुष वीबीडी) को वित्तीय वर्ष- 2014-15 में दिनांक 30 सितम्बर-2014 तक रखे जाने के सम्बन्ध में महोदय,

कृपया श्री मनोज झालानी संयुक्त सचिव भारत सरकार स्वास्थ्य एवं परिवार कल्याण मंत्रालय निर्माण भवन नई दिल्ली के अर्द्ध शासकीय पत्र संख्या-डीओ नं० 7(35)/2014-एनआरएचएम-1 दिनांक 18-6-2014 (छायाप्रति संलग्न) का सन्दर्भ ग्रहण करने का कष्ट करें।

पत्र द्वारा राष्ट्रीय वेक्टर बार्न डिजीज कन्ट्रोल कार्यक्रम के अन्तर्गत वर्ष-2013-14 में जनपदों में कार्यरत संविदा एमपीडब्लू (पुरुष वीबीडी) को निम्नलिखित टिप्पणी के साथ दिनांक 30 सितम्बर-2014 तक रखे जाने का अनुमोदन प्रदान किया गया।

"In the case of request from State Government for continuation of support to MPWs (Male), GoI will provide support for continuation of existing MPWs (Male) on contract basis under NRHM additionalities or order NVBDCP only upto (30th Sept. 2014). In case the service of MPWs (Male) are required by the State beyond 30th Sept. 2014 then the state would need to provide for in from its own resources and GoI support will not be available beyond 30th Sept. 2014"

भारत सरकार के उपर्युक्त अनुमोदन के क्रम में संविदा पर कार्यरत एम०पी०डब्लू० (वीबीडी) को वर्ष -2014 में दिनांक 30 सितम्बर-2014 तथा रखे जाने सम्बन्धी दिशा निर्देश मंत्रालय को अपने स्तर से तत्काल प्रेषित करने का कष्ट करें एवं उक्त की प्रति इस कार्यालय को प्रेषित करने का कष्ट करें। यहां पर यह भी स्पष्ट करना है कि दिनांक 30 सितम्बर-2014 के द्वारा एम०पी०डब्लू० (वीबीडी) की नियमित अथवा संविदा पर नियुक्ति राज स्तर से ही की जानी है।

संलग्नक- यथोक्त।

भवदीय

अमित कुमार घोष

मिशन निदेशक

पत्र संख्या- एसपीएमयू/एनवीडीसीपी/6/2014-15 तद दिनांक।

प्रतिलिपि-

1- प्रमुख सचिव चिकित्सा स्वास्थ्य एवं परिवार कल्याण उ०प्र० शासन को सादर सूचनार्थ।

2- अपर निदेशक, मलेरिया एवं वीबीडी जवाहर भवन लखनऊ उ०प्र० को इस निर्देश के साथ कि

अपने स्तर से तत्काल आवश्यक कार्यवाही करना सुनिश्चित करें।

अमित कुमार घोष

मिशन निदेशक"

11. Accordingly, on 14.07.2014, another letter came to be issued by the Additional Director, Malaria and VBD, Uttar Pradesh addressed to the Chief Medical Officers which is quoted hereinunder.-

"प्रेषक,

अपर निदेशक

मलेरिया एवं वीबीडी

उत्तर प्रदेश।

सेवा में,

मुख्य चिकित्सा अधिकारी,

आगरा, अम्बेडकरनगर, औरैया, आजमगढ़, बागपत, बलिया, बाराबंकी, बरेली, बिजनौर, बुलन्दशहर, चन्दौली, एटा, इटावा, फर्रुखाबाद, फतेहपुर, फिरोजाबाद, जी०बी०नगर, गोरखपुर, हमीरपुर, हरदोई, हाथरस, जौनपुर, झांसी, कानपुर नगर, लखनऊ, महोबा, मैनपुरी, मथुरा, मऊ, मेरठ, मुरादाबाद, मु०नगर, पीलीभीत, प्रतापगढ़, रायबरेली, सहारनपुर, शाहजहांपुर, श्रावस्ती, सीतापुर, सोनभद्र एवं उन्नाव।

पत्रांक मा०/एम०पी०डब्लू०/2014-15/4401-41 दिनांक- 14-7-2014

विषय: राष्ट्रीय जनित रोग नियंत्रण कार्यक्रमों के अन्तर्गत संविदा पर कार्यरत एम०पी०डब्लू (पुरुष वी०बी०डी०) को वित्तीय वर्ष- 2014-15 में दिनांक 30 सितम्बर- 2014 तक रखे जाने के सम्बन्ध में महोदय,

उपर्युक्त विषय मिशन राष्ट्रीय स्वास्थ्य मिशन, उ०प्र० लखनऊ के पत्र संख्या-एस०पी०एम०यू०/एनवीबीडीसीपी/6/2014-15/1709 दिनांक 09.07.2014 (छायाप्रति संलग्न) एवं श्री मनोज झालानी संयुक्त सचिव, भारत सरकार स्वास्थ्य एवं परिवार कल्याण मंत्रालय, निर्माण भवन नई दिल्ली के अर्द्ध शासकीय पत्र संख्या-डीओ नं० 7(35)/2014-एनआरएचएम-1 दिनांक 18-6-2014 (छायाप्रति संलग्न) का सन्दर्भ ग्रहण करने का कष्ट करें।

उक्त पत्र द्वारा राष्ट्रीय वेक्टर बार्न डिजीज कन्ट्रोल कार्यक्रम के अन्तर्गत वर्ष-2013-14 में जनपदों में कार्यरत संविदा एमपीडब्लू (पुरुष वीबीडी) को निम्नलिखित टिप्पणी के साथ दिनांक 30 सितम्बर- 2014 तक रखे जाने का अनुमोदन प्रदान किया गया।"

In the case of request from State Government for continuation of support to

MPWs (Male), GoI will provide support for continuation of existing MPWs (Male) on contract basis under NRHM additionalities or order NVBDCP only upto 30th Sept. 2014. In case the service of MPWs (Male) are required by the State beyond 30th Sept. 2014 then the state would need to provide for in from its own resources and GoI support will not be available beyond 30th Sept. 2014"

मिशन निदेशक, राष्ट्रीय स्वास्थ्य मिशन उ०प्र० लखनऊ ने अपने पत्र दिनांक 09.07.2014 में अवगत कराया है कि भारत सरकार के उपर्युक्त अनुमोदन के क्रम में संविदा पर कार्यरत एमपीडब्लू (पुरुष वीबीडी) को वर्ष- 2014-15 में दिनांक 30 सितम्बर- 2014 के बाद एमपीडी, (पुरुष वीबी०डी०) की नियमित अथवा संविदा पर नियुक्ति राज्य स्तर से ही की जानी है। अतः उक्त के सम्बन्ध में यथाशीघ्र आवश्यक कार्यवाही कर अधोहस्ताक्षरी को एवं मिशन निदेशक एनएचएम उ०प्र० लखनऊ को भी अवगत कराना सुनिश्चित करें।

संलग्नक- उपरोक्तानुसार

भवदीय

हस्ताक्षर-अस्पष्ट

14.07.2014

अपर निदेशक

मलेरिया एवं वी०बी०डी०

उत्तर प्रदेश।

पत्रांक माल०ए०/एमपीडब्लू/2014-15 तद् दिनांक।

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

- 1- निजी सचिव (प्रमुख सचिव) चिकित्सा स्वास्थ्य एवं परिवार कल्याण उ०प्र० शासन।
- 2- महानिदेशक, चिकित्सा एवं स्वास्थ्य सेवाये उ०प्र०।
- 3- महानिदेशक, परिवार कल्याण महानिदेशालय उ०प्र०।
- 4- मिशन निदेशक, एनएचएम, एसपीएमयू लखनऊ।
- 5- समस्त मण्डलीय अपर निदेशक चि०स्वा०एं व०प०क० उत्तर प्रदेश।
- 6- महाप्रबन्धक रा०कार्य० एनएचएम उ०प्र० लखनऊ।
- 7- समस्त जिला वेक्टर जनित रोग कार्यक्रम अधिकारी, उ०प्र०।

अपर निदेशक

मलेरिया एवं वी०बी०डी०

उत्तर प्रदेश।

सत्यप्रतिलिपि"

12. Since the term of the writ petitioners was not extended beyond October, 2014 in view of the circular dated 26.02.2014 issued by the Mission Director, National Rural Health Mission, UP, Lucknow, so the present writ petitions came to be preferred. The relief sought in the leading writ petition is as under.-

“(a) a writ, order or direction in the nature of certiorari quashing the circular dated 26.2.14 issued by the Mission Director, National Rural Health Mission, U.P., Lucknow, in so far as it prohibits the extension of the petitioners beyond 31.3.14 (Annexure No.28);

(b) a writ, order or direction of a suitable nature commanding the respondents to undertake proceedings in accordance with the communication of the Mission Director, National Rural Health Mission, U.P., Lucknow, dated 9.7.14 and the communication of the Additional Director, Malaria & Vector Borne Diseases dated 14.7.14, within a period to be specified by this Hon'ble court;

(c) a writ, order or direction of a suitable nature commanding the State authorities to comply with the conditionality contained in Office Memorandum dated 3.1.11, within a period to be specified by this Hon'ble court;

(d) a writ, order or direction of a suitable nature commanding the respondents to appoint the petitioners against substantively vacant posts of Health Worker (Male), after sending them for requisite training, within a period to be specified by this Hon'ble court;

(e) a writ, order or direction of a suitable nature commanding the respondents not to interfere in the working of the petitioners on contracts and to pay the petitioners their monthly emolument regularly every month till the continuance of the National Rural Health Mission Scheme;

(f) a writ, order or direction of a suitable nature commanding the respondents to forthwith disburse to the petitioners the arrears of their emoluments, within a period to be specified by this Hon'ble court;

(g) any other writ, order or direction as this Hon'ble court may deem fit and

proper in the circumstances of the case; and

(h) award cost of the petition to be paid to the petitioners.”

13. In the leading writ petition on 16.10.2015, the following orders came to be passed.-

“Heard Shri Ashok Khare, learned senior counsel assisted by Shri Siddharth Khare for the petitioner, Shri Arun Kumar Pal, learned counsel appearing for the respondents no. 2 and 3 and Shri Mata Prasad, learned Addl. Chief Standing Counsel for the respondents, 1 and 4 to 21.

The petitioner is seeking quashing of the circular dated 26.2.2014 issued by the Mission Director, National Rural Health Mission, U.P. Lucknow in so far as it prohibits the extension of the petitioner beyond 31.3.2014.

It is pointed out that an identical matter has come up before the Lucknow Bench of this Court in W.P. (S/S) No. 1453 of 2014 (Shiv Pratap Maurya and others Vs. State of U.P. and others) alongwith other connected matter in which the Court was pleased to pass the following order:

"Since controversy involved in the aforesaid writ petitions are one and the same, as such they have been connected and heard together.

Heard Mr. S.K. Kalia, learned Senior Advocate Assisted by Mr. Vidhu Bhushan Kalia, learned counsel appearing for petitioners, Mr. K.C. Kaushik, learned Additional Solicitor General for opposite parties no. 2 and 3 as well as Mr. Saurabh Lavania, learned counsel appearing for opposite party no. 4 and the learned Standing Counsel for State.

Mr. S.K. Kalia, learned Senior Advocate, duly assisted by Mr. V.B. Kalia, Advocate, appearing for petitioners submits that under the guidelines for Multipurpose Health Worker (Male) 2010 [hereinafter referred to as the "MPHW (M)"], MPHW (M) shall be engaged for initial period of three years. The expenditure shall be shared by the Central Government and the State Government during the said period. The said guidelines also provide that the State Government is required to create requisite number of posts and fill up on regular basis within next three years so that the continuity of these workers is maintained after the initial period of three years, during which the Government of India is to provide financial assistance.

It is submitted that the Scheme under which MPHW (M) have been engaged

has been initiated in the year 2012 in the State of U.P. The petitioners shall be allowed to initially continue for three years at least before being absorbed against regular posts sanctioned by the State Government. It is submitted that earlier identically situated persons like petitioners were not getting honorarium after 30th September, 2013 and, as such, had approached the Court by filing Writ Petition No.3792 (SS) of 2013. The Court, after recording the observations that learned Additional Solicitor General of India does not dispute the fact that the Scheme has been extended by the Central Government up to the year 2017, had directed the respondents to allow the petitioners to work and discharge their duties till the next date of listing and pay honorarium on the post, in question under N.R.H.M. Scheme, till the end of financial year 2013-14.

It is submitted that in compliance of the aforesaid order the Director, Ministry of Health and Family Welfare (N.R.H.M.-I Section), Government of India vide letter dated 22.11.2013 has conveyed the approval of contractual MPHWS till 31st March, 2014 only.

The submission is that there is no justification for granting approval to the petitioners' engagement for a period up to 31st March, 2014 only when as per the guidelines the petitioners are required to continue for initial period of three years before being absorbed against regular posts created by the State Government. It is submitted that the work and post on which the petitioners are working are very much available and directions be issued to respondents to allow the petitioners to continue after 31st March, 2014.

Mr. K.C. Kaushik, learned Additional Solicitor General of India submits that the Scheme is in fact in two parts; one part is to continue till 2017 whereas the second part of the Scheme under which petitioners have been engaged has been approved for the period up to 31.3.2014 only. It is also submitted that the financial burden after 31.3.2014 is to be borne by the State Government.

Be that as it may, prima-facie, I am of the view that as per Scheme petitioners are required to be engaged initially for a period of three years. The engagement of petitioners is to be approved on year to year basis. The scheme has started in the State of U.P. in the year 2012 and has to continue initially for three years. The financial assistance is to be provided by the Central Government in the ratio of 85%, 75% and 65% respectively as per letter dated

3.1.2011. The remaining cost shall be shared by the State Government.

The petitioners, as such, shall be allowed to continue after 31.3.2014 and in this regard necessary formalities with respect to approval of their engagement, sanction of project implementation plan, availability of finance etc. shall be done by the authorities concerned and they shall be paid salary/emoluments regularly provided their work and conduct is satisfactory.

Let counter affidavit be filed by the opposite parties within six weeks. In case counter affidavit is filed petitioners may file rejoinder affidavit within two weeks, thereafter.

List thereafter."

The matter requires consideration.

All the respondents may file counter affidavit within six weeks. The petitioner will have two weeks thereafter to file the rejoinder affidavit.

List thereafter.

The petitioners, as such, shall be allowed to continue after 31.3.2014 and in this regard necessary formalities with respect to approval of their engagement, sanction of project implementation plan, availability of finance etc. shall be done by the authorities concerned and they shall be paid salary/emoluments regularly provided their work and conduct is satisfactory."

14. With the same relief as claimed in the leading writ petition, the connected C1, C2 and C3 petitions came to be preferred.

15. The respondents herein aggrieved with the interim order dated 16.10.2015 passed in the leading writ petition preferred a Special Appeal (D) No. 631 of 2021 in which the following orders were passed on 02.09.2021.-

"Exemption Application No. 1 of 2021

Exemption Application is allowed.

Appellants are exempted from filing certified copy of the interim order dated 16.10.2015 to this appeal.

Order on Memo of Appeal

By this appeal, a challenge is made to the interim order dated 16.10.2015.

The appeal otherwise suffers from delay of more than 2100 days. However, the appeal needs to be disposed of without causing interference in the order looking to the currency of more than six years but with a direction to the office to list the pending Writ Petition No. 59726 of 2015 before Writ Court for final hearing and if it is not possible, to hear and decide the application submitted by the State to seek recall/modification/vacation of the interim order dated 16.10.2015 to which no objection has been raised by the side opposite.

Accordingly, without causing interference in the interim order challenged herein and after condoning the delay, we dispose of this appeal with a direction to the office to list the pending writ petition before the learned Single Judge in first ten cases on 20.09.2021. The learned Single Judge is requested to hear and decide the writ petition on the aforesaid date and if it is not possible, then at least hear and decide the application for recall/modification/vacation of the interim order.”

16. Since the order of the writ court in the leading writ petition was not complied with so the petitioners in the leading writ petition preferred Contempt Application (Civil) No. 5520 of 2016 in which on 04.01.2022, the following orders were passed.-

“Heard Sri Siddharth Khare, learned counsel for the applicants and Sri Neeraj Tripathi, Additional Advocate General ably assisted by Sri Ratan Deep Mishra, learned Standing Counsel, who have appeared on behalf of opposite party no. 1.

This contempt application has been filed alleging wilfull disobedience and non-compliance of the interim order dated 16.10.2015 passed by this Court in Writ Petition No. 59726 of 2015.

Counsel for the applicants has submitted that after six years of passing the order dated 16.10.2013 and filing of this contempt application a defective Special Appeal No. 631 of 2021 was preferred against the aforesaid interim order but the Special Appeal Court has refused to interfere with the same and has directed that the Single Judge should decide the writ petition at an early date. The matter was fixed before the Single Judge on 20.09.2021 but has not been taken up. However, the fact remains that the interim order of this court has not been complied.

Learned Additional Advocate General has relied upon the judgment of the Apex Court in the case of Vinay Kumar Pandey vs. Committee of Management

Shri Gandhi Inter College and Another dated 08.12.2020 passed in Civil Appeal No. 4007-4008 of 2020 wherein the Apex Court has held that unless the stay vacation application is decided no case for initiation for contempt proceedings is made out. Further reliance has been made on another judgment of the Apex Court in the case of State of Jammu & Kashmir vs. Mohd. Yaqoob Khan and others (1992) 2 UPLBEC 166 in support of the above proposition argued before this Court.

In the case cited above the Apex Court has not held that by merely filing a stay vacation application before the Court the respondent will get right to disobey the interim order of the Court. Nothing has been stated in the affidavit of contemner-opposite party no. 1 regarding the efforts made by him to get his stay vacation application decided. This court finds that the respondents have not made any pleadings before this Court that they have tried to get their stay vacation application filed in the Writ Petition No. 59726 of 2015 decided. They have unsuccessfully challenged the interim order dated 16.10.2015 before the Special Appeal Court but are unwilling to comply the interim order aforesaid.

The intention of the Apex Court's judgments are not to give a lever to the contemnors to thwart and frustrate the compliance of the interim orders of the High Court. Bona fide efforts by the contemnors to get the stay vacation application decided is to be proved as a pre-condition for taking up the plea of pendency of the stay vacation application of contemnors before the contempt court.

In this court thousands of writ petitions regarding service matters are pending and in most of the cases the stay vacation applications are also pending for orders. If the excuse taken by the contemner-opposite party no. 1 justifying violation of the interim order dated 16.10.2015 is allowed to prevail, no interim order would be complied by any of the respondents in any writ petition and the purpose of passing interim order in writ petitions arising out of service matters would be frustrated. The present case is one of the thousands of cases pending, with stay vacation applications also pending, which cannot be decided on account of peculiar practical problems of this High Court. Only by making consistent efforts such applications are taken up and decided by the court. The state counsels seldom make any such effort. Rarely listing application is moved by them for early listing of case. Even when case is listed no mention is made pointing out any urgency in the matter requiring immediate attention. Only when contempt proceedings are

initiated by the petitioner, stay vacation application are filed and time barred special appeal is filed.

Earlier Sri Arun Kumar Sinha, was impleaded as opposite party no. 1, who was required to comply the interim order dated 16.10.2015 of this Court. It has been informed that incumbent of the aforesaid post has changed.

Issue notice to the Principal Secretary, Medical Health and Family Welfare, Government of U.P., Lucknow. Whosoever is holding the aforesaid post shall file an affidavit of compliance or appear in person on 8th February, 2022.

List this case on 08.02.2022.”

17. Against the order dated Dated 04.01.2022 passed in Contempt Application (Civil) No. 5520 of 2016 dated 04.01.2022, the respondents herein preferred Special Leave to Appeal (C) No. 1190 of 2022 in which on 07.02.2022, the following orders were passed.-

“Issue notice.

Mr. Yatish Mohan, learned counsel appears for the contesting respondents i.e. respondent Nos. 1 to 140.

Service to the proforma respondents is dispensed with.

The contesting respondents may file their response, if so chosen, within two weeks from today.

Ms. Aishwarya Bhati and Mr. V. Giri, learned senior counsel appearing for the parties are ad idem that the contesting parties shall make a request before the High Court for taking up the main matter i.e., W.P. No. 59726 of 2015 "Ankit Pathak and 139 ors. vs. State of U.P. and 20 ors." itself for final hearing at the earliest.

We hope and trust that such a request shall be given due consideration by the High Court, looking to the subject matter of litigation and considering overall circumstances.

Until the next date in this petition, operation and effect of the impugned order dated 04.01.2022 in Contempt Petition (C) No. 5520 of 2016 shall remain stayed.

However, we make it clear that pendency of this petition shall not be of any impediment in the High Court proceeding with the said writ petition and disposing it of finally.

List this matter after two weeks.”

18. On 12.04.2022, this Court proceeded to pass the following orders.-

“1. Heard Shri. Ashok Khare, learned Senior Counsel assisted by Kauntey Singh, learned counsel for the petitioners and Shri.R.K. Ojha, learned Senior Counsel assisted by Anil Kumar Singh, learned C.S.C. VII for the respondents.

2. This writ petition has been filed seeking following reliefs:

" (a) a writ, order or direction in the nature of certiorari quashing the Circular dated 26.2.2014 issued by the Mission Director, National Rural Health Mission, U.P., Lucknow, in so far as it prohibits the extension of the petitioners beyond 31.3.2014 (Annexure No.28);

(b) a writ, order or direction of a suitable nature commanding the respondents to undertake proceedings in accordance with the communication of the Mission Director, National Rural Health Mission, U.P., Lucknow, dated 9.7.2014 and the communication of the Additional Director, Malaria & Vector Borne Diseases dated 14.7.2014 within a period to be specified by this Hon'ble Court;

(c) a writ, order or direction of a suitable nature commanding the State authorities to comply with the conditionality contained in Office Memorandum dated 3.1.2011 within a period to be specified by this Hon'ble court;

(d) a writ, order or direction of a suitable nature commanding the respondents to appoint the petitioners against substantively vacant posts of Health Worker (Male), after sending them for requisite training, within a period to be specified by this Hon'ble court;

(e) a writ, order or direction of a suitable nature commanding the respondents not to interfere in the working of the petitioners on contracts and to pay the petitioners their monthly emolument regularly every month till the continuance of the National Rural Health Mission Scheme;

(f) a writ, order or direction of a suitable nature commanding the respondents to forthwith disburse to the petitioners the arrears of their emoluments, within a period to be specified by this Honb'le court;

(g) any other writ, order or direction as this Hon'ble court may deem fit and proper in the circumstances of the case; and

(h) award cost of the petition to be paid to the petitioners."

3. This court has passed the following order on 16.10.2015:

"Heard Shri Ashok Khare, learned senior counsel assisted by Shri Siddharth Khare for the petitioner, Shri Arun Kumar Pal, learned counsel appearing for the respondents no. 2 and 3 and Shri Mata Prasad, learned Addl. Chief Standing Counsel for the respondents, 1 and 4 to 21.

The petitioner is seeking quashing of the circular dated 26.2.2014 issued by the Mission Director, National Rural Health Mission, U.P. Lucknow in so far as it prohibits the extension of the petitioners beyond 31.3.2014.

It is pointed out that an identical matter has come up before the Lucknow Bench of this Court in W.P. (S/S) No. 1453 of 2014 (Shiv Pratap Maurya and others Vs. State of U.P. and others) alongwith other connected matter in which the Court was pleased to pass the following order:

"Since controversy involved in the aforesaid writ petitions are one and the same, as such they have been connected and heard together.

Heard Mr. S.K. Kalia, learned Senior Advocate Assisted by Mr. Vidhu Bhushan Kalia, learned counsel appearing for petitioners, Mr. K.C. Kaushik, learned Additional Solicitor General for opposite parties no. 2 and 3 as well as Mr. Saurabh Lavania, learned counsel appearing for opposite party no. 4 and the learned Standing Counsel for State.

Mr. S.K. Kalia, learned Senior Advocate, duly assisted by Mr. V.B. Kalia, Advocate, appearing for petitioners submits that under the guidelines for Multipurpose Health Worker (Male) 2010 [hereinafter referred to as the "MPHW (M)"], MPHW (M) shall be engaged for initial period of three years. The expenditure shall be shared by the Central Government and the State Government during the said period. The said guidelines also provide that the State Government is required to create requisite number of posts and fill up on regular basis within next three years so that the continuity of these workers is maintained after the initial period of three years, during which the Government of India is to provide financial assistance.

It is submitted that the Scheme under which MPHW (M) have been engaged has been initiated in the year 2012 in the State of U.P. The petitioners shall be allowed to initially continue for three years at least before being absorbed against regular posts sanctioned by the State Government. It is submitted that earlier identically situated persons like petitioners were not getting honorarium after 30th September, 2013 and, as such, had approached the Court by filing Writ Petition No.3792 (SS) of 2013. The Court, after recording the observations that learned Additional Solicitor General of India does not

dispute the fact that the Scheme has been extended by the Central Government up to the year 2017, had directed the respondents to allow the petitioners to work and discharge their duties till the next date of listing and pay honorarium on the post, in question under N.R.H.M. Scheme, till the end of financial year 2013-14.

It is submitted that in compliance of the aforesaid order the Director, Ministry of Health and Family Welfare (N.R.H.M.-I Section), Government of India vide letter dated 22.11.2013 has conveyed the approval of contractual MPHWS till 31st March, 2014 only.

The submission is that there is no justification for granting approval to the petitioners' engagement for a period up to 31st March, 2014 only when as per the guidelines the petitioners are required to continue for initial period of three years before being absorbed against regular posts created by the State Government. It is submitted that the work and post on which the petitioners are working are very much available and directions be issued to respondents to allow the petitioners to continue after 31st March, 2014.

Mr. K.C. Kaushik, learned Additional Solicitor General of India submits that the Scheme is in fact in two parts; one part is to continue till 2017 whereas the second part of the Scheme under which petitioners have been engaged has been approved for the period up to 31.3.2014 only. It is also submitted that the financial burden after 31.3.2014 is to be borne by the State Government.

Be that as it may, prima-facie, I am of the view that as per Scheme petitioners are required to be engaged initially for a period of three years. The engagement of petitioners is to be approved on year to year basis. The scheme has started in the State of U.P. in the year 2012 and has to continue initially for three years. The financial assistance is to be provided by the Central Government in the ratio of 85%, 75% and 65% respectively as per letter dated 3.1.2011. The remaining cost shall be shared by the State Government.

The petitioners, as such, shall be allowed to continue after 31.3.2014 and in this regard necessary formalities with respect to approval of their engagement, sanction of project implementation plan, availability of finance etc. shall be done by the authorities concerned and they shall be paid salary/emoluments regularly provided their work and conduct is satisfactory.

Let counter affidavit be filed by the opposite parties within six weeks. In case counter affidavit is filed petitioners may file rejoinder affidavit within two weeks, thereafter.

List thereafter."

The matter requires consideration.

All the respondents may file counter affidavit within six weeks. The petitioner will have two weeks thereafter to file the rejoinder affidavit.

List thereafter.

The petitioners, as such, shall be allowed to continue after 31.3.2014 and in this regard necessary formalities with respect to approval of their engagement, sanction of project implementation plan, availability of finance etc. shall be done by the authorities concerned and they shall be paid salary/emoluments regularly provided their work and conduct is satisfactory. "

4. Shri. Ashok Khare, learned Senior Counsel assisted by Kauntey Singh, learned counsel for the petitioners submitted that the said order has not been implemented till date and contempt proceedings are pending against the respondents.

5. On 11.4.2022, this Court has passed the following order:

" Heard Shri Ashok Khare, learned Senior Counsel assisted by Shri Siddharth Khare, learned counsel for petitioners and Shri R.K. Ojha, learned Senior counsel assisted by Shri P.K. Srivastava, learned Standing Counsel.

To narrow down the controversy, Shri R.K. Ojha, learned Senior Counsel is directed to take instructions whether any regular appointment for the posts of Multipurpose Health Worker (Male as well as Female) is contemplated.

Put up this petition tomorrow i.e. on 12.4.2022 at 10 a.m."

6. Today, Shri. R.K.Ojha, learned Senior Counsel has placed on record a communication dated 11.4.2022 of Special Secretary, State of U.P. and relevant paragraph 3 thereof is mentioned hereinafter:

"3. मा0 उच्च न्यायालय द्वारा दिये गये उक्त आदेश के क्रम में मुझे यह कहने का निदेश हुआ है कि बहुउद्देशीय स्वास्थ्य कार्यकर्ता (एम 0 पी0 डब्लू0) पदनाम का कोई पद विभाग में नहीं है। स्वास्थ्य कार्यकर्ता (पुरुष/महिला) का पद विभाग में सृजित है। स्वास्थ्य कार्यकर्ता (महिला) के रिक्त 9212 पदों पर चयन हेतु उ 0 प्र 0 अधीनस्थ सेवा चयन आयोग, लखनऊ को दिनांक 09 अक्टूबर 2020 को अध्याचन भेजा जा चुका है। उ 0 प्र 0 अधीनस्थ सेवा चयन आयोग के माध्यम से चयन की कार्यवाही प्रक्रियाधीन है। स्वास्थ्य कार्यकर्ता (पुरुष) के रिक्त पदों पर भर्ती किये जाने के संबंध में उ 0 पू 0 चिकित्सा स्वास्थ्य एवं परिवार कल्याण विभाग स्वास्थ्य कार्यकर्ता और स्वास्थ्य पर्यवेक्षक (पुरुष एवं महिला) अराजपत्रित सेवा नियमावली, 2018 में कतिपय संशोधन किये जाने की कार्यवाही प्रक्रियाधीन है। सेवा नियमावली में संशोधन की कार्यवाही पूर्ण कर 02 माह में रिक्त पदों का अध्याचन महानिदेशक, परिवार कल्याण के माध्यम से उ 0 प्र 0 अधीनस्थ सेवा चयन आयोग को

प्रेषित किया जायेगा तथा लगभग 06 माह में उनके चयन की कार्यवाही पूर्ण किये जाने का अनुरोध मा 0 आयोग से किया जायेगा। कृपया उक्त स्थिति से मा 0 उच्च न्यायालय को अवगत कराने का कष्ट करें।”

7. *Shri. Ashok Khare, Senior Advocate has pointed out certain apprehensions in regard to above instructions that the Rules of 2018 provides an eligibility to pass out one year training conducted by certain institutes. However, he submits that neither the petitioners nor any other prospective candidates have undergone such training. To this Shri R.K. Ojha, learned Senior Advocate submits that there are few institutes which impart such training and therefore, presently few candidates have passed out this training course and also submits that while considering the proposed amendments in the rules, essential qualification may also be considered in light of above facts.*

8. *Shri. Ashok Khare, has also pointed out that petitioners have actually worked for three years and thereafter their services were discontinued under the garb that financial assistance to scheme was stopped by the Government of India and the scheme or programmes were not continued. He also pointed out that the interim order was not implemented and petitioners are out of service for more than seven years without their fault.*

9. *In these circumstances, the Court is passing following interim directions:*

(i) The respondents shall complete the process of necessary amendment in U.P. Medical Health and Family Welfare Department Health Worker and Health Supervisor (Male and Female) Non Gazetted Service Rules, 2018 and while considering the proposed amendment, the authority shall also take into note the letter dated 5.9.2017 which is annexed in this writ petition as Annexure R.A.6 in regard to imparting benefit of experience to the petitioners as well as eligibility to undergo a prescribed training course.

(ii) The above process shall be concluded within a period of six weeks.

(iii) Thereafter, selection process shall be concluded within a period of four months.

10. *Mr. R.K. Ojha, Senior Advocate submits that there is an application for vacation of stay of interim order which may be decided as contempt proceedings are pending against the respondents.*

11. *List this case on 21.4.2022 along with the stay vacation application for hearing of the said application.”*

19. Thereafter, on 10.01.2023, the following orders were passed.-

“Heard Sri Siddharth Khare, learned counsel for the petitioners and Sri R.K. Ojha, Senior Advocate assisted by Sri Amitesh Dwivedi appearing for Special Counsel on behalf of respondents and Sri Anil Kumar Singh, Additional Chief Standing Counsel for the respondents.

The present petition is filed with the following prayer :-

(I) a writ, order or direction in the nature of certiorari, quashing the circular dated 26.02.2014 issued by the Mission Director, National Rural Health Mission, U.P., Lucknow, in so far as it prohibits the extension of the petitioners beyond 31.3.14 (Annexure No.28).

(II) a writ, order or direction of a suitable nature commanding the respondents to undertake proceedings in accordance with the communication of the Mission Director, National Rural Health Mission, U.P., Lucknow, dated 09.07.2014 and the communication of the Additional Director, Malaria & Vector Borne Diseases dated 14.07.2014, within a period to be specified by this Hon'ble Court.

(III) a writ, order or direction of a suitable nature commanding the State authorities to comply with the conditionality contained in Office Memorandum dated 03.01.2011, within a period to be specified by this Hon'ble Court.

(IV) a writ, order or direction of a suitable nature commanding the respondents to appoint the petitioners against substantively vacant posts of Health Worker (Male), after sending them for requisite training, within a period to be specified by this Hon'ble Court.

(V) a writ, order or direction of a suitable nature commanding the respondents not to interfere in the working of the petitioners on contracts and to pay the petitioners their monthly emolument regularly every month till the continuance of the National Rural Health Mission Scheme.

(VI) a writ, order or direction of a suitable nature commanding the respondents to forthwith disburse to the petitioners the arrears of their emoluments, within a period to be specified by this Hon'ble Court.

Learned counsel for the petitioners submitted that Scheme in question is going on only by way of re-naming the same.

Learned counsel for the respondents vehemently opposed the prayer and submitted that the Scheme has been closed and now advertisement for the appointment of Basic Health Worker (Male) had already been issued and the provision of weightage of six marks to the petitioners have already been made,

therefore, the present petition has become infructuous.

List this case on 30.01.2023 at 12:00 O' clock.

In the meantime, Additional Chief Secretary, Medical Health & Family Welfare, Govt. of U.P., Lucknow is directed to file a comprehensive affidavit in response to the averments of the petition as well as rejoinder affidavit.”

20. In compliance of the order dated 10.01.2023, a personal affidavit came to be filed by the respondent no. 1 sworn by the Principal Secretary, Medical Health and Family Welfare, Government of Uttar Pradesh, Lucknow dated 27.01.2023.

21. In the mean time, the SLP (C) No. 1190 2022 got converted to Civil Appeal No. 533 of 2024 came to be decided on 09.01.2024, order whereof is quoted hereinunder.-

“Leave granted.

Learned Single Judge of the High Court passed an interim order dated 16.10.2015 whereby as an interim measure it was provided that the writ petitioners (respondents herein) shall be allowed to continue after 31st March, 2014 and in this regard necessary formalities subject to approval of their engagement, sanction of project implementation programme, availability of finance, etc. shall be done by the authorities concerned and they shall be paid salaries, emoluments regularly provided their work and conduct is satisfactory.

As the said interim direction issued by the learned Single Judge was not being complied with, the respondents herein initiated contempt proceedings. The High Court, vide impugned order dated 04.01.2022, issued notice to the Principal Secretary, Medical Health and Family Welfare and further directed that whosoever is holding the said post to file an affidavit of compliance and appear in person on 08.02.2022 for non-compliance of the interim order dated 16.10.2015. It is this order which has been challenged by the Principal Secretary.

Ms. Aishwarya Bhati, learned ASG appearing for the appellant submits that the State made all efforts possible to get the interim order vacated and also challenged the same by way of an intra court appeal but has not been successful.

On the other hand, Mr. P.N. Misra, learned senior counsel for the respondents

submits that the State kept sleeping over the matter for six years and filed a belated appeal which was dismissed on the ground of delay and the application for vacation of stay, which was filed after six years of the interim order, is still pending consideration.

Vide the earlier order passed by this Court, we had left it open for the High Court to proceed and decide the pending writ petitions finally and the pendency of the writ petition before this Court would not come in their way of final disposal of the writ petitions. The status today is that the writ petitions are still pending and even the application for vacation of stay is also pending.

Although some arguments have been made on the merits of the matter, but we are not inclined to go into the same.

According to us the interest of justice would be best served by keeping the impugned order in abeyance till the final disposal of the writ petitions for which we request the appellant-State to approach the Chief Justice of the High Court for early listing of the matter and also request that the matter be assigned to a Court which may hear the same on priority considering the nature of dispute involved, which relates to more than 3000 male health workers engaged under the scheme floated by the Central Government.

With the above observations, the appeal stands disposed of.

Pending application(s) shall also stand disposed of.”

22. Since affidavits have been exchanged between the parties and the learned counsel for the rival parties have made a statement at bar that they do not propose to file any further affidavit, thus, the writ petitions are being decided at the admission stage.

Argument of learned counsel for the petitioners

23. Sri Ashok Khare assisted by Sri Kumar Shresth holding brief of Sri Siddharth Khare and Sri Shalvan assisted by Sri Kautesh Tripathi, learned counsel for the writ petitioners have sought to argue that the circular dated 26.02.2014 issued by the Mission Director, National Rural Health Mission, UP, Lucknow to the extent that it prohibits extension of the tenure of the writ petitioners to be engaged as Multi-purpose Health Worker (Male) on contract basis beyond 31.03.2014 cannot be sustained even for a single moment. Elaborating the said submission, it is contended that the work and

the duties which the writ petitioners were performing is continuous in nature particularly when the same relates to health and hygiene. Contention is that health and hygiene is an integral part and it is the State's responsibility not only to allocate funds but also provide infrastructure and a condition whereby each and every citizen in the State or in the Nation is made available medical support at no cost or little cost. In a nutshell, the submission is that the work which the writ petitioners were performing is of regular nature, thus, in view of the office memorandum issued by the Government of India, Ministry of Health and Family Welfare dated 03.01.2011 initially for the 3 years, the Central Government supported the scheme on declining basis while providing funds i.e, 85%, 75% and 65% and thereafter, it is the State Government who is responsible to create requisite number of posts and fill up them on regular basis within 3 years for maintaining continuity of the workers from their own resources.

24. To put it otherwise, the submission of the learned Senior Counsel for the writ petitioners is that the State is shrinking from its responsibility while coming up with the stand that once the Central Government only supported the scheme for a period of 3 years beyond the same, the State Government is not liable or responsible to continue with the said scheme. It is also contended that there happen to be a communication dated 09.07.2014 and 14.07.2014 of the Mission Director, National Rural Health Mission, UP addressed to the Director General, Medical Health Services, UP and of Additional Director, Malaria and VBD, Uttar Pradesh addressed to Chief Medical Officers throughout the State of UP whereby the petitioners who have been engaged as Multi-purpose Health Worker (Male) were to be continued.

25. Learned Senior counsel has further made a statement at bar as per the instructions received from his clients, that though the petitioners have been engaged as Multi-purpose Health Workers on contract basis on the remuneration of Rs. 6,000/- per month but they are not seeking any regular appointment, however, their claim is that till regular appointment is made, they should be permitted to work as Multi-purpose Health Workers on the same terms and the conditions on which they were already working.

26. Further submission is that it is not the case of the respondents that now the requirement of Multi-purpose Health Worker has come to an end

particularly when in the State of Uttar Pradesh, the infrastructure is not upto the mark and a large section of public are not made accessible to medical facilities. Reference has been made to the communication dated 24.12.2019 of the Director General, Family Welfare, State of UP address to Secretary, Medical Health and Family Welfare, letter of the Government of India, Ministry of Health and Family Welfare, New Delhi dated 09.01.2019, letter dated 28.01.2021 of the Director General, Family Welfare, UP addressed to Chief Medical Officers of the State of Uttar Pradesh as well as other communications so as to contend that already there exist large number of posts of Multi-purpose Health Worker live vacant against which petitioners can easily be accommodated and permitted to work till regular selections are made in accordance with the rules.

27. In order to buttress the submission, reliance has been placed upon the judgment of the Hon'ble Apex Court in **Mohd. Abdul Kadir and another vs. Director General of Police, Assam and others: (2009) 6 SCC 611** so as to contend that once any engagement is done in terms of the scheme then so long as the scheme continues and the work of the engagee is found to be satisfactory then they are to continue on the same terms and conditions and services cannot be dispensed with. Thus, it is prayed that the writ petitions be allowed in toto and a direction be issued to the respondents to engage the writ petitioners on the post of Multi-purpose Health Workers till regular selections is made.

Argument on behalf of the State

28. Counting the submissions for the learned Senior Counsel for the writ petitioners, Sri S.B. Singh, learned Additional Chief Standing Counsel assisted by Sri Saurabh has submitted that none of the contentions so raised on behalf of the writ petitioners has any legs to stand. Submission is that the writ petitioners have been engaged on contractual basis that too against a scheme and once the said scheme came to an end then the writ petitioners cannot insist that they should continue despite closure of the scheme. In a nutshell, submission is that the engagement of the writ petitioners is co-terminus with the scheme in that regard. It is further contended that a decision has been taken to make regular selections and the Uttar Pradesh, Medical Health and Family Welfare Department, Lucknow has recommended for amendment in Health Worker/Health Supervisor

(Male/Female) Non Gazetted Service Rules, 2018 wherein one of the condition is for one year training for Health Worker (Male) at Divisional Training Centre as per Health Worker (Male) Training Rules, instructions dated 24.05.2022 providing Multi-purpose Workers (MPHW) engaged on contract basis for one year would be provided for three marks and thereafter, post completion of one year service three marks shall be awarded. In such a manner that maximum six marks would be awarded as weightage.

29. Submission is that the training instructions dated 24.05.2022 has been challenged in Writ-A No. 4095 of 2022 in which an interim order came to be passed on 22.07.2022 restraining the respondents from proceeding any further with the selection process in pursuance of the advertisement dated 26.05.2022. In a nutshell, the argument is that a conscious policy decision has already been taken by the State that now only regular selections would be made and the writ petitioners being contractual employees are not to be continued in that regard. Reliance has been placed upon the judgment of the Hon'ble Apex Court in **Ganesh Digamber Jumbhrunkar and others vs. The State of Maharashtra & others: (2023) Supreme(SC) 1785** and **Prashant Shukla vs. State of UP: 2021 (12) ADJ 145** so as to contend that contractual employee has no absolute or vested right to continue beyond the continuation of the scheme.

Analysis:

30. I heard the submissions made across the bar and perused the record carefully.

31. Facts are not in issue. It is not in dispute that the Government of India, Ministry of Health and Family Welfare on 03.01.2011 issued an office memorandum approving engagement of Multi-purpose Health Workers (Male) on contractual basis in 235 identified backward districts having high disease burden for a period of 3 years. Financial assistance was extended to support the said scheme on declining basis of 85%, 75% and 65% respectively for three years and the remaining cost was to be shared by the concerned State Government. State Government was advised to create the requisite number of posts and fill up on regular basis within next 3 years for maintaining continuity of Multi-purpose Health Workers from their own resources. The objection of the writ petitioners is that though they were

allowed to perform the duties so entrusted to them for a period of 3 years but by virtue of the circular dated 26.02.2014 issued by the Mission Director, NRHM, the extension of the writ petitioners to work as Multi-purpose Health Worker beyond 31.03.2014 was prohibited.

32. Plainly and simply, according to the writ petitioners, post completion of 3 years as per the office memorandum dated 3.1.2011 of the Government of India, Ministry of Health and Family Welfare, the said scheme ought to have been continued by permitting the writ petitioner to work as Multi-purpose Health Worker at the cost of the State Government and by not doing so, the State Government has shrunk from its responsibility. The stand of the State Government as set out in the pleadings is that the State Government has taken a policy decision not to continue with the said scheme but to make regular selections pursuant to the Uttar Pradesh, State Medical Health and Family Welfare Department, Health Worker and Health Supervisor (Male/Female) Non Gazetted Rules 2018 and Health Worker (Male) Training Rule, Instructions, 2022 dated 24.05.2022.

33. In order to address the said issue what would be relevant would be the legal right of the writ petitioners to insist that they should be permitted to discharge duties as Multi-purpose Health Workers till regular selections are made.

34. Notably, the engagement of the writ petitioners is on contractual basis on monthly remuneration Rs. 6,000/- as Multi-purpose Health Workers. The appointment order itself shows that the same is on contractual basis and further the agreement so entered into between the respondents/employer on one hand and the writ petitioners on the other hand itself shows the engagement can be terminated on a notice of one month. Thus, it becomes apparently clear that the appointment is not against any substantive post and is contractual and not regular. Once the appointment of the writ petitioners is on contractual basis then the writ petitioners cannot insist that a mandamus be issued directing the respondents to engage the writ petitioners despite the fact that the respondents have abandoned the scheme and they are not implementing the same.

35. Interestingly, the tenure of the engagement of the writ petitioners in total is approximately 3 years and in absence of any rule, regulation or Government Order providing for regularization or absorption or any status

akin to regular, the writ petitioners cannot ask for a mandamus directing the respondents to engage the writ petitioners.

36. The issue can also be seen from the another point of angle that it is not the case of the writ petitioners that on one hand the writ petitioners have been dislodged from their engagement, but, on the other hand, on contractual basis, appointments of the others are being made. Conversely, here, in the case, it is the specific stand of the respondents that they are not continuing with the said scheme, thus, there is no question of engagement of any other contractual employees.

37. Nonetheless, continuance or non-continuance of a scheme by an employer cannot be questioned in the court of law until and unless there is arbitrariness and discrimination being meted to the employee/engagee. However, there is nothing on record to suggest even remotely in that regard. The Hon'ble Supreme Court in **Subha B. Nair and others Vs. State of Kerala: (2008) 7 SCC 210** observed as under.-

“8. A decision on the part of an employer whether to fill up the existing vacancies or not is within its domain. On this limited ground in the absence of discrimination or arbitrariness, a writ court ordinarily would not interfere in such matters. This has been so held by this Court in Deepa Keyes v. Kerala SEB, observing that the rank list having expired and the validity having not been extended, no relief could be granted to the appellants therein.

9. Similar view has also been expressed by this Court in K. Thulaseedharan v. Kerala State Public Service Commission.”

38. In **S.S. Balu vs. State of Kerala: 2009 2 SCC 479**, it was held as under.-

“12. There is another aspect of the matter which cannot also be lost sight of. A person does not acquire a legal right to be appointed only because his name appears in the select list. (See Pitta Naveen Kumar v. Raja Narasaiah Zangiti 1.) The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate concerned will have no legal right for obtaining a writ of or in the nature of mandamus. (See Batiarani Gramiya Bank v. Pallab Kumar 2.) In Shankarsan Dash v. Union of India 3 a Constitution Bench of this Court held: (SCC pp. 50-51, para 7)

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

13. In State of Haryana v. Subash Chander Marwaha 4 this Court held: (SCC p. 226, paras 10-11)

"10. ... The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. ...

11. It must be remembered that the petition is for a mandamus. This Court has pointed out in Rai Shivendra Bahadur (Dr.) v. Nalanda College 5 that in order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority and the aggrieved party has a legal right under the statute to enforce its performance. Since there is no legal duty on the State Government to appoint all the 15 persons who are in the list and the petitioners have no legal right under the rules to enforce its performance the petition is clearly misconceived."

39. In **Ganesh Digamber Jumbhrunkar (supra)** the following was observed.-

"4. The issue with which we are concerned in this petition is as to

whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.

5. We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken.”

40. In **Prashant Shukla (supra)**, a Division Bench of this Court had the occasion to consider the contingencies wherein mandamus can be issued.-

“20. It is also settled law that a writ of mandamus can be issued if a petitioner is able to establish that he has legally protected and judicially enforceable subsisting right. The petitioner has completely failed to demonstrate that he has any statutory or legal right to compel the respondents to execute an agreement for his re-engagement or further engagement as Computer Operator for MANREGA in District Kannauj.

21. In Director of Settlement, A.P. Vs. M.R. Apparao (2002) 4 SCC 638 (para 17) Hon'ble Supreme Court considered the High Court's power for issuance of mandamus and held as under :-

"17. Coming to the third question, which is more important from the point of consideration of High Court's power for issuance of mandamus, it appears that the constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression 'for any other purpose'. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along recognised lines and subject to certain self-imposed limitations. The expression 'for any other purpose' in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Court must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such

right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition.{Kalyan Singh vs. State of U.P., AIR 1962 SC 1183}. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. When the aforesaid principle are applied to the case in hand, the so-called right of the respondents, depending upon the conclusion that the amendment Act is constitutionally invalid and, therefore, the right to get interim payment will continue till the final decision of the Board of Revenue cannot be sustained when the Supreme Court itself has upheld the constitutional validity of the amendment Act in Venkatagiri's case (2002) 4 SCC 660 on 6.2.1986 in Civil Appeal Nos. 398 & 1385 of 1972 and further declared in the said appeal that interim payments are payable till determination is made by the Director under Section 39(1). The High Court in exercise of power of issuance of mandamus could not have said anything contrary to that on the ground that the earlier judgment in favour of the respondents became final, not being challenged. The impugned mandamus issued by the Division Bench of the Andhra Pradesh High Court in the teeth of the declaration made by the Supreme Court as to the constitutionality of the amendment Act would be an exercise of power and jurisdiction when the respondents did not have the subsisting legally enforceable right under the very Act itself. In the aforesaid circumstances, we have no hesitation to come to the conclusion that the High Court committed serious error in issuing the mandamus in question for enforcement of the so-called right which never subsisted on the date, the Court issued the mandamus in view of the decision of this Court in Venkatagiri's case. In our view, therefore, the said conclusion of the High Court must be held to be erroneous."

22. A Division Bench of this Court in which one of us (Justice Surya Prakash Kesarwani) is one of the member, had considered the power of the High Court for issuance of high prerogative writ for enforcement of fundamental rights, and held as under:-

"18. It is settled law that writ of mandamus can be issued if the petitioner has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. Similar view has also been taken by Hon'ble Supreme Court in Kalyan Singh vs. State of U.P.. Applying the principles of issuance of writ of mandamus on the facts of the present case, we find that the petitioners have no legal right for protection on the facts of the present case inasmuch as such the protection as being asked, may amount to protection against commission of

offence under Section 494/495 I.P.C. It is well settled law that writ of mandamus can not be issued contrary to law or to defeat a statutory provision including penal provision. The petitioners do not have legally protected and judicially enforceable subsisting right to ask for mandamus."

Therefore, the learned Single Judge has not committed any error of law in dismissing the writ petition by refusing to issue mandamus as prayed for.

41. As regards the judgment in **Mohd. Abdul Kadir (supra)** is concerned, the same is of no assistance to the petitioners particularly when in the said judgment, the question was with regard to the fact that the ad hoc appointment under a scheme should be continued till the scheme is in existence. In para 17, the following was held.-

"17. When the ad hoc appointment is under a scheme and is in accordance with the selection process prescribed by the scheme, there is no reason why those appointed under the scheme should not be continued as long as the scheme continues. Ad hoc appointments under schemes are normally coterminous with the scheme (subject of course to earlier termination either on medical or disciplinary grounds, or for unsatisfactory service or on attainment of normal age of retirement). Irrespective of the length of their ad hoc service or the scheme, they will not be entitled to regularization nor to the security of tenure and service benefits available to the regular employees. In this background, particularly in view of the continuing Scheme, the ex-serviceman employed after undergoing the selection process, need not be subjected to the agony, anxiety, humiliation and vicissitudes of annual termination and re-engagement, merely because their appointment is termed as ad hoc appointments."

42. Here, in the present case there is a slight distinction that the respondents/State employers are not continuing with the said scheme but have taken a conscious decision for making regular selections in terms of the recruitment rules. Thus, the judgment in the case of **Mohd. Abdul Kadir (supra)** is distinguishable.

43. Moreover, the regular selections which were conducted by the respondents in pursuance of 2018 Rules has been stayed by the Coordinate Bench of this Court on 22.07.2022 passed in Writ-A No. 4095 of 2022

(Deepak Kumar and 26 others Vs. State of U.P. through Additional Chief Secretary Department of Medical Health and Family Welfare, Lko and 4 others).

44. Merely because certain communications came to be made by the Mission Director, NRHM, State of UP and of the Additional Director, Malaria and VBD, Uttar Pradesh and also the fact that according to the writ petitioners, some posts are lying vacant cannot be a ground to direct the respondents by way of mandamus to fill up those posts as it is not the domain of the Court to do so. There are various factors which are to be taken into consideration while filling up the post obviously, it includes feasibility, viability etc. Thus, by way of a blanket direction or judicial fiat, this Court cannot issue a direction by way of a mandamus which is contrary to law. On top of it, what would be relevant is the legal right of a party who seeks mandamus and once in the present case, writ petitioners are contractual employees who had worked for a period of 3 years, they cannot claim any right akin to of a regular employee.

45. Nonetheless, the relief for continuance post 31.03.2014 in co-relation with the circular dated 26.02.2014 which is subject matter of challenge in the present petitions came to be negated by a Coordinate Bench of this Court at Lucknow in Writ-A No. 1453 of 2014 (Shiv Pratap Maurya and 667 others Vs. State of U.P. through Principal Secretary Department of Medical Health and Family Welfare) along with connected writ petitions decided on 20.03.2024.

46. Cumulatively analyzing the case from the four corners of law, this Court does not find the present case to be a fit case for issuance of mandamus as the petitioners are miserably failed to show any legal right in their favour for continuance as Multi-purpose Health Workers. Resultantly, the writ petitions being devoid of merits are liable to be dismissed and are **dismissed**.

(Vikas Budhwar,J.)

September 1, 2026

Rajesh