

(2013) 03 DEL CK 0083
In the Delhi High Court
Case No : WP(C) 3676/2011

NCT of Delhi and Others

APPELLANT

Vs

Pramod Kumar and Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0083

Hon'ble Judges : Pratibha Rani, J;Pradeep Nandrajog, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Vide impugned order dated November 22, 2010, relying upon the decision of a Full Bench of the Central Administrative Tribunal disposing of O.A. No. 1330/2007 Mrs. Victoria Massey v. NCT of Delhi & Ors., directions issued is to pay claimants before the Tribunal pay in the minimum scale with effect from September 01, 2008 with dearness allowance. The grievance of the writ petitioner is that in the Original Application, the claimants before the Tribunal, impleaded as respondents in the writ petition, were claiming parity with Doctors.

2. The argument and the grievance advanced in the writ petition are absurd.

3. Respondents pleaded in the Original Application that employed on contract basis as Para-medics they should be paid salary in the minimum of the pay scale plus dearness allowance citing by way of an example that Doctors appointed on contracted basis were being paid salary in the minimum of the scale + dearness allowance. It would be height of stupidity to infer from said pleading that Para-medics were claiming salary at par with Doctors.

4. On the subject of contractual Para-medics and the decision of the Full Bench of the Tribunal in Victoria Massey's case, it needs to be noted that Para-medical employees working on contract basis in various hospitals established by the Government of NCT Delhi started claiming pay parity with regularly appointed

Para-medical staff. They started claiming increments and various allowances which were being paid to regular employed Para-medical staff.

5. Noting a conflict between views taken by two Division Benches of the Central Administrative Tribunal, OA No. 1330/2007 Mrs. Victoria Massey Vs. NCT of Delhi was referred to a Full Bench of the Tribunal. Answering the reference and simultaneously deciding OA No. 1330/2007 vide order dated July 23, 2008, the Full Bench opined that there being complete similarity in the work performed by the contractual employees they would be entitled to be paid same wages including allowances as also increments as were paid to regular employees.

6. The said decision of the Tribunal was challenged before this Court vide WP(C) No. 8764/2008 Government of NCT of Delhi Vs. Victoria Massey. Three other writ petitions including WP(C) No. 8476/2009 were decided by a common order dated May 22, 2009. The Division Bench noted the underlined paragraphs of the opinion of the Full Bench of the Tribunal:-

Several of the Staff Nurse initially engaged on contract basis, although were for a certain period being paid consolidated pay, as a result of the directions of the Tribunal, as upheld by the High Court, presently are getting salary as is admissible to a regular staff, in all respects. It is also pointed out that in the meanwhile there was proposal for regularization of eligibles by prescribing for a test and some of the staff nurses were successful in the selection and have been absorbed by the Establishment. But as far as the applicants are concerned, they have not been able to cross the hurdle of test. But this is altogether a different issue and in any case irrelevant for the adjudication of the present OA.

What is under challenge is the attempt of the respondents to deny the benefit of equal pay to the applicants herein on the strength of a circular, which had been issued on 03/02/2005, which, according to the respondents, have superseded the circular dated 12/09/2002. The presence of circular had been highlighted only when the matter was being heard by the Division Bench. A copy of the same has been made available to us as issued by the Additional Secretary to the Government of NCT. It reads as following:

It is informed that the Finance Department, Government of NCT of Delhi, in a matter regarding grant of equal pay to contractual staff as given to regular incumbents, had decided not to pay regular scales of pay to contractual staff except the beneficiaries of Hon"ble CAT orders.

Therefore all the Head of Hospitals and Medical Institution under Government of National Territory of Delhi are hereby requested to implement the above direction of Finance Department strictly.

The applicants in the OA have only made reference to the representations submitted by them requesting the respondents to pay the higher emoluments submitted later on. Perhaps, they have not been informed of the impediment brought by circular dated 03/02/2005. Although it is not under specific challenge,

we feel that the larger question whether the applicants will be entitled to salary on par with the regular staff could be gone into notwithstanding the presence of the abovesaid circular, without driving them for further round of litigation, and overruling technicalities.

The circular would show that the attempt and effort is to confine the benefits of higher emoluments only to persons who had obtained orders from CAT. Although the respondents argue for a position that this course is legally permissible, we do not think it may be a satisfactory approach. If the circular is held as operative, it may result in.

(a) Different principles of payment of salary to persons similarly working in the same institution.

(b) There will be indirect suggestion to such employees, who could not get the benefits so far to approach the Tribunal and get orders similar to the orders, which had been secured by their colleagues.

Both the circumstances are not to be encouraged especially as coming from Governmental Authorities. Withholding of pay, declared as admissible and due to the staff members, to a section of staff cannot be considered as good governance. By becoming penny wise, the Government would be pound foolish, since the credibility of the organization and who are responsible for running it would be at stake.

7. After noting the aforesaid paragraphs of the opinion of the Full Bench of the Tribunal, the Division Bench observed:-

Therefore, as regards grant of same salary and allowance to the respondent herein, which are admissible to regularly appointed staff nurses, there cannot be any quarrel the respondents will, therefore be entitled to those benefits.

8. But on the subject of being entitled to the grant of increments as well as promotions, noting the following directions issued by the Tribunal:-

Taking the totality of facts and circumstances into consideration, we come to the conclusion that applicant is entitled to all the benefits in terms of salary, allowances, promotion etc. which have been extended to other Staff Nurses, who were recruited during the period of strike of nurses in the year 1998.

the Division Bench observed:-

The legal position in this regard is that casual or contract employees are not entitled to increments and would get pay at the minimum of the regular pay scale. In the absence of regularization, question of consideration of cases for promotion also would not arise. While that is the position in law, we have no information as to whether other Staff Nurses appointed on contract basis, who had approached the Tribunal and this Court earlier for pay parity and were granted relief, have been granted increments or not. In case the petitioner had given to those nurses appointed on contract basis benefit of increment, then it

would be extended to the respondents herein as well on the principle of equality and equal treatment. However, if such a benefit has not been granted to other similarly situated staff nurses appointed on contract basis, then the respondents herein also shall not be entitled to benefit of other increment or promotion. All these writ petitions are disposed of in the aforesaid terms. Petitioner shall work out the arrears of salary payable to the respondents in terms of aforesaid directions. Arrears will be calculated from the date when these respondents filed the OA. If the payment is not made within two weeks, respondents will be entitled to approach the Court for withdrawal of the amount deposited in the Court.

9. Needless to state the view taken by the Division Bench of this Court is a partial modification of the directions of the Full Bench of the Tribunal in Victoria Massey's case (supra).

10. As per the view taken by the Division Bench of this Court, contract Para-medical employees would be entitled to same pay and benefit as regular employees but in the minimum of the pay scale without grant of any increment unless they could show to the Tribunal that similarly situated contractual employee was being granted benefit of increments.

11. The reason is obvious. There cannot be complete parity between contractual employees and those who undergo selection process and are appointed as regular employees. On the principle of "same work same pay", if there is complete identity of work between contractual employees and regular employees a court can direct same basic salary and allowances to be paid. But with reference to one set of persons not having undertaken the selection process and the second set having undertaken the selection process, the court could deny the benefit of increments.

12. This is the view taken by the Division Bench of this Court in Victoria Massey's case (supra).

13. The view taken by this Court has attained finality as far as this Court is concerned because challenge to the decision of the Division Bench before the Supreme Court failed when Leave to Appeal was declined.

14. We thus dismiss the writ petition but clarify that the respondents would be entitled to receive pay as contractual employees as per the decision of the Division Bench of this Court in Victoria Massey's case. No costs.