

(2019) 07 DEL CK 0217

In the Delhi High Court

Case No : Civil Writ Petition No. 12632 Of 2018, Civil Miscellaneous Application No. 49053 Of 2018, 49055 Of 2018

Union Of India & Ors

APPELLANT

Vs

Vinod Kumar Sharma & Ors

RESPONDENT

Date of Decision : 15-07-2019

Acts Referred:

Citation : (2019) 07 DEL CK 0217

Hon'ble Judges : G.S. Sistani, J; Jyoti Singh, J

Bench : Division Bench

Advocate : P.S. Singh, Colin Gonsalves, Fidel Sebastian

Final Decision : Dismissed

Judgement

G.S. Sistani, J

1. Aggrieved by the order dated 23.02.2017, passed by the Central Administrative Tribunal (CAT) the Union of India has filed the present writ

petition. The respondents had approached the Tribunal seeking directions for payment of salary, allowances, leave and other mandatory benefits in the

nature of basic pay in the applicable grade to the post of Staff Nurses plus Grade Pay plus dearness allowances plus House Rent Allowance, travel

allowance, washing allowance as well as Casual leave, medical leaves, including the benefits of maternity benefits at par with the regularly appointed

staff nurses.

2. Learned counsel for the petitioner has handed over a copy of office order dated 12.06.2019. He contends that the previous order stands complied

with. The D.A. has been paid at the rate of 12% and the process has been initiated for clearing the arrears and the same would be cleared within a

week from today.

3. Admittedly, the respondents are contractual Staff Nurses who have been working for a period of almost a decade. The Central Administrative

Tribunal while allowing the O.A. has placed reliance on an order passed by the Tribunal on 23.07.2008 in O.A. No. 1330/2007 Victoria Massey vs.

NCT of Delhi & Ors., which order was upheld by the Division Bench of this court in W.P. (C) No. 4764/2012 and an SLP filed had been dismissed.

4. Reliance was also placed on various subsequent decisions rendered by this court on almost identical facts. Mr. Gonsalves, learned senior counsel

for the respondent submits that in an identical matter arising out of W.P. (C) No. 142/2016 titled as Dr. Ram Manohar Lohia Hospital vs. Yogesh

Kumar & Ors., decided on 08.01.2016, a coordinate bench of this court headed by G.S. Sistani, J, has also followed the decision in Victoria Massey

(supra) and the decision in W.P. (C) No. 4863/2012 titled as Deen Dayal Upadhyay Hospital represented by its Medical Superintendent & Others v.

Mahesh Bhardwaj & Others.

5. Learned counsel for the appellant has not been able to distinguish the judgment in the case of Dr. Ram Manohar Lohia Hospital (supra) as also the

decision in the case of Victoria Massey (supra) and Deen Dayal Upadhyay Hospital (supra). He submits that the respondents being contractual

employees are not entitled to other allowances and their services cannot be equated to regular employees.

6. In the case of Dr. Ram Manohar Lohia Hospital (supra), we had extracted the relevant paragraphs in the case of Victoria Massey (supra) and

Deen Dayal Upadhyay Hospital (supra). Para 7, 8 and 9 of the judgment reads as under:-

“7. We have heard learned counsel for the parties, considered their rival submissions and also examined the impugned order dated 20.2.2015

passed by the Tribunal. We find that the Tribunal while passing the impugned order has correctly applied the law laid down in the case of Victoria

Massey (supra), which was upheld by a Division Bench of this Court. Relevant portion of the observations made by the Delhi High Court reads as

under:

“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.

However, next question which arose for consideration is as to whether these respondents were still working on contract basis and have not been

regularized can be held entitled to grant of increments as well as promotion. We are posing this question because of directions contained in judgment

dated 03/07/07 passed by the Tribunal in O.A. 1857/06 which is the subject matter of writ petition no. 8476/2008. These directions are in the following

terms:

“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 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 either increment or promotion. All these writ petitions are disposed of in the aforesaid terms. Petitioner shall 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 O.A. 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.”

8. The observations made by the Delhi High Court in the case of Deen Dayal Upadhyaya Hospital represented by its Medical Superintendent &

Others (supra), also reads as under:

11. This is the view taken by the Division Bench of this Court in Victoria Massey's case.

12. 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.

13. Impugned order passed by the Central Administrative Tribunal on November 01, 2011 has noted that the view taken by the Full Bench of the

Tribunal in Victoria Massey's case when OA No.1330/2007 was decided was partially modified by a Division Bench of this Court and thus has

directed that the respondents would be entitled to the same benefit as was accorded by the Division Bench of this Court in Victoria Massey's

case.

14. The challenge by the writ petitioner by predicated a stand resting on the opinion of the Supreme Court in the decision reported as (2006) 9 SCC

321 State of Haryana &Ors. Vs. Charanjit Singh &Ors .and (2009) 9 SCC 514 State of Punjab & Anr. Vs. Surjit Singh &Or.s is neither here nor

there for the reason as far as this Court is concerned an identical issue of payment of wages to contractually employed para-medics in various

hospitals of the Government of NCT Delhi has attained finality and the law of precedent compels us to adopt the same view which was taken by a co-

ordinate Bench of this court. This would mean that just as Victoria Massey and other persons who had approached the Tribunal earlier were required

to be paid wages at the minimum of the scale which would include all allowances as are paid to regular employees, sans an annual increment, we

direct that similar would be the position of the respondents; a view correctly taken by the Tribunal.

9. We are of the view that the present case is fully covered by Victoria Massey (supra) and Deen Dayal Upadhyay Hospital represented by its

Medical Superintendent & Others (supra).

7. We see no reason to take a different view than the earlier view taken by this court and coordinate Division Bench of this court. We may also add

that the SLP filed against the decision in the case of Victoria Massey (supra), was dismissed.

8. Consequently, we find no merit in this petition and no infirmity in the order passed by the Tribunal. Therefore, the writ petition as well as the

pending applications are dismissed.