

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 03.08.2012
Judgment pronounced on: 06.09.2012

W.P.(C) No.7242/2010

RAJ RANI CHACHRA & ORS.

..... Petitioners

versus

THE NATIONAL CAPITAL TERRITORY OF DELHI & ORS.

..... Respondents

Advocates who appears in this case:

For the Petitioners	: Ms Rekha Palli with Ms Punam Singh and Ms Amrita Prakash.
For the Respondents	: Ms Zubeda Begum with Ms Sana Ansari.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present writ petition assails the order dated 16.09.2009 in O.A. No.851/2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal'), whereby the Tribunal directed the respondents to pay the arrears of salary and allowances

to the Staff Nurses, the petitioners herein, from the date of filing of the said O.A., i.e., 26.03.2009.

2. The writ petition challenges the impugned order to the limited extent that, the Tribunal ought to have granted the petitioners benefit of regular salary and allowances, not from 26.03.2009 but w.e.f. 06.05.2004, i.e., the date from which the petitioners purportedly claimed benefit of regular pay-scale for the first time in a writ petition filed by them in the High Court.

3. The petitioners are Grade 'A' Staff Nurses appointed on short term contract basis since 09.05.1998 and had been working in various hospitals under the administration of the Government of NCT of Delhi (GNCTD), the respondents herein. Since the services of the petitioners were not regularized, despite working on contractual basis for a considerable period, the petitioners had approached the Tribunal by way of O.A. No.844/2001 and O.A. No.1490/2003. The Tribunal vide order dated 19.02.2004 had disposed of the said O.A.s filed by the petitioners, directing the GNCTD to endeavour to consider the candidature of the applicants therein favourably against the available vacancies by according them age relaxation for the period of service rendered by them since the period of their joining with government

hospitals and had further directed that they be also accorded preference over outsiders and fresh candidates in case it was proposed to make appointment in future.

4. Aggrieved by the said order dated 19.02.2004, since the Tribunal had not passed any direction with regard to regularization of the applicants therein, the petitioners had preferred WP(C) No.7167/2004 before the High Court. The High Court dismissed the said WP(C) No.7167/2004 by virtue of an order dated 10.02.2009. At this stage itself, it is pertinent to note the prayer in the said WP(C) No.7167/2004 strenuously relied upon by the counsel for the petitioners while arguing the dispute involved in the present writ petition. It is the petitioners' claim that they had made such a prayer in the said WP(C) No.7167/2004 pursuant to a notification dated 12.09.2002 issued by the respondent No.1 directing grant of regular pay scale to all contractual paramedical staff. For the sake of convenience the prayers are extracted hereinbelow:-

- “A) Direct the Respondents to regularize the services of the Petitioners and also grant them the regular pay scale of Grade ‘A’ Staff Nurses;
- B) Quash the order of the Hon’ble Central Administrative Tribunal only in so far as it does not grant regularization and stay of termination of the Petitioners services;”

5. The High Court, by the said order dated 10.02.2009, dismissed the said WP(C) No.7167/2004, holding that appointment on regular basis can only be made in conformity with the recruitment rules, the view endorsed by the Constitution Bench of the Supreme Court in **State of Karnataka vs. Uma Devi**, 2006 3 SCC 1. The High Court had also taken note of the fact that the Nurses who had been appointed in a similar manner as the petitioners were permitted to take part in the regular selection provided they fell within the prescribed age limit. Such nurses were given due age relaxation for the period they served in various hospitals prior to their regularization. The High Court had further held that since the petitioners were over age even on the date of their initial appointment on contractual basis, they could not be considered for regular appointment. While dismissing the said WP(C) No.7167/2004, the High Court granted the petitioners liberty to file a substantive O.A. in respect of benefits which may have accrued to them and also gave them liberty to file representation before the department concerned seeking age relaxation. The relevant extract of the decision of the High Court in the said WP(C) No.7167/2004 is reproduced hereinbelow for ready reference:-

“Insofar as appointment of regular basis is concerned, it had to be in accordance with the procedure prescribed in the Recruitment Rules which is explained above. This is the position

now laid down authoritatively by the Constitution Bench of the judgement of Supreme Court in the ***State of Karnataka v. Uma Devi 2006 SCC 1***. It is a matter of record that many other several nurses who were engaged in similar manner along with the petitioners but were within the age limit were allowed to participate in the regular selection process as and when regular post became available. They were given the age relaxation for the period they served. This is the maximum which could be done and as the petitioners were over aged even on the date of their initial appointment on contract basis, they could not be considered for regular appointment. In these circumstances, we do not find any infirmity in the order of the Tribunal.

The petitioners had approached the Court within few months of the aforesaid order and thereafter, have been continuing in service under orders of the Court. In *Uma Devi* it was made clear that all such persons who continue in service under the orders of the Court are not entitled to any benefit. Admittedly, this was not the issue raised in the OA and therefore, the petitioners cannot make this prayer in the writ petitions for the first time. The petitioners would be at liberty to file substantive OA claiming such relief and they can also take plea of pendency of these writ petitions for the purpose of taking benefits of the provisions of Section 14 of the Limitation Act. Needless to mention it is open to the respondents, as and when such and OA is filed to consider to contest raising all possible defences available to the respondents”

6. Consequently, the petitioners approached the Tribunal by way of O.A. No.851/2009 which came to be filed on 26.03.2009 praying therein for grant of salary at par with regularly appointed Grade-I Staff Nurses along with arrears w.e.f. 12.09.2002. The decision rendered by the Tribunal in the said O.A. has culminated in the order impugned before us.

7. The Tribunal, while adjudicating the said O.A No.851/2009, relied on the decision of the High Court in WP(C) No.8764/2008 passed on 22.05.2009. It would be pertinent to note that the order under challenge in WP(C) No.8764/2008 was a Full Bench decision of the Tribunal in O.A. No.1330/2007 and O.A. No.1331/2007 captioned as **Mrs Victoria Massey vs. NCT of Delhi & Ors.** The Full Bench of the Tribunal vide its order dated 23.07.2008 directed non-applicability of the circular dated 03.02.2005, by which GNCTD denied payment of regular pay scales to contractual staff except the beneficiaries of the orders of the Tribunal. The Tribunal held that the circular dated 03.02.2005 if allowed to operate would result in an anomalous situation as part of the staff would receive higher salary under the circular whereas the other half of the staff which does not fall under the ambit of the circular would receive lesser salary.

8. Therefore, the High Court while disposing of WP(C) No.8764/2008 vide order dated 22.05.2009 held that the contractual Staff Nurses were legally entitled to same salary and allowances which were admissible to regularly appointed Staff Nurses. With regard to the grant of increment to Nurses appointed on contractual basis, the finding of the Division Bench is extracted hereinbelow:-

“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 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 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.”

9. It is pertinent to note that the High Court while passing the aforesaid order dated 22.05.2009 was aware of the order dated 30.09.2003 passed by this Court in WP(C) No.1493/2003, wherein the GNCTD had decided to release full salary and other allowances to the *ad hoc* employees who had completed more than one year of service at par with the regular employees. Therefore, the Tribunal in the impugned order dated 16.09.2009 while allowing the O.A., granted the petitioners herein parity in pay and allowances as other similarly situated Nurses w.e.f. 26.03.2009, i.e., from the

date of filing of the O.A. The sum and substance of the impugned order is reproduced below:-

“Though negative equality has no place in the Constitution of India, it cannot vest an indefeasible right to the concerned. However, when a particular relief has been given as an implication of direction by a judicial Forum and complied with, if is claimed by the left over categories, identically situated, it would not amount to claiming negative equality. The Full Bench of the Tribunal having regard to the circular issued by respondents where a fraction of Nurses had been denied regular pay scale, disapproved the act of the respondents and this direction has been upheld by the High Court, which is a binding precedent on us. Applicants cannot be denied the benefit of extension of decision of the High Court.

We have asked the learned counsel of respondents as to the challenge to the order of the High Court before the Apex Court. No details have come-forth; law shall take its own course in that event. It is trite that unless a decision of the high fora is overturned, modified or set aside, it does not lose its precedent value. The claim of applicants insofar as the claim decided with direction by the High Court, on all fours covers the claim of applicants in the present OA. Accordingly, the OA is allowed to the extent that respondents shall now treat the applicants in the similar manner in the matter of pay and allowances as other Nurses are being treated. They are entitled to arrears from the date of filing of the OA, i.e., 26.03.2009.”

10. As aforesaid, the petitioners before us are only aggrieved by the fact that the Tribunal granted the relief qua parity of pay and allowances only w.e.f. 26.03.2009 and not from 06.05.2004 when the same set of petitioners approached the High Court in WP(C) No.7167/2004, in which it is urged similar relief was claimed. The petitioners urge that they had claimed the

same relief in the earlier writ petition pursuant to the order of the GNCTD dated 12.09.2002, wherein the Directorate of Health and Services had directed the paramedical staff to take salary admissible to regular staff.

11. We have already reproduced hereinabove the prayer of the petitioners in the WP(C) No.7167/2004, which does not in any way, indicate that any such prayer was made with reference to the notification dated 12.09.2002. It is observed that there is not even a whisper in the prayer clause of WP(C) No.7167/2004 about the notification dated 12.09.2002 issued by the GNCTD. The High Court while disposing of WP(C) No.7167/2004 vide order dated 10.02.2009 had categorically held that the issue pertaining to grant of pay scale similar to regular appointees had been raised in the said writ petition and therefore liberty was granted to the petitioners to approach the Tribunal by way of a fresh O.A. It is obvious that the intent behind granting liberty to file substantive O.A. claiming relief of pay parity and therein taking plea of pendency of the writ petition was only for the purpose of taking benefit of provisions of Section 14 of the Limitation Act. It is evident that, in the normal course if an O.A. had been filed by the petitioners seeking relief under notification dated 12.09.2002, the said O.A. would have been rejected as time barred. Therefore, it was only to enable the petitioners

herein to overcome limitation, that liberty was granted vide the order dated 10.02.2009 by the High Court. The petitioners therefore cannot, in any way, be permitted to claim benefit of the said order dated 10.02.2009 to urge that they be granted the benefit of regular salary and allowances not from 26.03.2009 the date on which the said O.A. was filed but w.e.f. 06.05.2004.

12. In view of the foregoing the writ petition is devoid of merit and is consequently dismissed. There shall be no order as to costs.

SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

SEPTEMBER 06, 2012

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