

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: May 10, 2013*
Judgment Pronounced on: May 24, 2013

+ **WP(C) No.424/2013**

DR.BABA SAHIB AMBEDKAR HOSPITAL

REPRESENTED BY: ITS MEDICAL

SUPERINTENDENT AND ORS. Petitioners

Represented by: Ms.Zubeda Begum, Advocate with
Ms.Sana Ansari, Advocate

versus

SWASTIKA BHAKAT & ORS. Respondents

Represented by: Mr.Pawan Bahl, Advocate with
Ms.Kamlakshi Singh, Advocate

WP(C)No.3077/2013

PARAS NATH & ORS. Petitioners

Represented by: Mr.Pawan Bahl, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Represented by: Ms.Zubeda Begum, Advocate
with Ms.Sana Ansari, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Staff nurses working on contract basis with Dr.Baba Sahib Ambedkar Hospital, established by the Government of NCT Delhi, and appointed on different dates in the months of July and August 2001 filed

OA No.1843/2010 raising issues of being discriminated vis-à-vis regularly appointed employees, in that, they claimed that notwithstanding contractual nurses and regular nurses performing same duties, contract nurses were getting less pay, less leave and less allowances.

2. Vide impugned decision dated January 29, 2011, which has been challenged in W.P.(C) No.424/2013 the Tribunal has directed that the claimants be paid salary with increments as were being given to the regularly appointed staff and for which view the reasoning of the Tribunal is that the applicants have successfully demonstrated through documentary evidence that contract employees working in G.T.B.Hospital, Delhi State Cancer Institute and Tibia College were being paid increments.

3. The writ petitioners of W.P.(C) No.3077/2013 had filed OA No.3617/2010 praying that they be given increments and other emoluments at par with regularly appointed employees, pointing out to the Tribunal that all of them were appointed on contract basis as para-medical staff being Laboratory Assistant, Senior Radiographers and Junior Radiographers and ECG Technicians. They relied upon an instance of one Mrs.Swaran Kanta Bhatia to whom, notwithstanding she being a contractual employee, said benefits were given.

4. Their claim has been negated by the Tribunal as per impugned decision dated October 04, 2012.

5. In other words we have before us two conflicting views taken by the two different Benches of the Tribunal.

6. Para-medical employees as also nurses 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 regularly employed para-medical staff. Some succeeded. Some failed.

7. Noting a conflict between views between different 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 and regular employees, contractual employees would be entitled to be paid same wages including allowances as also increments as were paid to regular employees.

8. 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 undernoted 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.”

9. 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.”

10. 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.”

11. 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.

12. 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.

13. 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.

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

15. 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.

16. Now, the stray orders shown by Paras Nath and others, the writ petitioners of W.P.(C) No.3077/2013 and the respondents of W.P.(C) No.424/2013 to us would reveal that the some para-medics obtained orders in their favours requiring them to be given annual increments notwithstanding they being contractual employees and unfortunately for the Government of NCT Delhi writ petitions filed against said view taken by the Tribunal came to be dismissed and Leave to Appeal sought from the Supreme Court were not granted. In no instance has the respondent on its own granted increment to anybody, except to doctors appointed at Tibia College.

17. We are thus having instances where writ petitions filed by the Departments have been dismissed in limine by this Court as against a reasoned decision of a Division Bench in Victoria Messy's case (supra).

18. The reasoned decision of the Division Bench of this Court must take precedents over non-speaking orders dismissing writ petitions in limine.

19. The solitary instance where Tibia College is granting annual increments to contract doctors (Unani Vaid and Hakeems), would confer no right on para-medics to claim parity for the reason para-medics and doctors do not form the same homogeneous class. In the pleadings there is no mention by the claimants before the Tribunal that they are entitled to be treated at par with doctors (Hakeems and Vaid) on the subject of parity in the applicability of concept of annual increments and in the absence thereof we find no response from the Government. A stray annexure has been inserted in the pleadings. Thus, we hold that with reference to increments being voluntarily given to Hakeems and Vaid, para-medics cannot claim parity as per extant pleadings.

20. Dismissing W.P.(C) No.3077/2013 we dispose of W.P.(C) No.424/2013 modifying the direction issued by the Tribunal on December 29, 2011 in OA No.1843/2010 limited to the extent it directs annual increments to be granted to the contract employees who were the claimants before the Tribunal.

21. Before bringing the curtains down formally we would like to impress upon the Government of NCT Delhi to streamline its Health Department because we find contract employees working in various hospitals established by the Government of NCT Delhi for more than a decade. The respondents of W.P.(C) No.424/2013 have worked as contract employees for nearly 12 years. If regular posts need to be created, we see no reason why they should not be created. Hospitals should not work on ad-hoc arrangements. The work of para-medic in Government Hospitals is of importance and we take judicial notice of the

fact that para-medics work tirelessly in stressed situations for the reason the attendants of patients constantly hound the para-medics: the nurses, the ward-boys, the laboratory technicians and the radiologist etc. to obtain information and reports at the earliest; more out of anxiety and concern and not that said information would be of any use to the attendants of the patient. If these para-medics are underpaid, they are bound to be snappy or lackadaisical in their working, which would not be good for the patients and the medical services rendered in hospitals.

22. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

MAY 24, 2013
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