

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

% *Judgment Reserved on: October 28, 2013*
Judgment Delivered on: November 01, 2013

+ **W.P.(C) 2915/2013**

CHIEF SECRETARY, GOVT. OF NCT OF DELHI
& ANR. Petitioners
Represented by: Ms.Avnish Ahlawat, Advocate

versus

SATISH KUMAR & ORS. Respondents
Represented by: Ms.Rashmi Chopra, Advocate

W.P.(C) 5259/2013

SATISH KUMAR & OTHERS Petitioners
Represented by: Ms.Rashmi Chopra, Advocate

versus

GOVERNMENT OF NCT OF DELHI & ANR. Respondents
Represented by: Ms.Avnish Ahlawat, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. Judgment and order dated August 09, 2012 passed by the Central Administrative Tribunal disposing of Original Application No.2538/2011, in so far direction has been issued to the respondents therein i.e. the writ petitioners of W.P.(C) No.2915/2013, to grant Earned Leave, Medical Leave, Child Care Leave, Paternity Leave, Health Card Facility,

Transport Allowance, House Rent Allowance, Bonus, Leave Travel Concession, Child Fee etc. to the applicants before the Tribunal, who are the respondents in W.P.(C) No.2915/2013 has been challenged in W.P.(C) No.2915/2013. The applicants before the Tribunal are also aggrieved by the said order and additionally by the order dated March 18, 2013 dismissing RA No.51/2013 filed by them seeking partial review of the order dated August 09, 2012, in so far it has declined relief that the principle of last cum first go should be followed if contract appointed craft instructors are disengaged from service. They are the writ petitioners in W.P.(C) No.5259/2013.

2. The applicants before the Tribunal are contract appointed Craft Instructors in various disciplines and are working at different Industrial Training Institutes established by the Government of NCT of Delhi.

3. Pertaining to W.P.(C) No.5259/2013, the admitted position is that the writ petitioners thereof had prayed for certain allowances to be paid to them as also the principle of last cum first go to be adopted if contract appointed Craft Instructors were disengaged from service.

4. Disposing of the Original Application, the Tribunal granted relief pertaining to payment of allowances and directed that the same would be paid with effect from July 14, 2011, the date when the Original Application was filed. But spoke nothing about the applicability of the principle of last cum first go in the order dated August 09, 2012. When the applicants sought review pointing out that the aspect of the matter pertaining to the applicability of the principle of last cum first go had escaped the notice of the Tribunal evidenced by the fact that it did not find even a mention in the order dated August 09, 2012, the Tribunal

dismissed the review application vide order dated March 18, 2013 observing that as per the applicants the principle of last cum first go was a principle of law and hence what was implicit in law need not be explicitly stated.

5. Suffice it to state that inherent in every decision is the recognition of a legal right asserted on a point of law and thus it is a wrong approach by the Tribunal to state that if law recognizes a right it need not be expressly recorded in a judicial decision. Further, the Tribunal overlooked the fundamental principle of law that if a relief is prayed for but is not granted, it is deemed to be rejected.

6. Ms.Avnish Ahlawat, learned counsel for the Government of NCT Delhi stated that the Government has not objection to apply the principle of last come first go if in the future the service of a Craft Instructor appointed on contract is not required.

7. Thus, as regards WP(C)No.5259/2013 we dispose of the same directing that if in the future the Government of NCT Delhi has to dispense with the services of Craft Instructors, the principle of last come first go shall be applied.

8. Lest there be litigation in the future when principle of last come first go is applied, we clarify that since the Craft Instructors are appointed in various disciplines such as '*scooter mechanic*', '*embroidery*' etc., the principle shall be applied discipline wise.

9. Proceeding to deal with the issue raised in W.P.(C) No.2915/2013, as noted above, the respondents thereof have been appointed on contract basis as Craft Instructors on various dates by the Government of NCT of Delhi and as of today have worked in the various Industrial Training

Institutes for years together; some of them having worked for more than 10 years.

10. They raised a claim to be paid wages at par with Craft Instructors appointed permanently against sanctioned posts and highlighted that even they were working against sanctioned posts evidenced by the fact that letter offering appointment on contract basis stated that their contractual appointment was made pending permanent recruitment. All of them highlighted that they possessed the necessary qualifications as prescribed by the Recruitment Rules for the post of Craft Instructor.

11. The Tribunal allowed said claim vide order dated August 09, 2012 and while doing so relied upon earlier orders passed by the Tribunal in OA No.1706/2001 Ms.Elisha Floria Boaz Vs. GNCT and OA No.327/2011 Satish Kumar & Ors. Vs. Govt. of NCT of Delhi & Ors. as also a decision dated May 22, 2009 of this Court in W.P.(C) No.8476/2009 Govt. of NCT of Delhi & Ors. Vs. Dipika S.Kumar arising out of an order passed by the Full Bench of the Tribunal in OA No.1330/2007 and OA No.1331/2007.

12. The Tribunal has directed that the claimants before it would be entitled to Earned Leave, Medical Leave, Child Care Leave, Paternity Leave, Health Card Facility, Transport Allowance, House Rent Allowance, Bonus, Leave Travel Concession, Child Fee etc.

13. Now, we do not understand what the Tribunal meant when it used the expression ‘etc.’ The reason being that prior to the use of the said word, the Tribunal has exhaustively listed all such allowances as are payable to permanent Government employees.

14. Various categories of contract appointed employees had raised claims under different Original Applications before the Tribunal praying that they should be paid wages at par with the permanently appointed employees. The response of the Government was that it was paying basic pay in the minimum of the grade + Dearness Allowance. As per the Government this was the term of offer which was accepted by the employees and thus constituted the consideration for the contract of service.

15. On being pointed out that different departments of the Government were taking different stands; and some were paying allowances to the contract appointed employees, a few Benches of the Tribunal directed that contract appointed employees be paid wages, which would include basic pay + Dearness Allowance + all such other allowances as were paid to permanent employees and additionally increments as per pay scale applicable to permanent employees. But some Benches of the Tribunal directed payment of only basic pay + Dearness Allowance + such other allowances as were being paid to some contract appointed employees. And we clarify it was not all allowances which were being paid to permanent employees.

16. On July 23, 2008, deciding O.A.No.1330/2007 Mrs.Victoria Massey vs. NCT of Delhi, and other connected Original Applications, one of which was the Original Application filed by Dipika S.Kumar, the Full Bench of Tribunal held that contract employees working in various hospitals established by the Government of NCT of Delhi as also Municipal Corporation of Delhi would be entitled to wages at par with the regular employees including increments and this meant that contract

appointed employees, in relation to payment of wages were equated at par with permanent employees.

17. The decision of the Full Bench of the Tribunal in Victoria Massey's case as also Dipika S.Kumar's case was modified by a Division Bench of this Court on May 22, 2009 when WP(C) 8476/2009 Government of NCT of Delhi vs. Victoria Massey and W.P.(C) No.8476/2009 Govt. of NCT of Delhi & Ors. Vs. Dipika S.Kumar were decided along with other writ petitions. The Division Bench held that contract employees would be entitled to wages in the minimum of the pay scale applicable to regular employees but not increments and such allowances which the Government of NCT of Delhi was paying to some contract appointed employees.

18. Challenge by the Government of NCT of Delhi to the decision of the Division Bench of this Court in Victoria Massey's case before the Supreme Court was unsuccessful.

19. The applicants before the Tribunal when the Full Bench of the Tribunal decided the issue were Nurses and Para-medics.

20. On November 19, 2012 the Government of NCT Delhi issued an order which reads as under:-

*“GOVT OF NCT OF DELHI
DEPARTMENT OF HEALTH & FAMILY WELFARE
9th LEVEL, A-WING, I.P. ESTATE, DELHI SECRETARIAT,
DELHI-110002.*

No.F.1(550)/TRC/H&FW/2012/12026-12061 Dated 19/11/2012

ORDER

Approval of the competent authority is hereby conveyed for payment of the following remuneration to the paramedical staff engaged on contract basis by the Health & Family Welfare

Department, Government of NCT of Delhi, with immediate effect:-

- (i) Basic Pay*
- (ii) Grade Pay*
- (iii) Dearness Allowance*
- (iv) Nursing Allowance (for Nurses)*
- (v) Patient Care Allowance (for other than nurses)*
- (vi) Uniform Allowance*
- (vii) Washing Allowance*
- (viii) House Rent Allowance*
- (ix) Transport Allowance*

Paramedical staff engaged on contract basis will get pay at the minimum of the pay band of the respective/corresponding post. They will not be entitled to increment in pay or promotion or regularization in service.

This issues with the concurrence of the FD vide U.O.No.624/DS-I dated 16.11.2012.

*Sd/-
(SUDHIR KUMAR)
SPECIAL SECRETARY
HEALTH & FAMILY WELFARE”*

21. At this stage we need to note that notwithstanding the Tribunal having directed in the instant case that Earned Leave, Medical Leave, Child Care Leave, Paternity Leave, Health Card Facility, Transport Allowance, House Rent Allowance, Bonus, Leave Travel Concession, Child Fee etc. have to be paid by the Government of NCT Delhi to contract appointed Craft Instructors, but we find that under the head of allowances only five were claimed, and we highlight that before us during oral submissions as also in the written submissions filed (refer para 5) said allowances claimed are: (i) House Rent Allowance (HRA), (ii)

Transport Allowance (TA), (iii) Earned Leave (EL), (iv) Medical Leave (ML), and Bonus.

22. The respondents had sought information under the Right to Information Act in respect of one Sh.Lokesh Sharma working as a para-medic on a contract basis with the Government of NCT of Delhi pertaining to what payments were made to him and in response receive the following information:-

*“GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF
DELHI*

*OFFICE OF THE MEDICAL SUPERINTENDENT
GURU TEG BAHADUR HOSPITAL, SAHADARA, DELHI*

Sub: Requisition of information/copies of documents for supplying to the applicant under RTI Act, 2005 (ID No.2076)

With reference to the U.O. Letter No.F.2/RTI/DMS(M)/PIO/GTBH/2012/315 dated 23.08.2013 on the subject cited above regarding RTI application filed by Sh.Lokesh Sharma, 1/3367, Ram Nagar Extn. Shahdara, Delhi-10032, the requisite information is as under as per record available in the Accounts Branch of this Department.

<i>S.No.</i>	<i>Information Sought</i>	<i>Reply</i>
<i>1.</i>	<i>Point-1</i>	<i>Basic pay, Grade pay, Dearness Allowance, House Rent Allowance, Washing Allowance, Transport Allowance and Patient Care Allowance.</i>
<i>2.</i>	<i>Point-2</i>	<i>This pertains to Establishment Branch.</i>
<i>3.</i>	<i>Point-3</i>	<i>No other benefits is been given except that mentioned at Sl.No.-1</i>
<i>4.</i>	<i>Point-4</i>	<i>This pertains to establishment Branch since the orders were given/issued by them.</i>

*Sd/-
(R.P.S.VERMA)
SR.ACCOUNTS OFFICER/DDO.”*

23. It is apparent that nurses and other para-medical persons appointed on contract are receiving the basic pay in the applicable grade to the post + Grade Pay + Dearness Allowance + House Rent Allowance + Transport Allowance + Washing Allowance + Patient Care Allowance.

24. Washing Allowance is paid if while discharging duties the employee has to wear a dress. Patient Care Allowance is paid if in discharge of duties one comes into contact with patients or equipment likely to spread infectious diseases. These two allowances would not be payable to Craft Instructors who neither wear a dress while discharging their duties nor come into contact with patients or equipment likely to spread infectious diseases. In any case, the respondents have not asked for said allowances to be paid.

25. But we see no reason why Craft Instructors should not be paid Dearness Allowance, House Rent Allowance and Transport Allowance. We note that the Government is paying to them Dearness Allowance. That leaves the issue of Casual Leave, Earned Leave and Medical Leave entitlement.

26. The consistent orders passed by this Court for other contract appointed employees is that apart from the basic pay in the applicable grade they would be entitled to a Dearness Allowance, a House Rent Allowance and a Transport Allowance. No decision directs that Casual Leave, Earned Leave and Medical Leave benefits as also bonus should be paid.

27. Not appointed by following the regular selection process as per the applicable Recruitment Rules, contract appointed employees cannot claim any parity with the permanently appointed employees.

28. Casual Leave and Earned Leave is governed by the Leave Rules framed, which are statutory in nature and nothing has been pleaded or shown to us that contract appointed employees are governed by the applicable Leave Rules, which we note are the CCS (Leave) Rules framed by the Central Government as they stand adopted by the Government of NCT of Delhi.

29. On the subject of maternity benefits we find that a Central Act called the Maternity Benefits Act, 1961 has been promulgated as per which maternity benefits have to be provided by all employers, irrespective of the nature of employment, be it tenure, contractual or of a kind which has acquired a status but only in relation to such establishments as fall within the definition of '*Establishment*' in Section 3(e) of the Act.

30. Since there are no pleadings on the applicability of the Maternity Benefits Act, 1961 we leave the issue open but with a direction to the Government of NCT of Delhi to consider whether the Maternity Benefits Act, 1961 is applicable to its employees as per the concept of an Establishment propounded by the Supreme Court in the decision reported as AIR 2000 SC 1274 *Municipal Corporation of Delhi Vs. Female Workers (Muster Roll)*.

31. Accordingly, WP(C) 2915/2013 stands disposed of modifying the impugned decision dated August 09, 2012 by restricting the total emoluments payable by the Government of NCT of Delhi to Craft

Instructors as follows : Basic Pay in the grade + Grade Pay + Dearness Allowance + House Rent Allowance + Transport Allowance. With further direction that within six weeks a decision would be conveyed to the respondents on the applicability of the Maternity Benefits Act, 1961 and if the Act is found applicable the benefits thereof shall be granted to the contract appointed Craft Instructors.

32. As regards WP(C) No.5259/2013 the same stands allowed as per para 7 above.

33. No costs in both writ petitions.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

NOVEMBER 01, 2013

mamta/skb