

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

Date of Decision: July 04, 2013

+ **W.P.(C) 3769/2013**

RAJESH KUMAR SHARMA & ORS. Petitioners
Represented by: Mr.Pawan Bahl, Advocate with
Ms.Kamlakshi Singh and Ms.Saundarya Singh,
Advocates.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: Ms.Zubeda Begum, Advocate with
Ms.Sana Ansari, Advocate for R-1.
Ms.Mini Pushkarna, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (ORAL)

1. The petitioners have been appointed, on contract basis, as Staff Nurse/para-medic on various dates by the erstwhile Municipal Corporation of Delhi and with the bifurcation of the Corporation have been assigned duties under respondent No.2; North Delhi Municipal Corporation. In the year 2010 they filed an Original Application before the Central Administrative Tribunal which was registered as O.A.No.3327/2010 praying that they be paid same salary as also annual increments are paid to permanently appointed Staff Nurses and para-medics by the Municipal Corporation of Delhi.

2. A large number of Staff Nurses/para-medics working under the Government of N.C.T. of Delhi as also the Municipal Corporation of Delhi had likewise filed Original Applications some of which were referred to a

Full Bench of the Tribunal.

3. On July 23, 2008, deciding O.A.No.1330/2007 Mrs.Victoria Massey vs. NCT of Delhi, 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.

4. O.A.No.3327/2010 filed by the petitioners was disposed of by the Tribunal on January 27, 2011 directing that the directions issued in Victoria Massey's case by the Full Bench as affirmed by the Delhi High Court and the Supreme Court would apply to the writ petitioners as well.

5. Pursuant to the directions issued by the Tribunal in favour of the petitioners the Municipal Corporation of Delhi passed an order directing that petitioners be paid salary in the minimum of the scale applicable to the regular employees + Grade Pay + Dearness Allowance.

6. This compelled the petitioners to file another Original Application before the Tribunal which was registered as O.A.No.323/2012 which has been dismissed by the Tribunal vide impugned decision dated May 09, 2013.

7. It is not in dispute that the decision of the Full Bench of the Tribunal in Victoria Massey's case was modified by Division Bench of this Court on May 22, 2009 when WP(C) 8476/2009 Government of NCT of Delhi vs. Victoria Massey was decided. 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.

8. To this extent, the observation of the Tribunal in its decision dated January 27, 2011 when O.A.No.3327/2010 was disposed of are incorrect i.e. that the Full Bench decision of the Tribunal in Victoria Massey's case was

affirmed by a Division Bench of this Court.

9. 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.

10. What falls for our interpretation today is the decision of this Court in Victoria Massey's case.

11. Learned counsel for North Delhi Municipal Corporation of Delhi states that in Victoria Massey's case the only direction is to pay wages to contract appointed employees in the minimum of the pay scale applicable to regular employees. Thus, counsel states that the decision taken to pay wages in the minimum of the scale + Grade Pay + Dearness Allowance is correct.

12. We do not agree. Wages was always understood by the Government of NCT of Delhi and erstwhile Municipal Corporation of Delhi to mean not only the basic pay as also the Grade Pay and the Dearness Allowance but also Nursing Allowance (for Nurse), Patient Care Allowance (for other than Nurses), Uniform Allowance, Washing Allowance, House Rent Allowance and the Transport Allowance. This is evident from the fact that the Government of NCT of Delhi had issued an order on November 19, 2011 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 19/22/2012

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”*

13. Learned counsel for the respondent No.1 states that the Government of NCT of Delhi has understood wages to mean as aforementioned in the order dated November 19, 2012.

14. The Government of NCT of Delhi has correctly understood the Corporation ‘wages’ referred to by the parties because a person would understand wages to mean the gross pay received.

15. That apart, the decision of the Full Bench of the Tribunal in Victoria Massey’s case categorically held that contractual employees would be entitled to all benefits which were given to the regularly appointed employees; and needless to state as per the Full Bench of the Tribunal this

included annual increment as well. The expression ‘wages’ used by the Full Bench of the Tribunal has to be understood in said context i.e. the context of the finding by the Full Bench that contract appointed employees would be entitled to same benefits as were being made available to regular employees. It is in this context that the Division Bench judgment of this Court has to be understood where it set aside that part of the decision of the Full Bench of the Tribunal where it was directed that equivalent benefits would include increment as well. (Which part of the Full Bench order was set aside.)

16. We note that the order dated November 19, 2012 was issued by the concerned officers in the Education Department of the NCT of Delhi because the Additional Secretary of Law & Justice wrote a letter on September 03, 2012 which reads as under:-

*“To,
All the Head of Departments
Govt. Of NCT of Delhi.*

Sub: Filling of SLPs in the matters, already decided by Hon’ble Supreme Court of India involving the same issues in the similar circumstances.

Sir/Madam,

It has been observed by the Hon’ble Supreme Court of India in SLP (Civil) No.18552/2012 titled GNCT of Delhi & Ors. vs. Raj Rani Chachra & Ors., decided on 09/08/2012, that the Govt. Of NCT of Delhi has chosen to file SLP in the matter involving the same issue under the same circumstances, although the similar SLPs already been dismissed by them (copy enclosed). The Hon’ble Supreme Court India has shown its annoyance in the matter and has directed that office to file affidavit stating the circumstances under which the above mentioned LPS was filed.

In order to avoid further annoyance of the Hon’ble Supreme Court of India, all the Head of Departments are

advised to ensure that in future the matters, which have already been decided by the Hon'ble Supreme Court of India involving the same issue in the similar circumstances, the SLPs are not filed.

Yours faithfully,

Sd/-

Encl: As above

(Tarun Sahrawat)

Addl.Secretary (Law, Justice & LA)''

17. We find that whereas the Government of NCT of Delhi has seen reason and logic but the three bifurcated Municipal Corporations in Delhi refused to see the logic.

18. We allow the writ petition directing the second respondent to pay salary and allowances to the petitioners as also to all other Staff Nurses and para-medics by including therein not only the Basic Pay, Grade Pay and Dearness Allowance but such other allowances as are being paid by the Government of NCT of Delhi to its contract appointed employees as per the letter dated November 19, 2012.

19. Since the petitioners had first approached the Tribunal in the year 2010 when they filed OA No.3327/2010 we direct arrears to be paid to the petitioners with effect from the date when OA no.3327/2010 was filed.

20. No costs.

21. DASTI.

(PRADEEP NANDRAJOG)
JUDGE

(V. KAMESWAR RAO)
JUDGE

JULY 04, 2013/skb