

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

% *Date of decision: August 18, 2015*

+ **LPA 398/2014**

WING CDR A K SAXENA

..... Appellant

Represented by: Ms.Vandana Sharma and
Mr.Abhay Singh Kushwaha,
Advocates.

versus

PAWAN HANS HALICOPTER LTD

..... Respondent

Represented by: Mr.S.K.Taneja, Sr.Advocate
with Mr.Puneet Taneja and
Mr.H.Banrjee, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CM No.9243/2014 (Delay)

1. For the reasons stated in the application 150 days delay in filing the appeal is condoned.
2. Application is disposed of.

LPA 398/2014

1. The appellant Wing Cdr.A.K.Saxena, duly qualified pilot was employed as Helicopter Pilot with the Government of Madhya Pradesh on a three years contract vide appointment letter dated December 18, 1995 and was posted at Bhopal to fly Dolphin Helicopter. The emoluments to be provided were consolidated amount, flying pay, conveyance reimbursement and fixed incidental amount per month and additionally entitlement to STA, TA, DA, HRA and medical expenses. In the meantime on the directions of the Government of India the respondent Pawan Hans Limited volunteered to

fly an expedition to Antarctica for which Wing Cdr.A.K.Saxena was also sent. The contract of employment of the appellant was renewed for a further period of one year on December 17, 1998. On May 03, 1999 the appellant represented to the respondent for equal pay and equal allowance as given to the regular appointees and since no response was received he filed W.P.(C) No.5321/1999 with limited prayer that he be granted similar pay and allowance as being given to the pilots employed on regular basis along with all such arrears from the date of his employment. After the term of the appellant had come to an end by way of amendment in the writ petition the appellant prayed for setting aside of termination, reinstatement, continuation of service and regularisation from the date of initial appointment, that is, December 18, 1995.

2. Vide the impugned order dated September 26, 2013 the writ petition of the appellant being W.P.(C) No.5321/1999 was dismissed on the ground that there cannot be comparison of unequals, that is, contractual employee cannot claim equality with the regular employee and in the writ petition the qualifications of the appellant for being equivalent to that of the regular pilots was not stated, what was his nature and type of work and that of regular pilots was also not stated. The additional prayers made by way of amended writ petition, that is, reinstatement with the consequential benefits and regularisation from the date of initial appointment appears to be not pressed at the time of hearing of the writ petition.

3. In the present appeal also the prayers are twofold, that is, similar pay and allowances as that given to the pilots employed on regular basis with arrears and consequential benefits and regularisation from the date of initial appointment. The termination order has not been challenged and it is not

disputed that the appellant was appointed on a contract basis and not on regular basis.

4. During arguments the only issue pressed before this Court was that the appellant was entitled to pay and allowance as given to the pilots employed on the regular basis. In the writ petition the only averment in relation to parity between the appellant who was employed on contract basis and the pilots employed regularly are in paras 5 and 6 which are noted as under:

“5. That the petitioner after appointment was posted at Bhopal to fly Dauphin Helicopter of Madhya Pradesh Government. This Helicopter was earlier flown by the regular Pilots of Respondent who were detached regularly to Bhopal for the said purpose. These Pilots were regular employees of the Respondent and were paid reimbursement of Air Fare, Hotel Accommodation at Bhopal, detachment allowances minimum STA etc.etc. as per the Company Rules.

6. That on being posted at Bhopal the Petitioner performed all the jobs for the Respondent as was previously done by the Regular Pilots. However, just because he had been kept on contract basis the Respondent was discriminated and paid less allowances and pay.”

5. From a perusal of the pleadings it is thus evident that no details of the duties assigned to the appellant and to the regular pilots having been stated. Be that as it may it is well settled that the principle of ‘equal pay for equal work’ applies only if the terms and conditions of the employment are same and there is no parity between an employee regularly appointed and an employee appointed on contract basis.

6. In the decision reported as 2006 (9) SCC 321 State of Haryana and

others vs. Charanjit Singh and others, the Supreme Court held:

“22. One other fact which must be noted is that Civil Appeals Nos. 6648, 6647, 6572 and 6570 of 2002 do not deal with casual or daily-rated workers. These are cases of persons employed on contract. To such persons the principle of equal pay for equal work has no application. The Full Bench judgment dealt only with daily-rated and casual workers. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In State of Haryana v. Surinder Kumar [(1997) 3 SCC 633 : 1997 SCC (L&S) 844] persons employed on contract basis claimed equal pay as regular workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging the same duties. It was held that the very object of selection is to test the eligibility and then to make appointment in accordance with the rules. It was held that the respondents had not been recruited in accordance with the rules prescribed for recruitment.

7. In view of the aforesaid discussion we find no merit in the present appeal, the same is dismissed.

CM No.9245/2014 (additional documents)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

AUGUST 18, 2015/‘vn’