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

+ W.P.(C) 142/2016

% ***Judgment dated 8th January, 2016***

DR. RAM NANO HAR LOHIA HOSPITAL Petitioner
Through : Mr.Himanshu Upadhyay and Ms.Ruby
Sharma, Advs.

versus

YOGESH KUMAR & ORS Respondents
Through : Ms.Avnish Ahlawat and Ms.Latika
Choudhury, Advs.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 20.2.2015 passed by Central Administrative Tribunal (in short the '*Tribunal*') whereby the petitioners herein were directed to examine the claim of the respondents herein (applicants before the Tribunal) in view of the earlier judgments passed by the Tribunal and the High Court.
2. Issue notice to the respondents to show cause as to why *Rule nisi* be not issued. Ms.Avnish Ahlawat, Advocate, enters appearance on behalf of the respondents on an advance copy and accepts notice.
3. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
4. In this case, the respondents herein are working as Para Medical Staff i.e. Lab Assistants/Lab Technicians at Ram Manohar Lohia Hospital. The respondents had filed O.A.No.2966/2013 before the Tribunal seeking directions to give them consolidated pay at par with the minimum pay

granted to the regular employees. To support their claim, the respondents had placed reliance on a judgment rendered by the Tribunal in the case of ***Victoria Massey v. NCTD & Ors.*** and other connected OAs. The Tribunal while passing the impugned order noticed that the judgment rendered in the case of ***Victoria Massey*** (supra) was upheld by the Division Bench of Delhi High Court in W.P.(C) No.8476/2009 and also in the case of ***Deen Dayal Upadhyaya Hospital represented by its Medical Superintendent & Others v. Mahesh Bhardwaj & Others***, W.P.(C) 4863/2012.

5. Learned counsel for the petitioner submits that the aforesaid judgments would not be applicable to the facts of the present case as the respondents herein were recruited through Relaxed Recruitment Rules with age limit of 20-45 years as on 1.7.2010 in contrast to the earlier notified Recruitment Rules where the age limit is 20-25 years. Counsel further submits that in the case of ***Victoria Massey*** (supra) when the matter was listed before the Division Bench of this Court, the Division Bench had observed that several staff nurses initially engaged on contract basis were being paid consolidated pay and as a result of the directions passed by the Tribunal, which was upheld by the Division Bench, they are getting salary as admissible to regular staff in all respects, but the applicants in the said matter had not been regularized.
6. Ms.Ahlawat, learned counsel for the respondents, submits that the persons continue to be appointed on contract basis whereas on the other hand the services of the respondents are not being regularized. Moreover the case of the present respondents is fully covered by the judgments of the Tribunal and upheld by the High Court, as rightly noticed by the Tribunal. Counsel further submits that an advertisement has recently been published with regard to the recruitment of staff nurses on six months contract basis. In the said advertisement, it has clearly been stated that the date of

registration would open on 19.10.2015 from 9.00 am to 12.00 p.m.

7. We have heard learned counsel for the parties, considered their rival submissions and also examined the impugned order dated 20.2.2015 passed by the Tribunal. We find that the Tribunal while passing the impugned order has correctly applied the law laid down in the case of **Victoria Massey** (supra), which was upheld by a Division Bench of this Court. Relevant portion of the observations made by the Delhi High Court reads as under:

“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.

However, next question which arose for consideration is as to whether these respondents were still working on contract basis and have not been regularized can be held entitled to grant of increments as well as promotion. We are posing this question because of directions contained in judgment dated 03/07/07 passed by the Tribunal in O.A. 1857/06 which is the subject matter of writ petition no. 8476/2008. These directions are in the following terms:

“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 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 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.”

8. The observations made by the Delhi High Court in the case of ***Deen Dayal Upadhyaya Hospital represented by its Medical Superintendent & Others*** (supra), also reads as under:

“11. This is the view taken by the Division Bench of this Court in Victoria Massey’s case.

12. 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.

13. Impugned order passed by the Central Administrative Tribunal on November 01, 2011 has noted that the view taken by the Full Bench of the Tribunal in Victoria Massey’s case when OA No.1330/2007 was decided was partially modified by a Division Bench of this Court and thus has directed that the respondents would be entitled to the same benefit as was accorded by the Division Bench of this Court in Victoria Massey’s case.

14. The challenge by the writ petitioner by predicating a stand resting on the opinion of the Supreme Court in the decision reported as (2006) 9 SCC 321 State of Haryana &Ors. Vs. Charanjit Singh &Ors. and (2009) 9 SCC 514 State of Punjab & Anr. Vs. Surjit Singh &Ors. is neither here nor there for the reason as far as this Court is concerned an identical issue of payment of wages to contractually employed para-medics in various hospitals

of the Government of NCT Delhi has attained finality and the law of precedent compels us to adopt the same view which was taken by a co-ordinate Bench of this court. This would mean that just as Victoria Massey and other persons who had approached the Tribunal earlier were required to be paid wages at the minimum of the scale which would include all allowances as are paid to regular employees, sans an annual increment, we direct that similar would be the position of the respondents; a view correctly taken by the Tribunal.”

9. We are of the view that the present case is fully covered by ***Victoria Massey*** (supra) and ***Deen Dayal Upadhyay Hospital represented by its Medical Superintendent & Others*** (supra).
10. We find no infirmity in the order passed by the Tribunal. Accordingly, no grounds are made out to interfere. Consequently, the writ petition is dismissed.

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11. Application stands dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JANUARY 08, 2016

msr