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

+ **W.P.(C) 3025/2014 & CM No.6325/2014**

Date of Decision : 14th February, 2017

**SH. S.C.L. DASS, THE PRINCIPAL SECRETARY, HEALTH
NATIONAL CAPITAL TERRITORY OF DELHI AND ORS**

..... Petitioners

Through: **Mr. Pankaj Sinha & Ms. Richa Singh,**
Advocates

versus

PRAMOD KUMAR AND ORS

..... Respondents

Through: **Ms. Kamalakshi Singh & Mr.**
Saundarya Singh, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The respondents, 21 in number, were employed on contract as para medical staff for the first time in the year 2002, and have since been given extensions. It is an accepted and admitted position that the respondents/employees being contractual employees would be entitled to minimum of the basic pay scale and admissible allowances, which would be normally paid to a regular employee, except annual increments and promotions. The allowances admissible to such contractual employees have

also been adjudicated and decided by this Court in a number of cases and the same is not the subject-matter of the present writ petition.

2. The respondents had filed OA No.2028/2010, which was disposed of vide the order dated 22.11.2010, holding that they would be entitled to benefit of revised pay scales as applicable to para medical staff appointed on contractual basis, with effect from 1.1.2006. The said date was fixed in accord with CCS(Revised Pay) Rules, 2008, enacted on 1.9.2008, but made applicable with retrospective effect from 1.1.2006.

3. The Government of National Capital Territory of Delhi ('GNCTD') filed WP(C) No.3676/2011, impugning the order dated 22.11.2010, which was decided vide judgment dated 1.3.2013. Para 3 records that the arguments and the grievance addressed by the GNCTD were 'absurd', for the assertion made was that the para medical staff was claiming salary at par with the doctors. This was not the claim of the contractual para medical staff. Para 6 observes that, in view of the decision of the Full Bench of the Tribunal in the case of *Victoria Massey v. NCT of Delhi & Ors.* in OA No.1330/2007 dated 23.7.2008, the contractual para medical staff had started claiming increments and various allowances, which was being paid to para medical staff employed on a regular basis. Para 6 also notices

conflict between the decisions of the Tribunal and that the issue was referred to a Full Bench, which had opined that the contractual employees would be entitled to same wages, including allowances as also increments paid to the regular employees. The decision of the Full Bench of the Tribunal was challenged in this Court in WP(C) No.8764/2008, titled ***Government of NCT of Delhi v. Victoria Massey***, which was disposed of by a common order dated 22.5.2010 holding as under:

“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.”

Accordingly, the Division Bench in **Victoria Massey** (supra) had opined that the contractual employees would be granted the same salary and allowances, which were admissible to regularly employed staff nurses. It was held:-

“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.”

However, on the question of grant of increment and promotion, it was

observed as under:

“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.”

To this extent, there was modification of the direction of the Tribunal

in the case of *Victoria Massey* (Supra) dated 23.7.2008, by which the direction was issued that the contractual employees would be entitled to increments. The contractual employees, it was held, would not be entitled to increments. Thereafter, the Division Bench of this Court, in its decision dated 1.3.2013, in WP(C) No.3676/2011 titled NCT of Delhi & Ors. v. Pramod Kumar & Ors. had observed as under:

“11. 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.

12. 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.

13. This is the view taken by the Division Bench of this Court in Victoria Massey’s case (supra).

14. 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.”

4. Learned counsel for the petitioners, however, rely upon para 15 of the decision in **Pramod Kumar** (supra), which reads:-

“15. We thus dismiss the writ petition but clarify that the respondents would be entitled to receive pay as contractual employees as per the decision of the Division Bench of this Court in Victoria Massey’s case.”

5. We are afraid that the petitioners are misinterpreting the paragraph 15, quoted above. Reference to the decision of the Division Bench of the High Court in **Victoria Massey** (supra) was to clarify that the contractual employees would not be entitled to increments. The judgment/decision dated 1.3.2013 had not interfered or modified the directions given by the Tribunal in their order dated 22.11.2010 that the contractual employees would be entitled to benefit of the CCS(Revised Pay) Rules, 2008 with effect from 1.1.2006. In the entire judgment/decision dated 1.3.2013, there is no discussion and not even a whisper reflecting on the issue of date from which the respondents were granted benefit of the revised pay scale, i.e., 1.1.2006.

The discussion was with reference to grant of increment, with which the Division Bench agreed, holding that as per *Victoria Massey* verdict of the High Court- annual increments were not payable. This order never directed or held that revised pay scales were not to be paid with effect from 1.1.2006, or had to be paid only from the date when the OA No.2028/2010 was filed.

6. In view of the aforesaid discussion, we do not find merit in the present writ petition and the same is dismissed. CM No.6325/2014 is dismissed. There will be no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

FEBRUARY 14, 2017
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