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

Date of decision: 14th November, 2018

+ **W.P.(C) 7737/2014**

ABDUL ALEEM & ORS. Petitioner

Through Mr. M.K.Bhardwaj, Adv.

versus

CHIEF SECRETARY & ORS. Respondents

Through Ms. Avnish Ahlawat, Standing
Counsel GNCTD Services with Mr.
N.K.Singh, Ms. Palak Rohmetra and
Ms. Aarushi, Advs.

AND

+ **W.P.(C) 7739/2014 and CM APPL. 18238/2018**

HARSH TIWARI & ORS Petitioners

Through Mr. M.K.Bhardwaj, Adv.

versus

CHIEF SECRETARY, GOVT. OF NCT OF DELHI & ORS

.... Respondents

Through Ms. Avnish Ahlawat, Standing
Counsel GNCTD Services with Mr.
N.K.Singh, Ms. Palak Rohmetra and
Ms. Aarushi, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. The issues raised in both the petitions are similar and same therefore, this Court has decided to dispose of both these petitions by this common judgment.
2. Vide the present petitions, the petitioners seek direction thereby directing the respondents to grant same pay and allowances to the petitioners as admissible to regular staff as being granted to other contractual staff working under GNCTD. Consequently, to direct the respondents to grant benefits i.e. HRA, TA, Medical Benefits, Leave Benefits(earned Leave and LTC), Child Fees, Tuition fee, Gratuity etc to the petitioners.
3. Mr. Bhardwaj, learned counsel appearing on behalf of the petitioners submits the petitioners are getting other aforementioned facilities, however, the respondents do not provide the HRA and Transport Allowance to which they are entitled for, whereas, other employees of the respondents are getting other facilities including HRA and TA.
4. Mr. Bhardwaj, further submits that this issue is no more res integra as has been decided by catena of judgements of this Court. He has drawn the attention of this court to the case of *Vedwanti and Ors in WP(C) 1201/2016 on 07.03.2017* whereby this court while considering the other judgments including *State of Punjab v. Jagjit Singh AIR 2016 SC 5176* has observed in paras 2 and 3 as under:

2. The petitioners herein are contractual employees, who are working on different posts in Chaudhary Brahm Prakash Engineering College ('CBPEC'), established by the Department of Training & Technical Education, Government of National Capital Territory of Delhi ('GNCTD'). The contention of the petitioners is that they are entitled to same salary and benefits as granted to other contractual employees working under the GNCTD. They are entitled to allowances like DA, HRA, leave benefits etc. Learned counsel for the petitioners has also drawn our attention to the decision of this Court dated 6.11.2013 in WP(C) No.6798/2002, *Sonia Gandhi & Ors. v. GNCT of Delhi & Ors.*, wherein the contractual employees, it was held, were entitled to minimum of pay, i.e., the basic pay at the induction stage, in addition to allowances, including HRA and TA. Reference is also made to the judgment dated 1.11.2013 passed in WP(C) No.2915/2013, *Chief Secretary, GNCT of Delhi & Anr. v. Satish Kumar & Ors.*, wherein the contractual employees were held to be entitled to benefits like DA and HRA. The question of maternity benefit has also been examined in this case. The recent decision of the Supreme Court in *State of Punjab v. Jagjit Singh*, AIR 2016 SC 5176, settles the issue and affirms the principle of "equal pay for equal work". We also find that the issue is covered and settled by the decisions of the Delhi High Court in *Victoria Massey versus GNCT of Delhi*, W.P.(C) No.8764/2008, decided on 22nd May, 2009, *Rajesh Kumar Sharma and Others versus GNCT of Delhi and Others*, W.P(C) No. 3769/2013, decided on 4th July, 2013, *NCT of Delhi and Others versus Pramod Kumar and Others*, W.P. (C) No. 3676/2011, decided on 1st March, 2013, *Deen Dayal Upadhyaya Hospital represented by its Medical Superintendent and Others versus Mahesh Bhardwaj and Others*, W.P. (C) No. 4863/2012, decided on 15th February, 2013, *Dr. Baba Sahib Ambedkar Hospital represented by its Medical Superintendent and Others versus Swastika Bhakat and Others*, W.P. (C) No. 424/2013 with connected petition,

decided on 24th May, 2013.

3. In view of the aforesaid legal position, we hold that the petitioners herein would be entitled to minimum of basic pay + grade pay + DA+HRA and TA. Learned counsel for the petitioners states that the other contractual employees are also being given advantage or benefit of Earned Leave. She relies on the order dated 1.10.2015 passed by the GNCTD whereby two additional benefits, i.e. 15 days Earned Leave in each case and maternity leave as applicable to regular employees has been granted. The respondents having passed the said orders will be bound by the same.”

5. Learned counsel appearing on behalf of the respondents submits that the respondents are giving the other benefits but not HRA and TA in terms of ***Jagjit Singh (supra)***, therefore, the petitioners herein are not entitled to HRA and TA.

6. Counsel for the respondents has referred to para 61 of the case of ***Jagjit Singh (supra)*** whereby the Hon’ble Supreme Court has held as under:

“61. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.”

7. The issue raised in the present petitions has already been dealt in ***Jagjit Singh (supra)*** in paras 57, 58 and 60.

“57. There is no room for any doubt, that the principle of ‘equal pay for equal work’ has emerged from an

interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under [Article 141](#) of the Constitution of India. The parameters of the principle, have been summarized by us in paragraph 42 hereinabove. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

60. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage

employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 hereinabove. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post."

8. In para 61 of *Jagjit Singh (supra)* referred by learned counsel for the respondent nowhere it is stated by the Supreme Court that the temporary employees are not entitled for the benefits of HRA and TA rather it is stated in para 60 that whether the employees who are rendering similar duties and responsibilities as were being discharged by the regular employees holding the same/corresponding posts therefore, they also require the application of the parameters of “equal pay for equal work”.

9. In view of the above observation and legal position, the petitioners are entitled for HRA and TA. Consequently, the respondents are directed to pay the HRA and TA to the petitioners from the date of filing of the present petitions.

10. The direction passed by this court shall be complied with within 8 weeks from the receipt of this order.

11. Both the petitions are disposed of accordingly.

SURESH KUMAR KAIT, J

NOVEMBER 14, 2018

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