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

+ **W.P.(C) 214/2015 & CM Appl.No. 337/2015 (stay)**

GOVT. OF NCT OF DELHI & ORS. Petitioners
Through Mr. Gaurav Dhingra, Advocate

versus

KIRAN SHARMA & ORS. Respondents
Through Mr. Ankur Chhibber, Advocate

CORAM:

JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

% **09.10.2019**

Dr. S. Muralidhar, J.:

1. The Government of NCT of Delhi has filed this writ petition challenging the order dated 28th January, 2014 passed by the Central Administrative Tribunal (CAT) disposing of OA No. 2909/2012 filed by the Respondents and directing that they should be paid salary on par with Welfare Officers appointed on contract basis.

2. The background facts are that each of the 16 Respondents herein was appointed on various dates between 1st February, 2007 and 14th June, 2010 as Protection Officer (Women) under the Protection of Women against Domestic Violence Act, 2005 (PWDV Act) on a contract basis and on a consolidated salary of Rs.10,000/- per month. It is stated that although the appointment was initially for a period of six months, successive extensions were granted. At the time of extension granted by an Office Order dated 3rd

August, 2009 for a period of one year with effect from 1st August, 2009 the salary was increased to Rs. 15,000/- per month.

3. The case of the Respondents was that they were working as Protection Officers (Women) under the PWDV Act on a contract basis against the vacant posts of 'Welfare Officer' and that the Petitioner had unjustly denied them regularisation of services on the said post. Their further grievance was that they had been denied the benefit of salary in the regular pay scale as was being given to regularly appointed Welfare Officers.

4. In the above circumstances, the Respondents had a legal notice dated 23rd July, 2012 issued to the Petitioners but received no reply. They then filed OA No. 2909/2012 before the CAT praying that they should be paid salary on par with regularly appointed Welfare Officers and that their services should be regularised on their post from the dates of their initial appointment with all consequential benefits. The further prayer was for a direction to the Respondents to create/sanction the requisite number of posts of Protection Officers and Welfare Officers and appoint the Respondents herein against the said post retrospectively on a regular basis from the date of their initial appointment on contract basis.

5. While the Respondents based their claim on the strength of the decision of the Supreme Court in *Uttar Pradesh Land Development Corporation v. Mohd. Khursheed Anwar* (2010) 7 SCC 739, the Petitioners herein resisted the plea by referring to the judgment in *State of West Bengal v. West Bengal Minimum Wages Inspectors Association* (2010) 5 SCC 225 to

contend that the principle of 'equal pay for equal work' was not a fundamental right. It was contended that the grant of parity of pay was dependent on a variety of factors, such as educational qualification, nature of the job, duty to perform responsibility to be discharged, experience, method of recruitment etc. Reliance was placed by the Petitioners on the decision in ***Secretary, State of Karnataka v. Uma Devi (2006) 4 SCC 1*** to contend that the services of the Respondents herein, who are appointed on contractual basis could not be regularised on the basis of equity in the absence of any such provision in the Recruitment Rules (RRs). Reliance was also placed on the decisions in ***Dr.Chanchal Goel v. State of Rajasthan (2003) 3 SCC 485***, ***State of Himachal Pradesh v. Suresh Kumar Verma (1996) 7 SCC 562*** and ***Director Institute of Management Development UP v. Smt. Shrivastava (1993) 1 SLJ 124 (SC)***.

6. The Petitioners further pointed out in their affidavit before the CAT that the proposal for creation of posts of Protection Officers under the PWDV Act was pending consideration with the Lt. Governor of Delhi and that after his approval the posts would be notified and the RRs and the pay scales would be fixed thereafter.

7. The CAT in the impugned order declined to issue any direction for regularisation of the services of the Respondents. However, as regards the plea of parity in pay, the CAT was of the view that the issue was covered in favour of the Respondents by the decision of the Supreme Court in ***UP Land Development Corporation v. Mohd. Khursheed Anwar (supra)***. The Respondents were held entitled to the same pay as that of Welfare Officers

appointed on a contract basis. Accordingly, the OA filed by the Respondents was partly allowed by the impugned order of the CAT with a direction to the Petitioners herein to pay the Respondents salary on par with Welfare Officers appointed on contract basis i.e. Rs. 19,575/- with effect from 1st August, 2010 and Rs. 20,385/- with effect from 1st May, 2011, within two months. It was further directed that any increases thereafter in the salary of ad hoc Welfare Officers would also be equally extended to the Respondents.

8. On 9th January, 2015, while directing notice to issue to the Respondents, the Court noted the plea of the Petitioners that there was a “wide divergence between the duties of the Protection Officer and Welfare Officers and therefore both the posts cannot be equated to give them the parity of pay scales.”. The Court by the above order dated 9th January, 2015 also stayed the impugned order of the CAT. The said interim order was directed to be continued.

9. The Respondents filed a counter affidavit on 27th November, 2015. It is *inter alia* pointed out therein that the present petition was filed only after a contempt petition was filed by the Respondents seeking enforcement of the impugned order of the CAT. Reliance is placed on the decisions in ***Randhir Singh v. Union of India AIR 1982 SC 879 Daily Rated Casual Labourers v. Union of India (1988) 1 SCC 122, Jaipal v. State of Haryana (1988) 3 SCC 354, Dhirendra Chamoli v. State of UP (1986) 1 SCC 637 and Surinder Singh vs. Engineer-in-Chief CPWD (1986) 1 SCC 639.***

10. A copy of the sanction order dated 19th June, 2007 showing that the Respondents were appointed on a contract basis as Protection Officers (Women) “against the vacant posts of Welfare Officers” was enclosed with the affidavit. Reference was also made to the advertisement dated 28th July, 2012 published in Hindustan Times for a walk-in interview for appointment to the posts of Welfare Officers. It was pointed out that the minimum qualification required for the post of Welfare Officer and Protection Officer (Women) is the same and that the experience required was also the same. It was pointed out that the post of Protection Officers under the PWDV Act is a statutory post and that the duties and functions of Protection Officers have been spelt out in Sections 8, 9 and 10 of the PWDV Act. It is accordingly submitted that the CAT was justified in issuing the impugned direction.

11. At the hearing on 3rd November, 2017 counsel for the Petitioners was directed to file an affidavit indicating *inter alia* the amounts that would be payable to the Respondents in terms of the order of the CAT.

12. Pursuant thereto, on 2nd April, 2018 an affidavit was filed by the Petitioners stating *inter alia* that during the pendency of the writ petition the RRs for the posts of Protection Officer had been framed and notified on 30th March, 2016 after obtaining the mandatory advise of the UPSC. It was further stated that pursuant to the order dated 3rd November, 2017 the Petitioner had sought information from various District Officers of the Department of Women and Child Development, GNCTD, where the Respondents had been working as Protection Officers. It is stated that from the initial data collected, the maximum permissible amount for each

Respondent working as Protection Officer from 1st August, 2010 to 31st March, 2016 worked out to around Rs. 5,37,900/- and for 16 Protection Officers the total amount worked out to Rs. 86,06,400/-.

13. At the hearing on 25th October 2018, counsel for the Petitioners sought leave to file yet another affidavit to explain the differences in the posts of Protection Officers and Welfare Officers and also to place on record the relevant RRs.

14. Pursuant to the leave so granted on 12th March, 2019 an additional affidavit was filed enclosing the RRs and setting out in Para 9 in a tabular column the differences in the roles and responsibilities of Welfare Officers and Protection Officers as well as the difference in the Recruitment Rules for Welfare Officers and Protection Officers. It was submitted that the Protection Officers cannot be treated at par with Welfare Officers.

15. This Court has heard the submissions of Mr. Gaurav Dhingra, counsel for the Petitioners and Mr. Ankur Chhibber, counsel for the Respondents.

16. The plea of the Respondents drawing a distinction between the rules and responsibilities of Welfare Officers and Protection Officers is no longer relevant, since the admitted position is that there are now RRs specific to Protection Officers and there is an equalisation of their pay and emoluments. The short question that therefore survives for consideration concerns the pay of the Respondents in the interregnum i.e. between the date of the impugned order of the CAT and the date of coming into force of the RRs i.e. 30th

March 2016. It was for this reason that the Court had required the Petitioners to file an affidavit as to the maximum permissible amount that would be payable to each of the Respondents for working as Protection Officers from 1st August, 2010 to 31st March, 2016. The affidavit dated 28th March, 2018 states that this works out approximately to Rs.5,37,900/- per person and the total amount works out to Rs. 86,06,400/-

17. In *State of Punjab v. Jagjit Singh (2017) 1 SCC 148* the Supreme Court accepted the plea of parity in pay scale and directed that the principle of equal pay for equal work “was also applicable to temporary employees performing the same duties and responsibility as regular employees.” It was held that “temporary employees possessing requisite qualifications and appointed against posts which were also available in regular cadre, performing similar duties and responsibilities as being discharged by regular employees holding same/corresponding posts were entitled to claim wages on a par with minimum pay scale of regular employees holding the same posts.”

18. The Court is informed that even in terms of the Minimum Wages Act the amount that has been calculated to be payable would be consistent with the statutory requirement thereunder. The Court therefore does not consider it necessary to discuss the case law cited by counsel for the Petitioner particularly in view of the changed circumstances, where the appointment for all of the Respondents now stands governed by the RRs that have been identified on 30th March, 2016 and in particular Rule 7 thereof which reads as under:

“Initial Constitution-

The incumbents holding the posts of Protection Officer on the date of issue of this notification, shall be deemed to have been appointed in accordance with the provisions of these rules provided they are deemed to have fulfilled all the eligibility conditions as specified under the Recruitment Rules to the post and having been declared as eligible by a Screening Committee constituted by the Appointing Authority to the given post. Matter relating to probation and other terms and conditions of the service/post may be determined in accordance with the extant DoP&T guidelines as applicable thereto.”

19. Therefore, in terms of the Rule 7 of the RRs the Respondents, who were already holding the posts of Protection Officers on the date of the notification of the RRs, “shall be deemed to have been appointed in accordance with the provisions of these rules” subject to the other conditions specified therein, which admittedly stands fulfilled in the case of the Respondents.

20. In that view of the matter, the Court sees no difficulty in holding that the Respondents should be paid the salary and emoluments in terms of the impugned order of the CAT for the interregnum i.e. 1st August, 2010 till 31st March, 2016. The aforementioned sum will now be paid not later than four weeks from today, failing which the Petitioners would be liable to pay simple interest at 6% per annum on the said sum due to each of the Respondents for the period of delay.

21. The impugned order of the CAT calls for no interference. The interim order passed by this Court on 9th January, 2015 accordingly stands vacated. The petition is disposed of with the above directions. The pending

application is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 09, 2019
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