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

% *Date of Judgment : 30th October, 2019*

+ **W.P.(C) 9795/2019**

SH. NANDAN SINGH AND ORS.

..... Petitioners

Through Mr. Baldev Singh and Ms. Ritu
Sharma, Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondents

Through Mr. Aman S. Bakhshi and Ms. Biji
Rajesh, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM.APPL 40432/2019(Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 9795/2019

3. With the consent of the parties, the present writ petition is set down for final hearing and disposal.
4. Present petition is directed against an order dated 11.03.2019 passed by the Central Administrative Tribunal (the 'Tribunal'), by which OA No.2924/2018 filed by the petitioners herein was rejected.

5. Brief facts, which are required to be noticed for the disposal of this petition, are that the petitioners are working as Electrical Beldars(E-Beldars)/Wiremen in various hospitals of the North Delhi Municipal Corporation (NDMC). The petitioners were being paid Hospital Patient Care Allowance (HPCA) which was stopped and thereafter restored on 13.07.2006, only to be stopped again in April 2018. The stand of the petitioners before the Tribunal is reflected in paras 4.2 and 4.13 of the OA, which we reproduce below:

“4.2 That the applicants are working with the respondents department in the Electrical department at various position like Electrical Beldars/Wireman posted in the sensitive Hospitals. The applicants are posted at Mrs. Girdhari Lal Maternity Hospital, Delhi and at Kasturba Hospital Daryaganj, Delhi (Maternity Hospital).

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4.13 That it is pertinent to mention that the applicants are working in the Electrical department and are posted in Hospitals which have special ICU's, Maternity Wards, Septic Labour Rooms, Septic Wards, Minor and Main Operation Theatre, DOT-Tuberculosis Department, Bio waste Room, Mortuary etc where the applicants visit on regular basis for all electrical needs of these areas and come in continuous and routine contact and thus are exposed to all kinds of spread of infection.

6. Learned counsel for the petitioners submits that the duties of the petitioners are such that they are in constant and continuous contact with the patients, more so, as they have to regularly and continuously visit the wards where there is infection including the tuberculosis ward and other wards in the normal course of their duties. He submits that there are regular faults relating to electrical working in the wards which are required to be attended to. Reliance is placed on the judgment in

the case of *Bhagwan Shukla s/o Sarabjit Shukla v. Union of India and Ors.*, reported at (1994) 6 SCC 154.

7. Mr. Aman S. Bakhshi, learned counsel for the respondents submits that there is no infirmity or illegality in the order passed by the Tribunal which would require interference by this Court. He submits that the present case is fully covered by earlier decisions of this Court in the cases of *Shamshuddin & Others v. Union of India and Others*, reported at 2011 SCC OnLine Del 1215 pertaining to ‘cooks’ employed with the BSF; *Union of India and Others v. Rajender Ram and Others*, reported at 2013 SCC OnLine Del 2444 pertaining to ‘chowkidars’; *Union of India & Others v. Prabhu Nath Prasad & Others*, [W.P.(C).4973/2013] pertaining to ‘peons/daftaris’ working at the National Institute of Communicable Diseases, Sham Nath Marg and the decision in the case of *North Delhi Municipal Corporation v. Workmen Working as Malies in Horticulture Deptt. MCD*, [LPA No.109/2017] decided on 22.02.2019 pertaining to ‘malis’ working in a hospital under the control of the Municipal Corporation of Delhi. He further submits that the eligibility criteria for entitlement to HPCA is that the petitioners must satisfy that their regular duties involve continuous and routine contact with patients infected with communicable diseases; or that they belong to such class of persons who routinely handle, as their primary duty, infected materials, instruments and equipments which can spread infection. Learned counsel contends that an electrician may be called to a particular ward only in case of some electrical fault, with little or no contact with the patients; and thus their duties cannot be termed as involving continuous

and routine contact with patients. Learned counsel for the respondents has relied upon the Minutes of the Meeting dated 21.02.2018 and 06.04.2018, which we reproduce below:

“MINUTES OF THE MEETING

As per directions of Addl. Com.(H), an urgent meeting of Medical Superintendents was called on 20.02.18 at 3:00 pm to discuss the issue of eligibility of group C&D employees for Hospital Patients Care Allowance (HPCA). The meeting was held under the chairmanship of DHA-NDMC and was attended by the following members:

1. Dr. L.C. Sunda, Officiating MS HRH
2. Dr. S.K. Gupta, Director-cum-MS RBIPMT & MVIDH
3. Dr. Anita Gupta, MS GLMH
4. Dr. Sangita Nangia, MS KH
5. Dr. Rajneesh, MS BRH
6. Dr. Ashok Kumar, CMO Legal Cell, DHA Office
7. Mr. Harish Bhartiya, JLO (Health)
8. Mr. Ravi Kant Vats, Radiographer Legal Cell

After due deliberations, it was unanimously decided that the Malies, Beldar of Electricity department and Beldar of Civil Department are not entitled for HPCA because these employees neither come in continuous and routine contact with the patients nor they handle infected materials, instruments and equipments, as their primary duty which can spread infection.

Sd/-
CMO(Legal Cell)
Member Secretary”

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“MINUTES OF THE MEETING **(CORRIGENDUM)**

In continuation and partial modification of the minutes of the meeting dated 21.2.2018, the last paragraph may be read as “after due deliberations, it was unanimously decided that

the Malies, Beldars and other officials of Electrical & Civil (Works) Department are not entitled for HPCA because the employees neither come in continuous and routine contact with the patients nor they handle infected materials, instruments and equipments as their primary duty which can spread infection.

Sd/-
CMO(Legal Cell)
Member Secretary”

8. We have heard the learned counsels for the parties and have considered their rival submissions.
9. In the case of *North Delhi Municipal Corporation*(supra), this Court has taken into consideration the decisions rendered in the case of *Shamshuddin & Others*(supra), paragraphs 8, 9, 10, 13 and 14, of which read as under:

“8. Mr. Phoolka, learned Senior Counsel appearing for the appellant submits that three Division Benches of this Court have taken a consistent view that only those who are in continuation contact with the patients or as a routine are in contact with the patients would be entitled to be HPCA. Mr. Phoolka has placed reliance on a decision rendered by this Court in W.P. (C) 2965/2010 titled *Shamshuddin & others Vs. Union of India and others*, reported at **2011 SCC OnLine Del 1215**, the matter pertaining to cooks employed with the BSF. One of the petitioners in the said writ petition was employed as a Safai Karamchhari. All the three petitioners had claimed entitlement to receive HPCA. Paras 5, 6, 7 & 8 read as under :

“5. Suffice would it be to state that the very preamble i.e. the opening paragraph of the circular makes it clear that Hospital Patient Care Allowance has to be paid to Group C & D (Non-Ministerial) employees working in hospitals, dispensaries and organizations. Prima facie, the word, organizations” must take colour from the

preceding two words i.e. hospitals“ and „dispensaries“. Thus, it would be those organizations of BSF where medical treatment is given, for example an M.I. Room.

6. That apart , the policy under caption (iii) makes it clear that only those Group C & D (Non-Ministerial) employees would be paid the allowance whose duties involve continuous and routine contact with patients infected with communicable diseases or those who have to routinely handle, as their primary duty, infected materials which can spread infection.

7. This explains the logic of the Division Bench“s decision relied upon in direction Kahars i.e. Watermen to be paid the allowance for the reason in BSF Kahars not only fetch water but even wash utensils. They wash utensils, if attached to hospitals, in which patient eat food. This also explains why Safai Karamcharis in hospitals are receiving the allowance. They clean the floors of the various wards. They clean toilets attached to the wards. They come into contact with patients.

8. As regards cooks, they simply cook food in the kitchen and do no duty which makes them in contact with patients.”

9. In W.P. (C) 5268/2012 titled ***Union of India and others Vs. Rajender Ram and others***, reported at ***2013 SCC OnLine Del 2444***, the Division Bench was dealing with a Chowkidar, who had sought identical relief but the same was declined. Reliance is also placed on ***Union of India & others Vs. Prabhu Nath Prasad & others*** (W.P. (C) 4973/2013). Both these writ petitions were dealing with Peons/Daftaris at the National Institute of Communicable Diseases at Sham Nath Marg. The relief sought with respect to these categories were also declined. Mr. Phoolka has drawn attention of the Court to circular dated 04.02.2004 issued by Govt. of India, Ministry of Health and Family Welfare, addressed to the Director General of Health Services regarding payment of Hospital Patient Care Allowance/Patient Care Allowance to group C & D (non-ministerial employees working in

hospital/dispensaries and organisations). We deem it appropriate to reproduce the eligibility of HPCA/PCA.

“1. Eligibility of HPCA

The HPCA is admissible to Group C and D Ministerial employees excluding nursing personnel @ Rs.700/- p.m. and Rs.65/- p.m. respectively working in General Hospital and in Super Speciality Hospital subject to the condition that no Night Weightage Allowance and Risk Allowance if sanctioned by the Central Govt. will be admissible to these employees.

2. Eligibility for PCA

The PCA is admissible to the Group C and D employees excluding nursing personnel @ Rs.690/- p.m. if sanctioned by the central Govt. will be admissible to these employees this ministry order no.Z8015/25/98 dt 28.9.1968.

3. The conditions which an organization must satisfy before its employees can be considered for grant of HPCA.

Only persons whose regular duties involve continuous and routine contact with patients infected with communicable disease or those who have to routinely handle, as their primary duty, infected materials, instruments and equipments which can spread infection as their primary duty may be considered for grant of HPCA.

(emphasis added)

It is further clarified that HPCA shall not be allowed to any of those categories of employees whose contact with patients or exposure to infected materials is of an occasional nature.

4. The conditions which an organization must satisfy before its employees can be considered for grant of PCA.

Only persons whose regular duties involve continuous and routine contact with patients infected with communicable disease or those who have to routinely handle, as their primary duty, infected

materials, instruments and equipments which can spread infection as their primary duty working in health care delivery institutions other than hospital may be considered for PCA shall not be allowed to any group C and D employees whose contact with patients or exposure to infected materials of occasional nature.”

(emphasis added)

10. Relying on the aforesaid circular, Mr. Phoolka contends that the aim, objective and purpose of providing the HPCA was to those persons, who were carrying out regular duties and were involved in continuous and routine contact with the patient infected with communicable disease or those who have to routinely handle, as their primary duty, infected materials, instruments and equipments which spread the contagious diseases. Mr. Phoolka submits that there is no infirmity in the judgment of the Tribunal. The Tribunal has rightly held that Malis do not fall in such a category as they do not routinely come in contact with the patients infected with communicable disease nor is their primary duty to deal with infected materials, equipments and instruments which can spread infection and thus, they are not entitled to the HPCA and cannot be equated with the persons to whom such allowance had been granted. It is further contended that the learned Single Judge was bound by the decision rendered by the Division Bench which apparently was not brought to his notice and thus the order of the learned Single Judge is liable to be set aside.

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13. We have heard learned counsels for the parties, examined the order passed by the Tribunal, the order passed by the learned Single Judge and the materials placed on record. The grant of HPCA is based on the circular dated 04.02.2004. The eligibility criteria for grant of HPCA has been extracted in para 7 aforegoing. At the cost of repetition, we highlight the eligibility criteria and the conditions which an organisation must satisfy before these employees can be considered for grant of HPCA, which read as under :

“3. The conditions which an organization must satisfy before its employees can be considered for grant of HPCA.

Only persons whose regular duties involve continuous and routine contact with patients infected with communicable disease or those who have to routinely handle, as their primary duty, infected materials, instruments and equipments which can spread infection as their primary duty may be considered for grant of HPCA.

It is further clarified that HPCA shall not be allowed to any of those categories of employees whose contact with patients or exposure to infected materials is of an occasional nature.”

14. The underlying principle for grant of HPCA is to grant allowance to those employees whose regular duties involved bring into contact in a routine manner with patients infected with communicable diseases or such employees, who during the course of their duty deal with infected materials, instruments and equipments which can spread infection. The consistent view taken by this Court in three judgments of Division Bench detailed in para 7 foregoing would show that persons who had not been in direct contact with patients with communicable diseases cannot be granted benefit of HPCA. The Malis in our view would not be covered within this category as they do not come in direct contact with patients with communicable diseases or with materials instruments or equipment. While the scope of deciding a dispute before the Industrial Tribunal is no doubt wider but even Tribunal did not come to the aid and rescue of the workmen as the award has been rendered against them and thus, it cannot be said that the judgments of the Division Bench would not apply the decision in this case. Even otherwise even if the scope of an industrial dispute is wider, it does not mean that relief is to be granted by the Tribunal in cases which lack merit. We have no hesitation in saying that had the decision of the Division

Bench been brought to the notice of the learned Single Judge, the position would have different.”

10. The present petition is evidently to be decided on the touchstone of the law laid down by the decisions noticed in the paragraphs foregoing. The petitioners have sought payment of Hospital Patient Care Allowance (HPCA) on the ground that they remain in constant touch with patients; that their nature of duties is such that they have to visit the wards in the hospitals, including the Intensive Care Unit, Maternity Wards, Operation Theatres and other such areas. This Court has taken a consistent view that only those persons who are in continuous and routine contact with patients would be entitled to HPCA. The petitions filed by *safai karmcharis, chowkidars* and *malis* already stand rejected. The nature of duties of the petitioners are not such which would require continuous or routine contacts with the patients or require handling infected material, instruments or equipment as their primary duty which can spread infection. The judgment relied upon by the learned counsel for the petitioners in the case of ***Bhagwan Shukla s/o Sarabjit Shukla*** (supra) is therefore not applicable to the facts of the present case.
11. At this stage, learned counsel for the petitioners submits that the representation made by the petitioners may be decided by the respondents as no opportunity of hearing was granted to them. Accordingly, we direct that if a representation is pending, the same would be considered by the respondents at an early date. However, we make it clear that rejection of the representation would not give to the petitioners a fresh cause of action.
12. The writ petition stands disposed of in above terms.

CM.APPL 40431/2019(stay)

13. The application also stands disposed of in view of the order passed in the writ petition.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

OCTOBER 30, 2019

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