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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19th November, 2019
Pronounced on: 4th December, 2019

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W.P. (C) 12059/2019

ASHOK KUMAR CHAUDHARY & ORS. Appellant
Through: Mr. Anand Nandan, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Ms. Avnish Ahlawat, Standing
Counsel for GNCTD.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

J U D G M E N T

Talwant Singh, J.

CM APPL. 46679/2018 (exemption)

1. Allowed, subject to all just exceptions.

W.P. (C) 12059/2019

2. The Petitioners have challenged an order dated 16th July, 2018 passed in OA No.362/2015 by Central Administrative Tribunal (CAT) Principal Bench, New Delhi by which their original application was disposed of by passing the following order:

“6. In the circumstances and for the aforesaid reasons, the OA is disposed of by permitting the applicants to submit an appropriate representative for leave benefits and bonus, and on receipt of such a representation from the applicants, the

respondents are directed to consider the same as per the rules and pass an appropriate speaking and reasoned order, in accordance with law, within 90 days there from. No costs.”

3. The prayers made in the OA No.362/2015 were as under:

“VIII RELIEF SOUGHT:

In the aforesaid facts and circumstances of the present case it is therefore most respectfully prayed that this Hon’ble Court may kindly be pleased to direct the Respondents to:

a) Direct the Respondents to pay to the applicants the salary as per the office order dated 25-4-2013 bearing No. H.C. (M)/C.E.D./North/2013/1211 annexed at ANNEXURE P/1 with the present application, and,

b) Direct the Respondents to pay arrears of salary to the applicants with effect from 1-4-2013, and,

c) Direct the Respondents to grant leave benefits to the applicants as mentioned in office order dated 23-4-2008 bearing No. AO(H)/RAN/2008/GF-29/103,

d) Direct the Respondents to grant bonus to the applicants as applicable to them.”

4. The Petitioners are stated to be working as Domestic Breeding Checkers (DBC) with the Respondent Corporations since 1996 onwards. They are being appointed on the basis of seniority list which was prepared as a consequence of the orders passed by this Court in a series of writ petitions. The Petitioners were appointed after proper notification, advertisement and from the names which were already registered with the employment exchange. The appointments are made every year on contractual basis in spite of the fact that there are resolutions for appointment of Petitioners on regular basis being passed by the Houses of Respondent Corporations. A

formal office order was passed by the Respondents for continuation of Petitioners on the post of Domestic Breeding Checkers. On 25th April, 2013 Respondent No.2 came out with an office order by which all contractual employees working in various categories/cadres were to be paid minimum pay in the respective pay band + grade pay + Dearness Allowance (DA) with effect from 1st April, 2013. The labour welfare officer passed an office order that the employees who were appointed directly on contract basis were to be given remuneration as per the circular dated 25th April, 2013 and to employees appointed on compassionate ground on contractual basis, the remuneration is to be paid as per the circular of the Labour Welfare Department. The approximate salary of any one of the Petitioners in December, 2013 would have been Rs.13,300/- as per circular but the Petitioners were paid a gross salary of Rs.7,748/- per month. The Accounts Department of Respondent No.2 sought clarification as to whether Petitioners employed with Respondent No.2 were entitled to payment of salary as per notification dated 25th April, 2013. The Petitioners were held entitled by communication dated 3rd February, 2014 for payment of salary as per notification dated 25th April, 2013. However, in spite of completing all the formalities in this regard, the salary at the revised rates is not being paid even by Respondent No.2 and other Respondents. The basic entitlements are not given to the Petitioners.

5. It has been submitted that during the pendency of the proceedings, the Respondents have already granted casual leaves, commuted leaves and bonus to the Petitioners. The OA was filed praying for grant of appropriate salary due to the Petitioners to which counter affidavits were filed by the

Respondents. The information received through RTI that the post of DBC was a sanctioned post was also placed before the CAT. Similarly, a resolution dated 5th August, 2013 passed by North DMC was also placed before CAT wherein it was resolved that Petitioners are entitled to get the pay band and grade pay and other benefits with effect from 2013. The Petitioners have been working continuously with Respondents with effect from 2012 till date without any break.

6. The judgment passed by the CAT has been assailed on the grounds that the same is erroneous and not based upon correct appreciation of facts and circumstances; it has been wrongly recorded that the post of Domestic Breeding Checker is not a sanctioned post; the impugned judgment was passed on the premises that the Petitioners were seeking parity of pay but the Petitioners are seeking the salary which has been already accepted by the Respondents; it has been wrongly stated on affidavit by the Respondents that the Petitioners are working only for seven months but on the other hand they are working continuously since 2012/2013 and they have a sanctioned pay scale and their case is not based on the issue of similar pay for similar post. On this basis, it has been prayed that the impugned judgment dated 16th July, 2018 passed by the learned CAT be set aside and Respondents be directed to comply with the prayers in the original application as detailed above.

7. In the counter affidavit filed on behalf of Respondent No.2, it has been mentioned that Petitioners are employed on contractual basis and it is a seasonal post with matriculation qualification for which no recruitment rules are available with MCD and they are governed under the terms and

conditions of the contract. There are no sanctioned posts and Petitioners cannot be compared with other contractual employees who are working against sanctioned category of posts for which recruitment rules are in existence. Initially, the Petitioners were only seasonally engaged on contractual basis during malaria/dengue season. In 2010-11 they were engaged for the period of 9 months and for the rest of the period they worked in Building and Property Tax Department. Since 2012, the Domestic Breeding Checkers are employed on contractual basis, they are being paid wages fixed by Labour Welfare Department of the North DMC on the basis of minimum wages fixed by Government of NCT of Delhi and these rates are revised from time to time. At present, they are being paid at the rate of Rs.15,296/- per month as per the revised rates applicable with effect from 1st April, 2018. They are not covered under the formula of pay band + grade pay + DA. The Petitioners have no legal right under the statute which they seek to enforce.

8. It is further submitted that the notification dated 25th April, 2013 issued by North DMC was with regard to contractual employees against sanctioned posts and it is not applicable to Domestic Breeding Checkers as they are daily wagers. In view of this, it has been stated that the learned CAT has passed a reasoned judgment and the same does not warrant any interference. The counter of EDMC, i.e. Respondent No.4 is almost on the same lines. It has been further mentioned that the MCD was trifurcated in the year 2012 and a common writ petition against three Corporations is not maintainable and the office order dated 25th April, 2013 issued by North DMC is not applicable and binding on EDMC. Similarly, in the counter affidavit filed on

behalf of Respondent No.3, i.e. South Delhi Municipal Corporation reiterates the same grounds. However, it has been mentioned that this Court vide order dated 2nd July, 2007 had directed MCD to take decision regarding regular employment of Domestic Breeding Checkers within six months. The matter was considered and regularisation of DBCs was not found feasible. In view of the facts that engagement of Domestic Breeding Checkers was an additional activity in Delhi; man power for Domestic Breeding Checker was not covered in the guidelines of National Vector Borne Disease Control Program and Domestic Breeding Checkers are stipulated to work during Vector Borne Disease transmission period only so it was decided that regularisation of DBCs was not possible and the Court was accordingly informed. It is admitted that since 2012 Domestic Breeding Checkers are being engaged for entire 12 months on contractual basis but no tangible effect can be seen due to their engagement on year to year basis.

9. The Petitioners have filed rejoinders to the said counter affidavits. They have also placed on record copies of the RTIs wherein information was sought as to whether there are any recruitment rules for Food Hygiene Beldars and the basic salary and grade pay for Food Hygiene Beldars. The response received is that there are no recruitment rules of Food Hygiene Beldars but the basic salary of Food Hygiene Beldars is Rs.18,000/- and grade pay is Rs.1,800/-. Copy of the resolution of South Delhi Municipal Corporation has been placed on record mentioning therein that there are 1,350 sanctioned posts of DBC in South DMC and there is already a resolution No.278 dated 25th March, 2013 regarding regularisation of DBC employees and they are being paid meagre salary in comparison to other

contractual employees who are getting basic pay + grade pay + variable DA and the said DBCs be paid minimum basic pay of Rs.5,200/- + grade pay of Rs.1,900/- + variable DA as per circular dated 30th April, 2013. Similarly, with a rejoinder to the counter affidavit of Respondent No.2, a copy of the RTI has been enclosed on the same lines mentioning that for Food Hygiene Beldars, there are no recruitment rules and the Food Hygiene Beldars are getting basic salary in the range of Rs.28,400/- to Rs.34,000/-. The reply received from North DMC to the RTI shows that the work nature of APHI employees in Health Department is to prevent diseases in public interest and they are also working to install ORS Depot and to distribute chlorine. The pay scale of FHB (Food Hygiene Beldars) is shown to be Basic Pay + Grade Pay. Copy of the resolution No.231 dated 24th December, 2018 passed by North DMC has been also filed wherein the contractual employees were ordered to be paid the salary on the basis of Basic Pay + Grade Pay + variable DA and it was resolved to pay the same emoluments to DBCs. The response from EDMC to the RTI has been filed along with the rejoinder again showing that there are no recruitment rules for Food Hygiene Beldars and in the 7th Pay Commission, the grade pay is no longer there and the basic salary of Food Hygiene Beldars is Rs.18,000/-. Copy of the resolution No.195 dated 24th December, 2018 mentioning therein that there are 710 posts of DBCs and they be paid at a same rate as the emoluments being paid to other contractual employees, has been also filed on record.

10. We have heard the learned counsel for the parties. The following facts have emerged from the documents on record as well as the arguments advanced before us:

i) From 2012/2013, the Petitioners are being employed throughout the year without any break. However, for few months their services are being utilised in other departments apart from them working as Domestic Breeding Checkers.

ii) The information received through RTI shows that the Respondent Corporations have sanctioned posts of Domestic Breeding Checkers.

iii) All the three Municipal Corporations do not have any recruitment rules for Domestic Breeding Checkers.

iv) All the three Corporations are also not having any recruitment rules for the Food Hygiene Beldars but they are being paid the Basic Salary + Grade Pay + Variable DA.

v) All the three Respondent Corporations have already passed resolutions to extend the same benefit to the Domestic Breeding Checkers.

11. On the basis of the above, where the services of the Petitioners are being utilised throughout the year on contractual basis from 2012/2013 and where there are sanctioned posts for them and the similarly situated other employees, i.e. Food Hygiene Beldars are being paid on the basis of minimum Basic Salary + Grade Pay + Variable DA, there is no ground to differentiate the present Petitioners from the Food Hygiene Beldars as both the categories are similarly placed, i.e. since there are sanctioned posts but no recruitment rules and the present Petitioners are fulfilling the minimum educational qualification of being Matriculate as required by the Municipal Corporations and they are working continuously for number of years with

the Respondent Corporations, initially with break in their services after every few months but continuously from 2012/2013 without any break; hence, the payment of salary to the Domestic Breeding Checkers at a lesser rate, i.e. at the rate of the minimum wages being fixed by the Government of NCT of Delhi is a clear violation of Article 14 of the Constitution of India.

12. This Court hereby orders that Petitioners are entitled to the same monthly emoluments as being paid to Food Hygiene Beldars with effect from the dates from which they are working regularly without any break, i.e. from the respective dates in the years 2012/2013.

13. Writ Petition is allowed in above terms and reliefs granted vide order of CAT dated 16th July, 2018 in OA No.362/2015 be read alongwith the above relief pertaining to emoluments. Necessary orders in this regard be passed within 3 weeks and with effect from 1st January, 2020 the Petitioners be paid at the minimum scale of Basic Pay + Grade Pay + variable DA as is being paid to Food Hygiene Beldars. The arrears be cleared by 31st March, 2020.

TALWANT SINGH, J

S. MURALIDHAR, J

DECEMBER 4, 2019

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