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

Date of judgment: 15.07.2019

+ W.P.(C) 12632/2018, C.M. Appl. No. 49053/2018, 49055/2018
UNION OF INDIA & ORS

..... Petitioner

Through: Mr. P.S. Singh, Senior Panel Counsel.

versus

VINOD KUMAR SHARMA & ORS

..... Respondent

Through: Mr. Colin Gonsalves, Senior
Advocate with Mr. Fidel Sebastian,
Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

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G.S. SISTANI, J. (ORAL)

1. Aggrieved by the order dated 23.02.2017, passed by the Central Administrative Tribunal (CAT) the Union of India has filed the present writ petition. The respondents had approached the Tribunal seeking directions for payment of salary, allowances, leave and other mandatory benefits in the nature of basic pay in the applicable grade to the post of Staff Nurses plus Grade Pay plus dearness allowances plus House Rent Allowance, travel allowance, washing allowance as well as Casual leave, medical leaves, including the benefits of maternity benefits at par with the regularly appointed staff nurses.

2. Learned counsel for the petitioner has handed over a copy of office order dated 12.06.2019. He contends that the previous order stands complied with. The D.A. has been paid at the rate of 12% and the process has been initiated for clearing the arrears and the same would be cleared within a week from today.

3. Admittedly, the respondents are contractual Staff Nurses who have been working for a period of almost a decade. The Central Administrative Tribunal while allowing the O.A. has placed reliance on an order passed by the Tribunal on 23.07.2008 in O.A. No. 1330/2007 *Victoria Massey vs. NCT of Delhi & Ors.*, which order was upheld by the Division Bench of this court in W.P. (C) No. 4764/2012 and an SLP filed had been dismissed.

4. Reliance was also placed on various subsequent decisions rendered by this court on almost identical facts. Mr. Gonsalves, learned senior counsel for the respondent submits that in an identical matter arising out of W.P. (C) No. 142/2016 titled as *Dr. Ram Manohar Lohia Hospital vs. Yogesh Kumar & Ors.*, decided on 08.01.2016, a coordinate bench of this court headed by G.S. Sistani, J, has also followed the decision in *Victoria Massey* (supra) and the decision in W.P. (C) No. 4863/2012 titled as *Deen Dayal Upadhyay Hospital represented by its Medical Superintendent & Others v. Mahesh Bhardwaj & Others*.

5. Learned counsel for the appellant has not been able to distinguish the judgment in the case of *Dr. Ram Manohar Lohia Hospital* (supra) as also the decision in the case of *Victoria Massey*

(supra) and *Deen Dayal Upadhyay Hospital* (supra). He submits that the respondents being contractual employees are not entitled to other allowances and their services cannot be equated to regular employees.

6. In the case of *Dr. Ram Manohar Lohia Hospital* (supra), we had extracted the relevant paragraphs in the case of *Victoria Massey* (supra) and *Deen Dayal Upadhyay Hospital* (supra). Para 7, 8 and 9 of the judgment reads as under:-

“7. We have heard learned counsel for the parties, considered their rival submissions and also examined the impugned order dated 20.2.2015 passed by the Tribunal. We find that the Tribunal while passing the impugned order has correctly applied the law laid down in the case of Victoria Massey (supra), which was upheld by a Division Bench of this Court. Relevant portion of the observations made by the Delhi High Court reads as under:

“Therefore, as regards grant of same salary and allowance to the respondent herein, which are admissible to regularly appointed staff nurses, there cannot be any quarrel the Respondents will, therefore be entitled to those benefits.

However, next question which arose for consideration is as to whether these respondents were still working on contract basis and have not been regularized can be held entitled to grant of increments as well as promotion. We are posing this question because of directions contained in judgment dated 03/07/07 passed by the Tribunal in O.A. 1857/06 which is the subject matter of writ petition no. 8476/2008. These directions are in the following terms:

“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.”

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 either increment or promotion. All these writ petitions are disposed of in the aforesaid terms. Petitioner shall 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 O.A. 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.”

8. *The observations made by the Delhi High Court in the case of Deen Dayal Upadhyaya Hospital represented by its Medical Superintendent & Others (supra), also*

reads as under:

“11. This is the view taken by the Division Bench of this Court in Victoria Massey’s case.

12. 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.

13. Impugned order passed by the Central Administrative Tribunal on November 01, 2011 has noted that the view taken by the Full Bench of the Tribunal in Victoria Massey’s case when OA No.1330/2007 was decided was partially modified by a Division Bench of this Court and thus has directed that the respondents would be entitled to the same benefit as was accorded by the Division Bench of this Court in Victoria Massey’s case.

14. The challenge by the writ petitioner by predicating a stand resting on the opinion of the Supreme Court in the decision reported as (2006) 9 SCC 321 State of Haryana &Ors. Vs. Charanjit Singh &Ors. and (2009) 9 SCC 514 State of Punjab & Anr. Vs. Surjit Singh &Ors. is neither here nor there for the reason as far as this Court is concerned an identical issue of payment of wages to contractually employed para-medics in various hospitals of the Government of NCT Delhi has attained finality and the law of precedent compels us to adopt the same view which was taken by a co-ordinate Bench of this court. This would mean that just as Victoria Massey and other persons who had approached the Tribunal earlier were required to be paid wages at the minimum of the scale which would include all allowances as are paid to regular employees, sans an annual increment, we direct that similar would be the position of the

respondents; a view correctly taken by the Tribunal.”

9. *We are of the view that the present case is fully covered by Victoria Massey (supra) and Deen Dayal Upadhyay Hospital represented by its Medical Superintendent & Others (supra).”*

7. We see no reason to take a different view than the earlier view taken by this court and coordinate Division Bench of this court. We may also add that the SLP filed against the decision in the case of *Victoria Massey (supra)*, was dismissed.

8. Consequently, we find no merit in this petition and no infirmity in the order passed by the Tribunal. Therefore, the writ petition as well as the pending applications are dismissed.

G.S.SISTANI, J

JYOTI SINGH, J

JULY 15, 2019

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