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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3050/2020 & CM APPL. 10619/2020

S.K. ROUT

.....Petitioner

Through: Mr. Pradeep Sharma with Mr. Harsh
Sharma, Advocates

versus

MINISTRY OF HEALTH AND
FAMILY WELFARE,
UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Maninder Acharya, ASG with
Mr. Asheesh Jain, CGSC, Mr. Adarsh
Kumar Gupta and Mr. Viplav
Acharya, Advocates for R-1.
Mr. Rishi Kesh, Advocate for R-2.

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Date of Decision: 5th May, 2020**CORAM:****HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE SANJEEV NARULA****JUDGMENT****MANMOHAN, J: (Oral)**

1. The present petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The petition has been heard by way of video conferencing.

2. It is pertinent to mention that present public interest litigation has been filed with the following prayers:-

a) *Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondents to make provisions for the payment of salaries to the Health Workers in time.*

and

b) *Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondents to make provisions for the payment 'risk and hardship' allowance, incentives in form of bonus, additional salary to the Health Workers who are presently serving on the frontline in view of the present lock down situation due to the COVID 19 situation in the country;*

and

c) *Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondents to identify such health workers who are above the age of 48 years with health conditions such as diabetic etc and direct not to deploy them in any duty which comes in direct or indirect contacts with COVID-19 patients; and*

d) *Issue a Writ of Mandamus or any other appropriate Writ, order or direction to the Respondents to supply the basic Personal Protection Equipments (PPE) to all health workers;*

and

e) *pass such other and further order/orders as deemed fit and proper in the facts and circumstances of the present case and in the interest of justice."*

3. Learned counsel for the petitioner states that the benefit of Hazard or Risk pay which has been extended to officers in high-active field areas such as the country's borders or counter-insurgency operations in accordance with the Seventh Central Pay Commission should be extended to health workers who are dealing with or treating COVID-19 patients. In support of his contention, he relies upon the Press Note dated Nil allegedly released by the Government of India. Since learned counsel for the petitioner has

extensively relied upon the said document, the relevant portion of the same is reproduced hereinbelow:-

“7th CPC recommendations on Allowances

xxxx xxxx xxxx xxxx

A new paradigm has been evolved to administer the allowances linked to risk and hardship. The myriad allowances, their categories and sub-categories pertaining to civilians employees, CAPF and defence personnel have been fitted into a table called the Risk and Hardship Matrix (R&H Matrix). The Matrix has nine cells denoting varying degrees of risk and hardship with one extra cell at the top named as RH - Max to include Siachen Allowance. Multiple rates applicable to individual allowances will be replaced by two slab rates for every cell of the R&H Matrix.

xxxx xxxx xxxx xxxx

Highlights of Cabinet approval on Allowances

xxxx xxxx xxxx xxxx

9. Recommendations in respect of some important allowances paid to Nurses & Ministerial Staffs of Hospital

- i. Existing rate of Nursing Allowance has been increased from ₹4800 per month to ₹7200 per month.*
- ii. Rate of Operation Theatre Allowance has been increased from ₹360 per month to ₹540 per month.*
- iii. Rates of Hospital Patient Care Allowance / Patient Care Allowance have been increased from ₹2070 - ₹2100 per month to ₹4100 – ₹5300 per month. 7th CPC recommendations modified to the extent that it will be granted to Ministerial staff also.*

xxxx xxxx xxxx xxxx

Conclusion

While increasing the rate of allowances affecting the central government employees, especially the Defence, CAPF and Coast Guard personnel, the staff of Railways, Postal department and nursing staff, the total number of allowances have been rationalized from 197 to 128. Thus, the Government has shown a great deal of

fiscal prudence and at the same time addressed the genuine concerns of the employees and responded to some of the administrative exigencies necessitating the modifications.”

4. He lastly states that the High Court of Bombay (Nagpur Bench) in PIL No. 10 of 2020 vide order dated 30th April, 2020 and the Karnataka High Court in W.P. No. 6685 of 2020 in the matter of ***Dr. Rajeev Ramesh Gothe Vs. State of Karnataka*** vide order dated 21st April, 2020 have recommended that Accredited Social Health Activist (ASHA) workers be paid an additional sum of Rs. 200/- per day.

5. Having heard learned counsel for the petitioner, this Court finds that the petitioner had not even filed a representation seeking any relief either with the State or the Central Government, before approaching this Court.

6. There is no averment in the writ petition with regard to shortage of PPE kits or a complaint/grievance by any health worker with regard to non payment of salaries. It is settled law that newspapers are second-hand, secondary evidence and no Court can grant relief only on the basis of what is published therein. [See ***Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, (1988) 3 SCC 319***].

7. Further, neither the High Court of Bombay (Nagpur Bench) nor the Karnataka High Court, in the orders placed on record, has given any binding direction with regard to hazard and risk pay. They have only expressed a hope/expectation. The orders of the said High Courts are interim in nature.

8. In our opinion, the Press Note (supra) with regard to the 7th Central Pay Commission Report does not specifically recommend payment of Hazard or Risk pay to health workers deployed on COVID-19 duty.

9. Undoubtedly, the health workers are doing commendable job under very odd and difficult circumstances, but it is settled law that the Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive. If there is a law, the Court can certainly enforce it; but Court cannot create a law or policy and seek to enforce it [See *Suresh Seth v. Commr., Indore Municipal Corpn. and Another*, (2005) 13 SCC 287; *Asif Hameed and Others v. State of Jammu and Kashmir and Others*, 1989 Supp (2) SCC 364 and *Divisional Manager, Aravali Golf Club and Another v. Chander Hass and Another*, (2008) 1 SCC 683].

10. Accordingly, the present petition and application are dismissed being bereft of merits. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

MANMOHAN, J

SANJEEV NARULA, J

MAY 05, 2020

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