



\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of Decision: 27th January, 2022*

+

W.P.(C) 8597/2019 & CM APPL. 35501/2019**GENERAL MANAGER, CMS, ONGC HOSPITAL****& ANR.**

..... Petitioners

Through: Mr. Varun K Chopra, Advocate.

versus

GOVIND SINGH BISHT

..... Respondent

Through: Mr. Ankur Yadav, Advocate.

CORAM:**JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 24th May, 2019, in *ID No.116/2015* titled *G.S. Bisht, State Secretary, BMS Dehradun v. General Manager, CMS, ONGC Hospital & Anr.*, passed by the CGIT, which has rejected the application filed by the Petitioner-Employer (*hereinafter "Employer"*), seeking recall/review of the order dated 29th November, 2018. Vide the said order, application of the Respondent seeking interim relief of payment of equal remuneration at par with regular employees of the Employer, during the pendency of proceedings under the Equal Remuneration Act, 1976, was allowed.
3. The claim was preferred by the Respondent, representing around 40 workers (*hereinafter "Workers"*), who were working on a contractual basis with the Employer. The Workers had filed a claim before the Labour Court alleging that the contractual workers were not being given regular pay and other benefits, at par with the regular workers. Accordingly, the CGIT had directed on 29th November, 2018, as under:



“Section 2 (g) of the Equal Remuneration Act, 1976 defines remuneration which means basic wage or salary and any additional emoluments whatsoever payable to a person employed in respect of employment or work done. Thus in view of definition of remuneration and judgment of the Apex court, the above petition filed by the claimant/workman seeking interim relief of equal pay is allowed. The management /respondent is directed to pay the remuneration and additional emolument to the claimant to this case at par with persons having regular employment and discharging similar nature of work from the succeeding calendar month of this order till final disposal of this proceeding, reserving its right to recover the same from the workman/ claimant in case the workman /claimant would not succeed to establish their claim at the end.”

4. The Employer had a grievance against this order, in as much as on the said date only proxy counsel had appeared for the Employer and submissions on behalf of the Employer were not heard. Accordingly, an application for review/recall was filed by the Employer seeking a hearing. The objections on behalf of the Employer were already on record but the AR of the Employer was not available to make submissions on that date. The said review/recall application was dismissed by the CGIT vide the impugned order dated 24th May, 2019.

5. On the previous date before this Court, i.e., 3rd January, 2022, an affidavit was placed on record by ld. counsel for the Workers, to submit that the pay scale for remuneration payable to contractual workers has now been revised in terms of the Office Order (20/2020) dated 22nd October, 2020 and that the Workers ought to be paid pursuant to the interim order, in terms of the said office order. Accordingly, counsel for the Employer was directed to



take instructions, in respect of the applicability of this Office Order.

6. Today, Mr. Varun Chopra, Id. counsel for the Employer, has relied upon another Office Order (30/2021) dated 16th August, 2021, which is stated to be superseding the earlier Office Order (20/2020) dated 22nd October, 2020. He submits that as of now, the remuneration of paramedical staff on contract has been fixed and is governed by this Office Order (30/2021), dated 16th August, 2021. He also submits that the Office Order (20/2020) dated 22nd October, 2020, is only an office order applicable to regular employees and not to contractual workers.

7. Mr. Yadav, Id. Counsel for the Workers, on the other hand, submits that even in terms of this office order, the Workers are not being paid by the Employer. He further submits that the matter is listed before the CGIT for final hearing on 1st February, 2022.

8. Heard. The impugned order is an interim order of 2018 of which review/recall was sought. The said order has been in operation now for the last two to three years and the matter is also listed for final hearing before the CGIT. Accordingly, this Court is of the opinion that the issues raised in the main claim by the Workers ought to be finally adjudicated upon by the CGIT, when the matter is listed on 1st February, 2022.

9. The parties to appear before the CGIT on 1st February, 2022 and make their submissions and the CGIT shall dispose of the matter, in accordance with law within a period of three months.

10. Needless to add, if the final hearing before the CGIT does not commence on 1st February, 2022 for any reason, the Employer is permitted to place the relevant office orders concerning pay scale of the Workers on record there, and seek modification of interim order dated 29th November,



2018 before the CGIT. In that case, all the office orders placed before this Court today shall be considered by the CGIT, in accordance with law.

11. In the meantime, since the Employer's own case is that the Workers would have to be paid in terms of the Office Order (30/2021) dated 16th August, 2021, the payments to the Workers, after deducting the payments already made, shall be made by the Employer in terms of the interim order of the CGIT dated 29th November, 2018, on the basis of the Office Orders applicable during the relevant period, till further orders of the CGIT. It is made clear that the outstanding dues of the Workers till date, shall be paid within six weeks from now, with effect from the date of the interim order passed by the CGIT, i.e., 29th November, 2018. All such payments shall be subject to the outcome of the final adjudication by the CGIT, in respect of the claims of the Workers.

12. It is also clarified that this payment shall be completely without prejudice to the rights and contentions of the Employer and Workers, to defend their respective stands before the CGIT.

13. The present petition is disposed of in these terms. All pending applications are also disposed of. Needless to add, this Court has not examined the merits of the issues raised, as the matter is listed for final hearing next week itself before the Tribunal.

14. Let a copy of this order be sent to the CGIT-cum-Labour Court-II, New Delhi in *ID No.116/2015* titled *G.S. Bisht, State Secretary, BMS Dehradun v. General Manager, CMS, ONGC Hospital & Anr.*

PRATHIBA M. SINGH
JUDGE

JANUARY 27, 2022/Aman/MS