



2024:DHC:8778



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

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Date of Decision: 23rd October, 2024+ **W.P.(C) 9067/2019****ASHOK KUMAR YADAV AND ORS.**

.....Petitioners

Through: Mr. Harish Kumar and Mohd. Anif,
Advocates.

versus

GOVT OF NCT OF DELHI AND ORS.

.....Respondents

Through: Ms. Laavanya Kaushik, Ms. Aliza
Alam and Mr. Mohnish Sehrawat, Advocates on
behalf of Mrs. Avnish Ahlawat, Standing Counsel
for R1 and R2.Dr. Vikrant Narayan Vasudeva and Mr. Rohit
Lochav, Advocates for R-3/MAIDS with Mr. Lalit
Kumar, ASO and Mr. Pradeep Rahi, DA.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioners under Articles 226 and 227 of the Constitution of India seeking extension of benefit of office order dated 19.11.2012 to the Petitioners w.e.f. November, 2012 to 31.01.2014, *albeit* in the prayer clause benefit is sought upto December, 2014, learned counsel for the Petitioner submits that this is a typographical error.

2. Shorn of unnecessary details, facts to the extent relevant are that Petitioners were appointed as Staff Nurses/Nursing Officers in Deen Dayal



Upadhyaya Hospital ('DDU') on contract basis in 2008 whereafter they were transferred to Maulana Azad Institute of Dental Sciences ('MAIDS') in May, 2009 due to surplus staff at DDU. Petitioners assert that pursuant to common judgment dated 22.05.2009 passed by the Division Bench of this Court in *W.P.(C) 8764/2008*, titled *Govt. of NCT and Others v. Victoria Massey* decided with a batch of writ petitions, Department of Health & Family Welfare, GNCTD issued an Office Order dated 19.11.2012, conveying approval of the Competent Authority for fixing the pay of the paramedical staff engaged on contract basis by the said Department at the minimum of the pay-band of regular employees working on corresponding posts and also for grant of various allowances enumerated therein, including Dearness Allowance.

3. Petitioners aver that by a subsequent order dated 08.04.2013, the Department clarified the benefits which would be available to the contractual employees and both these orders were meant to be implemented by all hospitals and medical Institutions working under GNCTD. Basis the order dated 19.11.2012, Petitioners requested Respondent No.3/ MAIDS to extend the benefit of pay fixation and allowances. It is the case of the Petitioners that on continuous representations, order dated 19.11.2012 has been implemented MAIDS but only w.e.f. 01.02.2014 whereas all similarly placed employees in other Institutions under Department of Health & Family Welfare, GNCTD have been granted benefits from November, 2012 and the discrimination is unwarranted and without any justifiable cause.

4. Learned counsel for the Petitioners submits that the limited grievance that remains is for grant of benefit of fixation of pay and allowances under office order dated 19.11.2012 from November, 2012 as given to other



employees working as paramedical/nursing staff on contract basis in Institutes/hospitals under the Department of Health & Family Welfare, GNCTD. It is argued that the Supreme Court in *State of Punjab and Others v. Jagjit Singh and Others, (2017) 1 SCC 148*, has declared the law that all temporary employees including contractual employees would be entitled to draw wages at the minimum of the pay scale given to regular employees holding the same posts and there is no rationale in granting benefits to the Petitioners from 01.02.2014, creating a class within a class and violating Article 14 of the Constitution of India. It is also urged that order dated 19.11.2012 was passed by GNCTD in implementation of the judgment of this Court in the case of *Victoria Massey (supra)* and therefore the benefit must inure to all similarly placed employees. Moreover, even autonomous Institutions under GNCTD such as CNBC, Geeta Colony and IHBAS, Dilshad Garden have granted benefits of order dated 19.11.2012 to its employees from November, 2012 and Petitioners cannot be placed at a disadvantage.

5. Learned counsel appearing on behalf of MAIDS submits that order dated 19.11.2012 specifically provides that the same is applicable to paramedical staff engaged on contract basis by the Department of Health & Family Welfare, GNCTD and is not automatically applicable to MAIDS, which is an autonomous society registered under the Societies Registration Act, 1860 and discharges functions as per its own approved Articles of Association, Rules, Regulations and Bye-laws. MAIDS came into existence w.e.f. 01.07.2005 and apart from patient care, the Institute is responsible for dental education, i.e., BDS, MDS and Dental Health Care. MAIDS was started as dental wing of Maulana Azad Medical College ('MAMC') and



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during 2003 it separated and was running as a full-fledged Dental College till 30.06.2005. Subsequently on 01.07.2005, GNCTD took a conscious decision to convert the Institute into an autonomous body and affairs of the Institute are being managed and administered by its Governing Council since issue of Notification dated 01.07.2005.

6. Learned counsel further submits that as per Article 14(2)(b)(viii)(3) of Articles of Association, Governing Council lays down the terms of appointments and other conditions of service of the employees of the Institute and Article 25(1) provides that terms and conditions of service of the staff shall form a part of the Bye-laws. Article 3 gives the power and autonomy to the Institute to determine the terms and conditions of its employees and accordingly, pay-scales of contractual employees including the Petitioners were independently fixed. It is explained that a resolution was passed by MAIDS to adopt the order dated 19.11.2012 only w.e.f. 01.02.2014 and accordingly, all arrears were given to the Petitioners from this date. Petitioners cannot compel MAIDS to adopt the order dated 19.11.2012 from the date of its issuance as that would violate the autonomy of the Institution. Being an autonomous Institution, MAIDS cannot be equated with other hospitals/Institutes under GNCTD. There is no discrimination with the Petitioners as no other employee of the Institute has been given benefit of the order dated 19.11.2012 from a date prior to 01.02.2014.

7. Ms. Laavanya Kaushik, Advocate, appearing for Mrs. Avnish Ahlawat, Standing Counsel on behalf of Respondent Nos.1 and 2, states that MAIDS is an autonomous Institute, however, it is bound by orders issued by Department of Health & Family Welfare, GNCTD as the Institute works



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under the aegis of the said Department and also receives financial aid therefrom.

8. Heard learned counsels for the parties and examined their submissions.

9. There is no dispute that in implementation of the judgment of this Court in *Victoria Massey (supra)*, Department of Health & Family Welfare, GNCTD issued an order dated 19.11.2012, whereby pay of the paramedical staff engaged on contract basis was fixed at minimum of the pay-band of regular employees working on corresponding posts and various allowances payable to them were enumerated in the said order. It is equally undisputed that MAIDS has implemented the order in respect of its nursing staff/staff nurses including the Petitioners and the only dispute that remains is for grant of benefits of the order dated 19.11.2012 for the period November, 2012 to 31.01.2014. In *Victoria Massey (supra)*, Division Bench of this Court observed that withholding of pay, declared as admissible and due to the staff members, to a section of the staff cannot be considered as good governance. By becoming penny wise, the Government would be pound foolish, since the credibility of the organisation and those who are running it would be at stake. Division Bench observed that there cannot be application of different principles of payment of salary to similarly placed persons. The Supreme Court in *Jagjit Singh (supra)*, declared the law that all temporary employees including contractual employees would be entitled to draw wages at the minimum of the pay scale given to regular employees holding the same post and there is no reason why this law should not be uniformly applicable to all similarly placed employees.



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10. The primordial argument on behalf of MAIDS is that being an autonomous Institute, it has the power and autonomy to lay down its own terms and conditions of service of its employees including pay-scales. It was strenuously contended that the Institute through its Governing Council resolved to adopt the order dated 19.11.2012 only w.e.f. 01.02.2014 and therefore, benefit of the same cannot be claimed by the Petitioners from the date of the order. On a pointed query to point out to the resolution to this effect, it is fairly conceded that no formal resolution is available in the record of the Institute and thus none has been filed with the counter affidavit. From the entire affidavit filed on behalf of MAIDS, Court is unable to discern any justifiable reason or rationale for accepting the order dated 19.11.2012 from 01.02.2014. It cannot be glossed over that MAIDS, *albeit* an autonomous Institute is working under the aegis of Department of Health & Family Welfare, GNCTD and receives financial aid therefrom and therefore, there has to be a strong and compelling reason for the Institute to deviate from the orders passed by the said Department, more particularly, when order dated 19.11.2012 has been passed in implementation of the judgment of the Division Bench of this Court, recognising the principle of equal pay for equal work. No rationale for choosing 01.02.2014 as a cut off date for implementation of order dated 19.11.2012 has been brought forth, save and except, a statement in the affidavit that a decision was taken to this effect, but as noted above, there is no such resolution. Even otherwise, once the Supreme Court has held that no contractual employee can be deprived of pay fixation at the minimum of the regular pay scale payable to regular employees holding the same post, in the absence of any justified reasons, Petitioners cannot be deprived of the benefit of the order dated 19.11.2012



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for fixation of their pay at the minimum of the regular pay scale, from the date the same has been implemented in other Institutions, when similarly placed employees working in other hospitals and medical Institutions under GNCTD have been given the benefits from November, 2012 and this would include payment of allowances enumerated in the said order. Pertinently, GNCTD supports the cause of the Petitioners and it also needs to be penned down that in the rejoinder, Petitioners have specifically brought forth that even autonomous Institutions under GNCTD such as CNBC, Geeta Colony, Delhi and IHBAS, Dilshad Garden, Delhi have implemented the Office Order dated 19.11.2012 from November, 2012 and this position is uncontroverted on record.

11. Accordingly, this writ petition is allowed directing MAIDS to extend the benefits arising out of order dated 19.11.2012 from November, 2012 as granted to other employees in different hospitals and medical Institutions under Department of Health & Family Welfare, GNCTD and release the arrears for the period November, 2012 to 31.01.2014 to the Petitioners after re-fixation of their pay, within a period of two months from the date of receipt of this order.

12. Writ petition is disposed of in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 23, 2024

Aj/JG/shivam