



2024:DHC:9062-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16242/2024, CM APPLs. 68244/2024 & 68245/2024**
MUNICIPAL CORPORATION OF DELHI ...Petitioner

Through: Ms. Sriparna Chatterjee, Adv.

versus

DHARAMVEER SINGH AND ORSRespondents
Through: Ms. Pragnya Routray, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT (ORAL)

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22.11.2024

C. HARI SHANKAR, J.

1. The impugned order passed by the Central Administrative Tribunal¹ reads as under:

“The present Original Application (O.A.) has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

“a. Issue an order/direction to the respondents to grant the Applications the benefits of salary in proper pay scale, allowances and other benefits as being granted to regular malaria beldars/field workers.

b. Issue an order/direction to the respondents to grant the Applicants the benefits of revision of salary in terms of direction issued by this Hon’ble Court vide the order dated 5.4.2017 as passed in OA No. 3784/2015 and upheld by the Hon’ble High Court of Delhi in W.P. (civil) No. 755/2018 dated 31.01.2018, and grant the Applicants salary,

Signature Not Verified¹ “the Tribunal”, hereinafter

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allowances and other benefits accordingly.

c. Issue an order/direction to impose exemplary cost on the respondent.

d. and pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.”

2. Pursuant to notice, the respondent has filed a detailed counter reply vehemently opposing the contentions and the prayer of the applicants both on facts as also on the point of law and rules. During the course of the arguments, it has been brought to our notice that the issue at stake in the present Original Application has been fully and conclusively adjudicated upon, initially vide order dated 22.12.2022 in O.A. No. 2278/2021, and subsequently, on 24.05.2023 in O.A. No. 172/2021.

3. Accordingly, the present Original Application should also be disposed of against the background of these orders. While taking note of the strong opposition of learned counsel for the respondents, we have to acknowledge that the present OA bears striking similarity to the two earlier said OAs. We are reproducing the order dated 22.12.2022 passed in O.A. No. 2278/2021:-

“Learned counsel for the applicants stated as under:-

1.1 The applicants are officiating on the post of Assistant Public Health Inspectors (APHI)/Vaccinator on contract basis with the respondent. The respondent issued an advertisement in December, 2009 for filling up the post of AMI and APHI/Vaccinator for appointment on contract basis for a period of one year. The applicants applied for the said post and after undergoing selection process/interview, they were appointed on contract basis for a period of one year on a consolidated salary of Rs.10,300/-pm, vide order dated 17.09.2010. The contract kept on renewing from time to time with artificial breaks since their initial appointment.

1.2 It is stated that other similarly situated contractual employees of the respondent like Nursing and Paramedical staff, who were also continued as contractual employee and denied the benefit of regularization, were granted relief by the Hon’ble High Court of Delhi in ***Rajesh Kumar & Ors. v Govt. of NCT of Delhi & Ors***². It is further submitted that



the respondent, in compliance of the aforesaid decision of the Hon'ble High Court, issued an office order dated 01.09.2014 whereby staff nurses and paramedical staff engaged on contractual basis were extended the benefits and salary at par with regular employees.

1.3 It is further stated that similarly situated employees of the respondents had preferred OA No.3784/2015 seeking payment of salary in terms of the order passed by the High Court of Delhi in **Rajesh Kumar's** case (supra). The said OA was also allowed by the Tribunal, vide its order dated 05.04.2017. However, the respondents, instead of implementing the aforesaid order of the Tribunal, preferred **South Delhi Municipal Corporation v Ved Prakash Nagar & Ors³**, before the Hon'ble High Court of Delhi, which was dismissed with the following observations:-

“...while dismissing the present petition as meritless, we are constrained to express our displeasure with the petitioner/SDMC for approaching the Court to assail orders in cases where the decisions taken by the Tribunal are based on orders passed by the High Court, ruling on a legal position tested and upheld by the Supreme Court. For some time, we have been observing this trend of Government authorities and civic agencies persisting in seeking judicial review even in matters where the legal issue stands finally and fully settled and the Tribunal has only applied the said principles to similarly situated employees.”

1.4 It is further stated that the respondent-Corporation issued office order dated 20.03.2019 wherein, pursuant to the above referred orders, salary of those similarly situated employees were revised and they are now being given the revised salary of Rs.42,900/- (now revised to Rs.45,000/-) w.e.f. 05.02.2017.

1.5 It is again stated that on coming to know about the decision of the Tribunal, counterparts of the applicants also preferred OA No.2610/2019 before this Tribunal, which was disposed of, vide order dated 30.08.2019, with direction to the respondent to grant them the same benefits as have been given to the applicants in OA No.3784/2015 (supra).



1.6 It is, therefore, stated that as the applicants herein, who are similarly situated employees as that of the petitioners in various litigations referred to hereinabove, inasmuch as they possess all the requisite qualifications and experience, and are also continuing with the respondent since 2010, submitted their representation in April and June, 2019 seeking revision of their salary in terms of the orders passed by the Tribunal and Hon'ble High Court, referred to above, but of no avail. Hence, the applicants have filed the instant OA seeking the following reliefs:-

“a. issue appropriate order/direction to the respondent to grant the applicants salary in the proper scale and other allowances such as given to their co-workers in OA 3784/15 vide order dated 5.4.2017 and upheld in the CWP No.755/18 vide the order dated 31.1.2018 and order dated 30.08.2019 as passed in OA No.2610/19.

b. issue an order/direction to impose exemplary cost on the respondent.

c. and pass such other or further order(s) as may be deemed fit and proper in facts and circumstances of the present case.”

2. Per contra, learned counsel for the respondent stated as under:-

2.1 The respondent filed its reply denying the averments made by the applicants in the OA. However, it is stated that the applicants were engaged in the post of APHI/Vaccinator in the year 2010 by the office of the Dy. MHO (Epid), Health Department of erstwhile MCD on contract basis. As per the terms and conditions of the Agreement, it was clearly specified that the engagement is purely on contract basis for a period of six months or till the time the post is filled up on regular basis, whichever is earlier. The agreement also mentioned that the engagement could be terminated at any time by giving one month's notice or by paying one month's salary to the incumbent, without assigning any reason. As per condition No.5, it was clearly specified that this engagement will not bestow any claim or right with the incumbent for regular appointment to the post.

2.2 It is an undisputed fact that most of the applicants are failures, meaning thereby that they could not succeed in



regular examination conducted for the vacancy of ASI/AMI/APHI, despite appearing in examinations conducted by the DSSSB. They failed to get minimum marks in the examination, due to which posts remained vacant. It is stated that despite accepting all the terms and conditions contained in their offer of appointments, the applicants have filed the instant OA in utter violation of the same.

2.3 It is a settled law that contractual employee is to be governed by the contract agreement executed by them. However, it is found that after decision of the Hon'ble High Court of Delhi in matter of *Victoria Messy's* case and *Rajesh Kumar Sharma's* case (supra), the benefit of minimum pay scale with other allowances like TA/DA/HRA etc. were extended to the contractual employees of Delhi Government as well as in all Civil Bodies because the SLP(C) No.18552/2012 of Delhi Govt. was disposed of by the Hon'ble Supreme Court on 09.08.2012 on the same issue at the threshold.

2.4 It is stated that from the above judgment, Hon'ble High Court of Delhi and Tribunal deemed declared that it's a rule position which was tested and upheld by the Supreme Court whereas in the judgment of Supreme Court in the matter of *State of Punjab & Ors v Jagjit Singh & Ors*⁴ settled the rule position clearly upholding that contractual employees are only entitled for minimum pay scale of the category to which they belong, but would not be entitled to allowances attached to the posts held by them with further direction that the same is binding on all Courts under Article 141 of the Constitution of India.

3. The applicants have filed the rejoinder denying the contentions of the respondent and reiterated the averments made by them in the OA.

4. We have heard Ms. Pragya Routray, learned counsel for the applicants and Mr. Aman Oberoi, learned counsel for the respondent and have perused the material on record. Learned counsels for both the parties have also filed their respective written submissions which is a reiteration of what they had already argued during the course of hearing.

5. An objection had been raised by the learned counsel for the respondent that the instant case was filed against the



North Municipal Corporation of Delhi but now, after unification of all three corporations, it is a single entity i.e. Municipal Corporation of Delhi. We reject this objection being hyper technical in nature.

5.1 The other objection was that the applicants are only contractual employees as they have not been able to succeed in regular examination conducted by DSSSB. We are of the view that the decisions, referred to above, granting the benefit of salary to the contractual employees at par with the regular employees does not prescribe passing of any examination, as a prerequisite for granting this benefit. In fact, had they passed the said examination they would have become regular employees of the respondents. Hence, this objection also fails, being misconceived.

5.2 We have also gone through the decision of the Hon'ble High Court in *South Delhi Municipal Corporation* (supra) wherein their Lordships were constrained to express their displeasure with the petitioner/SDMC for approaching the Court to assail orders in cases where the decisions taken by the Tribunal are based on orders passed by the High Court, ruling on a legal position tested and upheld by the Supreme Court. It has been further observed by them that this trend of Government authorities and civic agencies persisting in seeking judicial review even in matters where the legal issue stood finally and fully settled and the Tribunal had only applied the said principles to similarly situated employees. The aforesaid view was further reiterated by the Hon'ble High Court of Delhi in *Animesh Kumar & Ors. vs. Secretary, Urban Development and Director of Local Bodies & Ors.*⁵The relevant part of the said order reads as under:-

“Having heard the learned counsel for the parties, the Court finds no reason why the Petitioners should be treated differently insofar the grant of minimum scale of pay and allowances granted to contractual employees of South and East DMC is concerned.”

5.3 In the conspectus of the discussion, we are of the considered opinion that the applicants are similarly situated employees with the applicants in OA No.3784/2015 and, therefore, deserve to be extended the same benefit which has been extended to the applicants in that OA.



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5.4 In the facts and circumstances of the case, the instant OA is allowed. The respondents are hereby directed to grant the benefit of salary as has been extended to the applicants in OA No.3784/2015, within a period of two months from the date of receipt of a certified copy of this order.

6. No order as to costs.”

4. There being no doubt in our mind of the close similarity the present OA bears with the order quoted above, we allow it with a direction to the respondents to grant the benefit of salary to the present applicants strictly on the analogy of the benefits granted in O.A. No. 3784/2015. These directions shall be complied within a period of twelve weeks from the date of receipt of a certified copy of this order.

5. There shall be no order as to costs.”

2. To say the least, the impugned order is completely unsatisfactory. There is no discussion of the facts and there is no mention, much less discussion, of the rival contentions. Para 2 of the order notes that the petitioner – as the respondent before the Tribunal – strongly objected to the reliance placed by the respondents on the judgment in OA 2278/2021. The nature of the objections are not reflected in the order. No finding is contained as to the merit of the objections raised by the petitioner, though the order notes that the petitioner strongly objected to the respondents’ contention that the case was covered by the earlier decision. Instead, the Tribunal has merely reproduced the order dated 22 December 2022 passed in OA 2278/2021 and has thereafter proceeded to allow the OA saying that the case before it bore a striking similarity to OA 2278/2021.

3. It is, therefore, not even the finding of the Tribunal that the two cases were identical. Admittedly, even as per the Tribunal, the two



cases were only similar. If that is so, the Tribunal was required to note the points of distinction between the two cases and return findings as to why they did not make any difference to the merits of the dispute before it.

4. It is impossible for us to sit in judicial review over the impugned order, as we do not know the reason why the Tribunal has disposed of the OA or rejected the objections of the petitioner to the relief sought by the respondents.

5. Brevity and precision in a judicial order are desirable attributes. However, as the first port of call for the service litigant, whose decision can be subjected to judicial review at two stages at the least, the decision of the Tribunal should, advisedly, at least record the rival contentions and state, howsoever briefly, why it agrees with one side and disagrees with the other.

6. We are particularly inclined to interfere, in the present case, in view of the observation, in para 2 of the order of the Tribunal, that the petitioner – as the respondent before the Tribunal – strongly objected to the reliance, by the respondent, on the decision in OA 2278/2021. The Tribunal had, therefore, to address the objection, at the very least.

7. Without, therefore, expressing any observation regarding the merits of the matter, and with consent of the parties, we quash and set aside the impugned order dated 6 October 2023 in OA 1549/2019 and remand the OA 1549/2019 to the Tribunal for decision *de novo*.



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8. The Tribunal is requested to ensure that the *de novo* order which is passed by it is a reasoned order, dealing with the rival contentions of the parties and that, if the Tribunal chooses to follow any earlier precedent, also set out how the precedent is applicable and why the objections of the petitioner to the applicability of the precedent are rejected.

9. We, however, express no opinion regarding the merits of the dispute before the Tribunal. Needless to say, the *de novo* decision would be undertaken without being influenced by the observations and findings contained in the impugned order.

10. In order to expedite matters, the parties are directed to appear before the Tribunal on 5 December 2024. The Tribunal is also requested to decide the matter as expeditiously as possible.

11. The petition is allowed to the aforesaid extent.

C. HARI SHANKAR, J.

AMIT SHARMA, J.

NOVEMBER 22, 2024/aky

Click here to check corrigendum, if any