



2024:DHC:7738



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 18th September, 2024*+ **W.P.(C) 8902/2015****RAJ KUMAR SAINI & ORS**

.....Petitioners

Through: Mr. Amar Nath Saini, Ms. Preeti Saini, Ms. Neelam Pathak, Mr. Karan Gupta, Mr. Rohit Singh and Ms. Diksha Saini, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS

.....Respondents

Through: Ms. Hetu Arora Sethi, ASC with Mr. Nirmal Prasad and Mr. Arjun Basora, Advocates for Respondents/GNCTD.

Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar and Mr. Abhinav Bhardwaj, Advocates for Respondent No.2/UOI.

CORAM:**HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking 'equal pay for equal work' at par with regular employees employed with Respondent No.1/GNCTD as also for parity in various allowances such as DA, House Allowance etc.
2. Facts to the extent relevant are that Petitioners are employees of Respondents No. 3 to 9 which are societies registered under the Societies



Registration Act, 1860 and working under the directions of Directorate of Health Services, Government of NCT of Delhi/Respondent No. 1 and were employed on contract basis. Petitioners are stated to have been appointed after due process of selection involving skill test and interview after an open advertisement and meeting the eligibility criteria of appointment to the posts. The recruitment rules of appointment of Respondents No. 3 to 9 provide contractual appointment for a fixed tenure as a mode of recruitment from the open market apart from appointment on deputation basis.

3. It is the case of the Petitioners that they have been appointed through a rigorous process of selection including a written and skill test followed by an interview and pursuant to a public advertisement, a process akin to regular appointment. Petitioners are performing the same work as their counterparts who are working in the Mission with them but are on the rolls of Directorate of Health Services/MCD and are regular employees and are getting higher salaries with allowances.

4. Espousing the case of the Petitioners, learned counsel for the Petitioners submits that Petitioners have been working for the last 10 to 15 years with Respondents No. 3 to 9 and there is no difference between them and the regular employees on the roll of Directorate of Health Services who are working along with them, either in terms of qualifications, nature of work or the process of appointment yet they are being paid salaries which are far less in comparison to those of regular employees. Having so argued, learned counsel for the Petitioners, on instructions, fairly and candidly submits that Petitioners would not press the relief of 'equal pay for equal work' but be granted salaries/wages at the minimum of the pay scale



2024:DHC:7738



extended to regular employees holding the same posts in terms of the judgment of the Supreme Court in *State of Punjab and Others v. Jagjit Singh and Others*, (2017) 1 SCC 148. Additionally, reliance is also placed on the judgment of the Punjab and Haryana High Court in case of *Pankaj and Others v. State of Haryana and Others*, 2020:PHHC:037241, where a similar prayer, in case of pharmacists appointed on contractual basis in Urban Health Centre, was allowed on the basis of the observations of the Supreme Court in *Jagjit Singh (supra)*. Reliance is also placed on the order of the Co-ordinate Bench of this Court in *Govt. of NCT of Delhi Through Directorate of Family Welfare v. Smt. Nisha and Others*, W.P. (C) No. 15950/2023, decided on 12.12.2023, which was assailed before the Division Bench by the Government of NCT of Delhi and the Division Bench in *Govt. of NCT of Delhi through Directorate of Family Welfare v. Nisha and Others*, 2024 SCC OnLine Del 5149 upheld the judgment of the learned Single Judge.

5. Ms. Hetu Arora Sethi, learned ASC appearing on behalf of Respondents No. 1 and 3 to 9 opposes the writ petition on the ground that Petitioners were appointed on contract basis by Integrated District Health Societies, 11 in number and accepted their terms and conditions including those of wages with open eyes and cannot claim wages at the minimum scale of a regular employee and more so, when Respondents No. 4 to 9 do not employ any regular staff. Learned ASC places reliance on the judgment of this Court in *Stuti Ranjan & Ors. v. Govt. of NCT of Delhi & Ors. Through: Mission Director*, 2016 SCC OnLine Del 14, where in turn, reliance was placed on decision of the Supreme Court in *Jawaharlal Nehru*



Technological University v. T. Sumalatha (Smt.) and Others, (2003) 10 SCC 405 and the Court held that grant of pay scale must be left to the Executive and Courts must be slow in giving directions in this regard. Learned ASC submits that in the said case, Court had declined to apply the doctrine of equal pay for equal work to the Petitioners on the ground that they were not appointed against regular vacancies and the genesis of the appointment was a Scheme with different service conditions and the same principle should apply to the present case.

6. Heard learned counsels for the parties and examined their rival contentions.

7. It is no longer *res integra* that temporary/contract employees have a vested right to seek and to be granted wages at the minimum of the pay scale extended to the regular employees holding the same pay scale and learned counsel for the Petitioner rightly relies on the judgment of the Supreme Court in ***Jagjit Singh (supra)*** and relevant passages are as follows:

“5. The issue which arises for our consideration is : whether temporarily engaged employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), are entitled to minimum of the regular pay scale, along with dearness allowance (as revised from time to time) on account of their performing the same duties which are discharged by those engaged on regular basis, against sanctioned posts? The Full Bench [Avtar Singh v. State of Punjab, 2011 SCC OnLine P&H 15326 : ILR (2013) 1 P&H 566] of the High Court, while adjudicating upon the above controversy had concluded, that such like temporary employees were not entitled to the minimum of the regular pay scale, merely for reason, that the activities carried on by daily wagers and the regular employees were similar. However, it carved out two exceptions, and extended the minimum of the regular pay to such employees. The exceptions recorded by the Full Bench of the High Court in the impugned judgment are extracted hereunder : (Avtar Singh case [Avtar Singh v. State of Punjab, 2011 SCC OnLine P&H 15326 : ILR (2013) 1 P&H 566] , SCC OnLine P&H para 37)



- “(1) A daily wager, ad hoc or contractual appointee against the regular sanctioned posts, if appointed after undergoing a selection process based upon fairness and equality of opportunity to all other eligible candidates, shall be entitled to minimum of the regular pay scale from the date of engagement.*
- (2) But if daily wagers, ad hoc or contractual appointees are not appointed against regular sanctioned posts and their services are availed continuously, with notional breaks, by the State Government or its instrumentalities for a sufficient long period i.e. for 10 years, such daily wagers, ad hoc or contractual appointees shall be entitled to minimum of the regular pay scale without any allowances on the assumption that work of perennial nature is available and having worked for such long period of time, an equitable right is created in such category of persons. Their claim for regularisation, if any, may have to be considered separately in terms of legally permissible scheme.*
- (3) In the event, a claim is made for minimum pay scale after more than three years and two months of completion of 10 years of continuous working, a daily wager, ad hoc or contractual employee shall be entitled to arrears for a period of three years and two months.*
- 6. The issue which has arisen for consideration in the present set of appeals, necessitates a bird's-eye view on the legal position declared by this Court, on the underlying ingredients, which govern the principle of “equal pay for equal work”. It is also necessary for resolving the controversy to determine the manner in which this Court has extended the benefit of “minimum of the regular pay scale” along with dearness allowance, as revised from time to time, to temporary employees (engaged on daily-wage basis, as ad hoc appointees, as employees engaged on casual basis, as contract appointees, and the like). For the aforesaid purpose, we shall, examine the above issue, in two stages. We shall first examine situations where the principle of “equal pay for equal work” has been extended to employees engaged on regular basis. And thereafter, how the same has been applied with reference to different categories of temporary employees.*

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60. Having traversed the legal parameters with reference to the application of the principle of “equal pay for equal work”, in relation to temporary employees (daily-wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that requires our determination is, whether the employees



concerned (before this Court), were rendering similar duties and responsibilities as were being discharged by regular employees holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of “equal pay for equal work” summarised by us in para 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals were appointed against posts which were also available in the regular cadre/establishment. It was also accepted that during the course of their employment, the temporary employees concerned were being randomly deputed to discharge duties and responsibilities which at some point in time were assigned to regular employees. Likewise, regular employees holding substantive posts were also posted to discharge the same work which was assigned to temporary employees from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State that any of the temporary employees would not be entitled to pay parity on any of the principles summarised by us in para 42 hereinabove. There can be no doubt, that the principle of “equal pay for equal work” would be applicable to all the temporary employees concerned, so as to vest in them the right to claim wages on a par with the minimum of the pay scale of regularly engaged government employees holding the same post.

61. *In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding that all the temporary employees concerned, in the present bunch of cases would be entitled to draw wages at the minimum of the pay scale (at the lowest grade, in the regular pay scale), extended to regular employees holding the same post.”*

8. In light of the binding dictum of the Supreme Court, it is not open to the Respondents to deny to the Petitioners minimum of the pay scale of the regular employees holding the same posts. I may only reflect the additional and special features of the employment of the Petitioners herein which are: (a) they were selected through an open advertisement; (b) underwent a rigorous process of selection including a written exam, skill test and



interview; (c) have been working for 10 to 15 years; (d) Rules of the societies in question provide appointment through contract for a fixed term as a mode of recruitment to the posts in question; and (e) Petitioners are working with the regular employees on the same posts under the Directorate of Health, Government of NCT of Delhi and are discharging similar and onerous duties. Therefore, Petitioners are entitled to the minimum of the pay scale given to the regular employees who are their counterparts and I am fortified in my view by the judgment of the Punjab and Haryana High Court in *Pankaj (supra)*. The judgment in the case of *Stuti Ranjan (supra)*, relied upon heavily by learned ASC for Respondents No. 1 and 3 to 9 is inapplicable for two reasons. Firstly, the Petitioners therein were appointed under a special scheme with a limited lifespan and as a matter of fact, the Court found that they were performing different duties and moreover, the claim was for 'equal pay for equal work' whereas in the present case, Petitioners have restricted their claim to the minimum of the pay scale extended to regular employees working on similar posts. Secondly and more importantly, this judgment was passed by the Co-ordinate Bench of this Court before the judgment of the Supreme Court in *Jagjit Singh (supra)*, wherein after examining the wealth of judicial precedents, the Supreme Court has held that all temporary employees including daily wagers, *ad hoc* appointees, casual employees, contractual employees will be entitled to a minimum of the pay scale extended to the regular employees and there is no doubt that this judgment binds this Court.

9. For all the aforesaid reasons, this writ petition is allowed directing Respondents No. 1 and 3 to 9 to re-fix the salaries of the Petitioners at



2024:DHC:7738



minimum of the pay scale extended to the regular employees working on the same posts in the Directorate of Health, GNCTD and grant arrears on re-fixation. The entire exercise will be completed within three months from the date of receipt of this order.

JYOTI SINGH, J

SEPTEMBER 18, 2024

B.S. Rohella/shivam