



\$~67

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 694/2026, CM APPL. 3376-3377/2026**
SH BIJENDRA KUMAR AND ORSPetitioners

Through: Mr. Amarnath Saini, Mr. Sahil
Asghar, Mr. Lakshay Aggarwal,
Ms. Fiza Khan, Ms. Kashish and
Mr. Himanshu, Advocates.

versus

GOVT OF NCT OF DELHI AND ORS.Respondents

Through: Mrs. Avnish Ahlawat, SC for
GNCTD with Mr. N.K. Singh, Ms.
Aliza Alam and Mr. Mohnish
Sehrawat, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
19.01.2026

%

1. The Petitioners contend that they were engaged as '*Sweeper-cum-Chowkidars*' and '*Nursing Orderlies*' on daily-wage basis after participating in interviews purportedly advertised in daily newspapers from 2006 onwards, and that they have since been working in various dispensaries run by the Directorate General of Health Services ('DGHS'). It is asserted that although no formal appointment letters were issued, certain office orders were displayed from time to time whereby the Petitioners were engaged on daily-wage basis.

2. The Petitioners place reliance on several deployment orders, including one order dated 03rd August, 2016, issued by the Office of the Chief District Medical Officer (North-West), Directorate of Health Services, Government of NCT of Delhi, which, according to them, substantiates that they were employed with the Government of NCT of Delhi. It is further urged that the



Petitioners have been working continuously for a long period; that the nature of work performed by them is perennial and integral to the healthcare system; and that sweeping and nursing services are essential functions of the dispensaries run by the Respondents.

3. Mr. Amarnath Saini, counsel for the Petitioners, clarifies that the Petitioners do not seek regularisation. The Petitioner's grievance is confined to pay parity on the principle of "*equal pay for equal work*", placing reliance on ***Raj Kumar Saini & Ors. v. Government of NCT of Delhi & Ors.***¹

4. Mr. Saini asserts that even if the Petitioners were initially engaged through private entities, the Petitioners were not aware of the particulars of such entities. Nonetheless, he contends that, their wages were credited directly into their bank accounts by the Respondents, and the work was assigned and supervised by the authorities running the dispensaries.

5. Mr. Saini further submits that the Petitioners discharge duties indistinguishable from those performed by regular "*Sweeper-cum-Chowkidars*" and "*Nursing Orderlies*" posted at the same dispensaries, yet they are paid substantially lower wages. Invoking the principle of "*equal pay for equal work*", he prays for a writ of mandamus restraining the Respondents from terminating or discontinuing the Petitioners' engagement and directing payment of wages at par with the regular incumbents performing the same work.

6. On the other hand, Mrs. Avnish Ahlawat, SC for GNCTD, opposes the petition on three principal grounds. First, it is submitted that the Petitioners have failed to establish any employer-employee relationship with the Government of NCT of Delhi. The documents relied upon, on the face of



it, reflect engagement through outsourcing agencies, which have not been impleaded as parties. Second, it is submitted that the decision in ***Raj Kumar Saini*** has no application to the present case. None of the documents placed on record suggests recruitment through a regular process conducted by the Government of NCT of Delhi or satisfaction of the parameters recorded in ***Raj Kumar Saini***. On this basis, it is contended that the Petitioners do not fulfil the pre-conditions for a claim of pay parity. Third, and without prejudice to the objections on merits, it is urged that even if the Petitioners' narrative is accepted at face value, the petition ought not to be entertained in writ jurisdiction because an efficacious alternative remedy is available before the Central Administrative Tribunal.

7. The Court has considered the aforementioned submissions. The material placed on record does not include appointment letters, recruitment records, selection documents, or any order of engagement issued by the Government of NCT of Delhi constituting the Petitioners as its employees. The documents relied upon are deployment orders for specified periods. Those documents, on their face, indicate that the Petitioners were deployed through named private entities, including M/s Xeam Ventures Pvt. Ltd. and M/s Shivalik Housekeeping Pvt. Ltd.

8. In law, the mere fact that contract labour is deployed to work in an establishment, and performs work under directions at the site, does not, by itself, create a master-servant relationship with the principal employer. The Supreme Court has emphasized that when labour is engaged “*by or through*” a contractor, the relationship of employment ordinarily remains with the contractor; the principal employer's operational directions at the site are

¹ 2024 SCC OnLine Del 7965.



consistent with a contract-labour arrangement and do not, without more, convert the engagement into direct employment.² The Supreme Court, recently in *Municipal Council, Rep. by its Commissioner Nandyal Municipality v. K. Jayaram & Ors.*³, further clarified that continuity of deployment, the perennial nature of work, or functional similarity with duties performed by regular employees cannot, in the absence of a finding that the contractual arrangement is sham, nominal or a mere camouflage, be treated as determinative of a direct employer-employee relationship, nor can courts, on such considerations alone, recast the contractual framework between the parties.

9. Whether a contractor is merely a façade, or whether the contract is sham or nominal, is a fact-intensive inquiry. The settled approach, as discussed in *Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola & Ors.*⁴, is that such a finding depends on recognised indicia, including who appointed the worker, who pays remuneration, who has authority to dismiss or impose discipline, and the extent of “complete” control and supervision. Secondary control at the work site, after a worker is allotted by the contractor, is not decisive.

10. Tested on these principles, the deployment orders placed by the Petitioners, at best, establish that the Petitioners were deployed at government dispensaries pursuant to arrangements with outsourcing agencies. They do not, by their nature, constitute orders of appointment by the Government of NCT of Delhi. The mere circumstance that the Petitioners may have received their wages through accounts operated by or

² See *Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors.* (2001) 7 SCC 1.

³ Special Leave Petition (Civil) Nos. 17711-17713 of 2019.



routed via the Respondents, or that work was supervised at the dispensary level, does not, by itself, displace the contractual arrangement reflected in the deployment orders or establish a direct jural relationship of employment with the Government of NCT of Delhi. In the absence of the outsourcing agencies as parties, and in the absence of the foundational material that would enable a Court to determine whether the contractual arrangement is a mere camouflage, the petition cannot be converted into an adjudication on employer-employee status through writ proceedings.

11. The claim for pay parity founded on the principle of “*equal pay for equal work*” necessarily rests on the existence of a discernible and workable comparator and proof that the duties, responsibilities and functions discharged are substantially similar. The application of the principle to temporary or contractual engagements is not automatic. As elucidated by the Supreme Court in ***State of Punjab & Ors. v. Jagjit Singh & Ors.***⁵, temporary employees may, in appropriate cases, be entitled to wages at the minimum of the regular pay scale upon establishing such comparability. At the same time, as cautioned by the Supreme Court in ***K. Jayaram***, the doctrine cannot be applied in disregard of the mode of engagement or so as to confer service benefits or status *dehors* the governing recruitment framework. The burden to establish such parity lies on the claimant.

12. The reliance placed on ***Raj Kumar Saini*** is misplaced. That decision proceeded on a materially different factual footing. The Petitioners in that case were shown to have entered service after an open recruitment exercise, through a structured selection process. They had then continued for a decade

⁴ (2019) 13 SCC 82.

⁵ (2017) 1 SCC 148.



or more, working alongside regular incumbents on the same posts within the establishment, discharging substantially the same duties and responsibilities. Those features supplied the necessary factual foundation for applying the doctrine of “*equal pay for equal work*” in the manner contemplated in ***Jagjit Singh***, while remaining mindful that the principle cannot be deployed as an indirect route to secure status benefits that the law does not confer. On the present material, the essential predicates that enabled relief in ***Raj Kumar Saini*** are absent.

13. In the present case, the record, as it stands, does not show appointment through a recruitment process conducted by the Government of NCT of Delhi, engagement against sanctioned posts under its recruitment framework, or parity in qualifications and service incidents with regular staff. The documents relied upon point in the opposite direction, namely, deployment through identified private entities. In these circumstances, the relief of pay parity against the Government of NCT of Delhi cannot be granted in writ jurisdiction on the present material.

14. The prayer to restrain termination or discontinuation also cannot be granted in the form sought. Once the engagement itself is asserted through outsourcing agencies and the existence of a direct jural relationship with the Government of NCT of Delhi is not established on record, a mandamus to continue engagement against the Respondents would, in substance, travel beyond the demonstrated legal relationship. The Petitioners remain at liberty to pursue such remedies as may be available in law against the outsourcing agencies and/or before the competent forum for adjudication of the true nature of the engagement, including claims founded on alleged sham contractual arrangements, and to seek interim protection there, if advised.



15. The objection on availability of an alternative remedy is, in these circumstances, left open. Nothing stated in this order shall be construed as an opinion on the forum that may be invoked, which will depend on the precise case pleaded and the parties impleaded.

16. The writ petition, along with pending applications, is disposed of in the above terms.

SANJEEV NARULA, J

JANUARY 19, 2026/nk