



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 05, 2023

+ W.P.(C) 6282/2016

SITA MUNDU & ANR

..... Petitioners

Through: Ms. Kamlakshi Singh and

Ms. Divya Chawla, Advs.

versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES

..... Respondent

Through: Mr. Tanveer Oberoi, Adv. for AIIMS

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition is to an order dated May 17, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA 4034/2013, whereby the Tribunal has dismissed the OA filed by the petitioners herein.

2. The claim of the petitioners before the Tribunal was seeking the same pay and benefits as are being paid to regular staff nurses working in the respondent - AIIMS. It was their case that they were appointed as staff nurses on contract basis by the respondent initially on a monthly salary of ₹11,750/- which was later increased to ₹28,000/-. It was further their case before the Tribunal that the staff nurses working on regular basis in respondent received a total salary of ₹56,800/-.



3. The petitioners had placed reliance on the judgment of this Court in *Victoria Massey & Ors. v. Government of NCT, W.P.(C) 8764/2018 dated May 22, 2009*, wherein this Court, while modifying an order of the Full Bench of the Tribunal held that staff nurses / paramedics appointed on contract basis, would be entitled to wages in the minimum of the pay scale applicable to regular employees. The challenge made before the Supreme Court against the judgment by the Government of NCT of Delhi was also rejected. Hence, in that sense, the judgment in the case of *Victoria Massey (supra)* had attained finality. The petitioners had also relied upon the judgment in the case of *Sonia Gandhi v. Government of NCT of Delhi and Ors., W.P.(C) 6798/2002*, wherein this Court had reiterated the decision in the case of *Victoria Massey (supra)* by holding that the contractual employees would be entitled to wages in the minimum of the pay- scale applicable to regular employees, but not increments. The order of this Court dated November 6, 2013 was dismissed by the Supreme Court on March 3, 2016. The petitioners had also relied upon *W.P.(C) 142/2016*, titled as *Dr. Ram Manohar Lohia Hospital v. Yogesh Kumar and Ors.* in support of their case.

4. The case of the respondent before the Tribunal was that the petitioners are being paid at par with other contractual employees of Sister Grade-II and as such there is no discrimination. That apart, they stated that the petitioners are working on contractual basis and their term had expired on July 30, 2014, but they are continuing in work due to the interim orders passed by the Tribunal and this Court.

5. The respondent had relied upon the judgment in *State of*



Haryana and Ors. v. Charanjit Singh and Ors., (2006) 9 SCC 321 to contend that the Supreme Court has clearly held that persons employed on contract basis cannot be equated with regular employees even in respect of pay as the recruitment rules and service conditions do not apply to them. Further their responsibility cannot be equated with those of regular employees. The Tribunal held that as the judgment in the case of *Charanjit Singh (supra)* was decided by three Judges of the Supreme Court as against the Tribunal and two Judges of this Court in *Victoria Massey (supra)*, the former shall prevail.

6. The submission of the learned counsel appearing for the petitioners is by reiterating the submissions as were advanced before the Tribunal. She has relied upon the Judgment of the Supreme Court in the case of *State of Punjab and Ors. v. Jagjit Singh and Ors.*, (2017) 1 SCC 148 to contend that the Supreme Court has applied the principle of 'equal pay for equal work' even in the case of temporary employees by stating that such employees shall be entitled to minimum of regular pay scale along with allowances as revised from time to time. She submits that the Supreme Court in this case also referred to the judgment in *Charanjit Singh (supra)* and distinguished the same in paragraph 37 by stating that in that judgment, the Court had set aside the judgment of the High Court and remanded back the matter to the High Court to examine each case in order to determine whether the respondents therein were discharging similar duties and responsibilities as the employees with whom they claimed parity. Her submission is, no such issue has been raised by the respondent in the present petition and as such, the ratio of the judgment in the case of *Charanjit Singh*



(*supra*) is clearly not applicable.

7. During the course of her submissions, learned counsel for the petitioners has also placed before us the pay slip given to a regular employee working in the respondent organization namely, Niangneihkim, Sister Grade-II, to contend that she was drawing a net salary of ₹44,317/- which is much higher than what has been paid to the petitioners herein. In fact the latest pay slip with regard to the same employee has been placed before us to contend that her gross salary is ₹1,59,485/- and after deduction, she receives a salary of ₹70,369/- which is much higher than that what is being paid to the petitioners. Similar reference is also made to the pay drawn by two employees namely Jisha K Shaji and Babli. In fact, it is her submission that Niangneihkim was initially appointed on *ad hoc* basis against a contractual post, whereas petitioners were appointed on contractual basis. The services of Niangneihkim have been regularized, while a similar plea of the petitioners has not been accepted, though a claim of regularization is still pending consideration. She submits that the judgments in the cases of *Victoria Massey (supra)* and *Sonia Gandhi (supra)* are clearly applicable to the facts of this case.

8. On the other hand, learned counsel appearing for the respondent would submit that the issue is no more *res integra* being covered by the judgment in the case of *Charanjit Singh (supra)* wherein it has been held that principle of '*equal pay for equal work*' has no applicability to a person employed on contractual basis. It is the contract which would govern the terms and conditions of the service.



Further he sought to argue that the judgment in the case of *Victoria Massey (supra)*, on which heavy reliance has been placed by the petitioners, has no applicability to the facts of this case, more so in view of the judgment of the Supreme Court in the case of *Charanjit Singh (supra)*. That apart, the judgment in the case of *Victoria Massey (supra)* was with regard to paramedical employees working in various hospitals established by Government of NCT of Delhi and not the respondent herein. He also stated that the AIIMS being an autonomous body, their employees cannot be equated to government servants. He also stated that principle of 'equal pay for equal work' cannot be translated into a mathematical formula. The petitioners have to establish that they are similarly situated and failure to do so cannot afford them parity. No material has been placed before the Court to establish parity. There should be total similarity between both the groups. Burden to prove this parity is on the employee claiming parity. There can be a distinction between employees working at headquarters and at institutional level even though nomenclature of posts is the same. The complaint of discrimination must be between the same establishment owned by the same management. He seeks dismissal of the petition.

9. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the petitioners are entitled to the same pay that is being paid to regular employees in AIIMS.

10. A perusal of the impugned order would reveal that the case of the petitioners before the Tribunal was that they have not been paid



salary at the minimum of pay scale as is being given to the regular employees.

11. At the outset, we may state here that there is no dispute raised by the respondent AIIMS in so far as the nature of duties being performed by the petitioners are concerned. In other words, the duties being performed by the petitioners are at par with that of regular employees. The Supreme Court in *Jagjit Singh (supra)* has in paragraphs 57 to 60 held as under:

57. There is no room for any doubt that the principle of “equal pay for equal work” has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India under Article 141 of the Constitution of India. The parameters of the principle have been summarised by us in para 42 hereinabove. The principle of “equal pay for equal work” has also been extended to temporary employees (differently described as work-charge, daily wage, casual, ad hoc, contractual, and the like). The legal position, relating to temporary employees has been summarised by us, in para 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us yet again.

58. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self-worth, and at the cost of his integrity. For he knows



that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

59. We would also like to extract herein Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. The same is reproduced below:

“7. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

India is a signatory to the above Covenant having ratified the



same on 10-4-1979. There is no escape from the above obligation in view of different provisions of the Constitution referred to above, and in view of the law declared by this Court under Article 141 of the Constitution of India, the principle of “equal pay for equal work” constitutes a clear and unambiguous right and is vested in every employee—whether engaged on regular or temporary basis.

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.”

(emphasis supplied)

12. The Supreme Court noting that the appellants who were temporary employees were discharging the same duties as regular employees working with the employer, directed that they be paid wages at par with the minimum of the pay scale of regular employees. In the case in hand, the petitioners are seeking parity with staff nurses working in the respondent AIIMS, who perform similar duties and have similar responsibilities. They cannot be denied adequate compensation as is being received by regular staff nurses in the respondent hospital. The principle of ‘equal pay for equal work’ as propounded by the Supreme Court is clearly applicable to the facts of this case.

13. In so far as the reliance placed by the learned counsel for the respondent on *Charanjit Singh (supra)*, we agree with the submissions made by the learned counsel for the petitioners that the said judgment is clearly distinguishable as the Supreme Court while holding that equal pay for equal work is applicable to persons discharging similar duties and responsibilities observed that no such finding was there in the judgment of the High Court and set aside the judgment, remanding the matter back to the High Court for fresh consideration. It is not



such a case here as no such contest has been made by the respondent, the duties and responsibilities being performed by the petitioners are at par with the employees working on or holding regular post.

14. As there is complete similitude in the work done by the petitioners and other staff nurses working on regular basis, the settled ratios of the judgments in *Victoria Massey (supra)* and *Sonia Gandhi (supra)* would also be squarely applicable to this case and the petitioners would be entitled to wages in the minimum of the pay scale applicable to regular employees working in the respondents as staff nurses with Dearness Allowance.

15. Before parting, we must state that nurses working in hospitals provide a very valuable humanitarian service; their duties are manifold - from assisting doctors in carrying out treatment to taking personal care of patients and even sometimes handling bystanders and relatives of the patients. They attend to the needs of the sick and the ailing in the extremely tense atmosphere of hospitals. It would be a travesty of justice, if such people are denied adequate compensation for their services as they are entitled to. In this regard, it is appropriate to refer to the judgment of this Court in *Government of National Capital Territory of Delhi and Anr. v. Suman Singh, W.P.(C) 4641/2012*, wherein in paragraph 9 the following observation has been made:

“9. Strictly speaking, the reasoning of the Tribunal is not justified and may not be legally sound. But we do not interfere with the impugned decision dated October 20, 2011 for the reason the State cannot act like a despot. The State cannot indulge in unfair labour practices. It is with regret



we note that large number of cases of para-medical employees, working in Government Hospitals in Delhi, are reaching this Court wherein we find that hundreds of technical staff is employed on contract basis. All of whom are exploited. Grievances relating to convenient working hours assigned to a chosen few, compelling them to perform personal duties of doctors, leave not being sanctioned etc. are projected in litigation. Paramedical staff is a support staff in a hospital and the duties performed are as important as those of doctors. The atmosphere in a hospital is one of tension and anxiety because of the obvious reasons, except in a maternity ward of a hospital, the general air of a hospital is one of tension and anxiety because it is the sick which are admittedly at the hospital. The tension of the sickness as also the anxiety of what would happen next is bound to permeate the general atmosphere. It therefore becomes important that para-medical staff is able to handle the stress, tension and anxiety of not only the patient but even the attendants and relatives of the patients who come to the hospital.”

16. In view of the discussion above, the present petition is allowed. The order of the Tribunal is set aside.

17. The respondent is directed to pay the salary in the minimum of the pay scale of the post along with Dearness Allowance to the petitioners w.e.f September 19, 2013, that is, from the date of filing of the OA, but without interest. The order shall be complied within three months. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 05, 2023/jg