CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO.2558/2014
MA NO.2182/2014

RESERVED ON 08.10.2015
PRONOUNCED ON 31.10.2015

HON'BLE MR. JUSTICE SYED RAFAT ALAM, CHAIRMAN
HON'BLE MR. P.K. BASU, MEMBER (A)

1. Ms. Vedwanti
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R/o H.No.- 20/467,
Ashok Nagar, Bahadurgarh,
Haryana.

2. Sunil Kumar,
Asst. Librarian,
S/o Sh. Dalbir Singh,
R/o H.No. -223, Sainik Nagar,
Near Sector-6,
Bahadurgarh.

3. Shiv Shankar
Sr. Mechanic
S/o Sh. Parmanand Prasad,
R/o 95 D, DDA Flats,
Mansarovar Park,
Shahadara, Delhi-32.

4. Vikrant Kumar
Sr. Mechanic
S/o Sh. Tara Chand,
R/o Plot No.147,
Village Sultan Pur Dabas,
Delhi-39.

5. Devender
Jr. Mechanic
S/o Sh. Rameshwar Dass,
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Main Mubarakpur Road,
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6. Pawan Kumar,
Jr. Mechanic,
S/o Dharam Singh,
R/o H.No.1109/7,

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7. Manoj Dabas
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R/o 178, Village Rasulpur,
P.O. Ranikhera, New Delhi.

8. Rohit Kumar,
Workshop Astt. W.S.A.,
S/o Sh. Hari Shanker,
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New Delhi-110001.

9. Abhishek Kumar,
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S/o Sh. Surendra Pandey,
R/o RZ-07, 3X-Block,
New Roshan Pura,
Delhi-43.

10. Nitin Kharb
Jr. Mechanic,
S/o Sh. Rohtas Kumar,
R/o RZ-F-88, Dharmpura,
Najafgarh, New Delhi-110043.

11. Deepak
Sr. Mechanic,
S/o Sh. Vishnu Dutt,
R/o H.No. -128,
V.P.O., Ghumanhera,
New Delhi-110073.

12. Kuldip
Caretaker,
S/o Sh. Ram Kumar,
R/o RZ 221, Dharam Pura,
Phase-I, Najaf Garh,
New Delhi-110043.

13. Murari Rai,
W.S.I.
S/o Sh. Gajendra Narayan Rai,
R/o D-2, Laxmi Gopal Mandir,
Madangir, New Delhi-62.

14. Devender Gupta,
W.S.I.
S/o Sh. Om Prakash Gupta,

3664/7 Narang Colony,
Tri Nagar, Delhi-110035.

15. Jitender Gahlot,
Storekeeper,
S/o Sh. Jai Bhagwan Gahlot,
R/o LZ-84/85, B-Block,
Maksudabad Colony,
New Delhi-43.

16. Nand Kishor
Junior Mechanic
S/o Sh. Chandra Kant Jha,
Mohalla – Chugal,
Near – Jhore,
Village Jaffarpur Kalan,
New Delhi-110073. …Applicants

(By Advocate: Mrs. Rashmi Chopra)

VERSUS

1. Chief Secretary,
Govt. of NCT of Delhi,
I.P. Estate, Players Building,
New Delhi.

2. Secretary,
Department of Training and
Technical Education,
Muni Maya Ram Marg,
Pitampura, Delhi-110088. …Respondents

(By Advocate: Shri Anmol Pandita for Shri Vijay Pandita)

ORDER

Mr. P.K. Basu, Member (A)

The applicants are working on contract basis with the Department of Training and Technical Education (DTTE), Government of National Capital Territory of Delhi (GNCTD) in Ch. BP Engineering College, Jaffarpur. They hold various posts such as Workshop Instructor, Workshop Assistant, Caretaker, Storekeeper, Junior Mechanic, Senior Mechanic and Assistant

Librarian. They joined on separate dates between the years 2007 and 2013.

2. The grievance of the applicants is that the respondents are nor granting them the benefits of "equal pay for equal work" and benefits which are given to the other contractual employees as also that they are being denied the benefit of leave (medical leave and paternity leave), Health Card Facility, Bonus, LTC and other benefits like child fees, gratuity etc. Similarly, the applicants are being denied dearness allowance also. It is stated that discrimination is manifest from the fact that other contractual employees working in various departments under respondent no.1 i.e. GNCTD are being provided all the benefits. In this regard, the applicants have annexed Annexure `D', salary slip of one O.T. (Tech.) Shri Neyaz Ahmed, who is also on contract basis, from which it would be seen that he is drawing D.A., House Rent Allowance, Travelling Allowance and Washing Allowance apart from Basic Pay and Grade Pay. It is further added that respondents themselves have been recommending the contract faculty in the ITIs under respondent no.2 i.e. the Secretary, DTTE to be paid consolidated emoluments equivalent to the total salary paid to a fresh Instructor in the scale on regular appointment. In support of this, the applicants have annexed Annexure 'E', which is copy of minutes of the meeting with Principal Secretaries/ Secretaries of States held on 10.11.2009, in which the following is recorded:

"5.3 <u>Instructor Vacancy and Training of Instructors</u>"

(a) There are large Instructor vacancies in the ITIs which need to be filled up on priority. The State Governments were advised that they should engage contract faculty till the regular appointment is made. However the contract faculty should be paid consolidated emoluments equivalent to the total salary paid to a fresh Instructor in the scale on regular appointment."

3. The applicants state that they have made several representations before the respondents, copies of which have been annexed at Annexure 'F' but have received no response. Being aggrieved by this action of the respondents, the applicants have filed this OA seeking the following reliefs:

"(a) to direct the respondents to grant the applicants salary and other benefits as given to the other contractual employees under the GNCT.

(b) direct the respondents to grant the applicant the benefits, HRA, TA, Leave Benefits i.e. Earned Leave, Medical Leave and Paternity Leave, Health Card Facility, Bonus, ITC and other benefits like child fees etc.

(c) direct the respondents to grant the applicants Dearness Allowance @ 100% as statutory due to them and arrears resulting as a result of the arbitrary increase, deprived to them.

(d) to direct the respondents to grant all arrears of payments due and payable to the applicants from the date the same were due and payable.

(e) grant all consequential benefit to the applicants which they are entitled in law and pass such other or further order (s) as may be deemed fit and proper in facts and circumstances of the present case.

4. The learned counsel for the applicants argued that the reliefs claimed in this application are allowed and upheld by a catena of judgments of this Tribunal and its hierarchical Courts. In this regard, the learned counsel relied on the judgment of this Tribunal in OA 1706/2001, **Ms. Elisha Floria Boaz Vs. GNCT of Delhi**, in which the Tribunal directed the respondents to continue the applicant in service till regularly selected person is available and grant the applicant same pay scale and other service benefits as are admissible to regularly appointed staff nurse.

5. Learned counsel for the applicants also relied on the judgment dated 22.05.2009 of the Hon'ble High Court in W.P. (C) No.8764/2008 titled **Govt. of NCT of Delhi Vs. Victoria Massey**, on appeal from order of Full Bench in OA No.1330/2007 and 1331/2007 where the Hon'ble High Court held as follows:

> "Therefore, as regards grant of same salary and allowance to the respondent herein, which are admissible to regularly appointed staff nurses, there cannot be any quarrel the respondents will, therefore be entitled to those benefits."

6. It is further added that in OA No.2538/2011, **Mr. Satish Kumar and others Vs. GNCT of Delhi and others** decided on 9.08.2012, relying on various judgments of the Hon'ble Supreme Court and the Hon'ble High Court and orders of the Tribunal, this Tribunal held that the contractual staff working in ITIs under the DTTE are entitled to all benefits as granted to other contractual staff under the GNCTD. The matter went to the Hon'ble High Court in W.P. (C) No.2915/2013, **Chief Secretary, Govt. of NCT of Delhi and another Vs. Satish Kumar and others** and the Hon'ble High Court upheld the order of this Tribunal in the aforesaid OA by relying on its own judgment in the case of Victoria Massey (supra).

7. The applicants have also annexed order of the Hon'ble Supreme Court in Special Leave to Appeal No.18552/2012, **Government of National Capital Territory of Delhi and others Vs. Raj Rani Chachra and others** (arising from the judgment and order dated 16.03.2012 in W.P. No.8791/2011 of the Hon'ble High Court of Delhi) where the Hon'ble Supreme Court dismissed the SLP. In fact, it directed the Principal Secretary, Govt. of NCT of Delhi to file an affidavit stating the circumstances under which the present special leave petition was filed in the light of the fact that the government had chosen to file the said SLP despite the fact that another SLP filed by them in respect of certain other similarly situated persons was dismissed on 1.10.2009.

8. The applicant have also produced copy of order dated 19.02.2014 issued by DTTE, GNCTD granting the benefits to Contractual Craft Instructors, as directed by the Hon'ble High Court in Satish Kumar and others (supra).

9. The learned counsel for the applicants, in conclusion, stated that in view of the judgments of the Hon'ble Supreme Court, Hon'ble High Court and this Tribunal as also the fact that the GNCTD itself has extended the relief sought for in the instant OA to others in some organizations under it, the benefits cannot be denied to the applicants herein.

10. The learned counsel for the respondents pointed out that recruitment of the applicants on contract basis was for less than or equal to one year through walk-in-interview after advertisements were published in 2-3 local daily newspapers. The response to the advertisement was very poor. However, the Committee set up for the purpose, selected the candidates despite having limited choice so that the Training College could at least function. It is also clarified that in the advertisement for engagement of technical support staff on contract basis, it was clearly mentioned that appointment to the respective posts was purely on contractual basis for a definite period or till the posts are filled on regular basis through the competent authority, whichever is earlier and had a consolidated remuneration throughout the contract period. Copy of the advertisement has been filed as Annexure R-2. In the offer letters also, it was clearly mentioned that (i) the respective post is purely on

contractual basis and that too for a definitive period or till the post is filled on regular basis, (ii) fixed remuneration shall be paid throughout the entire contractual period, (iii) the contractual staff will not claim for regularization of service on the basis of this contract etc.

11. It is argued that while accepting the contractual posts, the candidates were very well aware of all the conditions and thereafter they entered into agreement with the Training College. Therefore, they cannot now go back and claim higher remuneration. Regarding judgment in Satish Kumar (supra), it is submitted that the Hon'ble High Court in this case modified the Tribunal's order dated 9.08.2012 passed in OA 2538/2011.

12. The learned counsel for the respondents further argued that it has been held in several judgments that contractual employees are not entitled to get regular pay scales. In this regard, he cited the following judgments:

(i) **State of Haryana and others Vs. Jasmer Singh and others**, JT 1996 (10) SC 876

(ii) **Kumari Priti Chopra Vs. Managing Director M.P. Hastshilp Vikas**, 2002 (2) AISLJ 197

(iii) **Utkal University and another Vs. Jyotirmayee Nayak and others**, 2003 (2) SCSLJ 249

(iv) **Orissa University of Agriculture and Technology and another Vs. Manoj K. Mohanty**, 2003 (1) SCSLJ 363

(v) Mahendra L. Jain and others Vs. Indore Development Authority and others, (2005) 1 SCC 639

(vi) State of West Bengal and another Vs. West Bengal Minimum Wages Inspectors Association and others, (2010) 5 SCC 225

13. In fact, it is argued that in Kumari Priti Chopra (supra), the Hon'ble High Court of Delhi has held that doctrine of "equal pay for equal work" does not apply to contractual employments. It is further submitted that in West Bengal Minimum Wages Inspectors Association (supra), the Hon'ble Supreme Court has held in para 19 as follows:

> "19. The principle "equal pay for equal work" is not a fundamental right but a constitutional goal. It is dependent on various factors such as educational qualifications, nature of the jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment etc. Comparison merely based on designation of posts is misconceived. Courts should approach such matters with restraint and interfere only if they are satisfied that the decision of the Government is patently irrational, unjust and prejudicial to any particular section of employees."

14. The learned counsel for the respondents, therefore, states that since the applicants have been offered contractual appointment on a fixed remuneration for a limited time period and they have agreed to such terms of contract, they cannot now claim as a matter of right remuneration equivalent to regular employees.

15. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited by either side.

16. In OA 1330/2007, **Mrs. Victoria Massey Vs. NCT of Delhi and others**, this Tribunal allowed the prayer of the applicants therein. The applicants in the said OA were appointed on contract basis in various hospitals run by GNCTD and they were agitating that they should be given salary as admissible to regular staff. Thereafter, in Satish Kumar and others (supra), this Tribunal vide order dated 9.08.2012, again allowed a similar prayer directing the GNCTD to grant the applicants therein, who were Craft Instructors in DTTE, salary and other benefits as given to the other contractual employees under the GNCTD. The Tribunal further directed to grant other benefits like Earned Leave (Medical Leave and Paternity Leave), Health Card facility, Transport Allowance, HRA, Bonus, LTC, Child fees etc. When this matter came up before the Hon'ble High Court in W.P. (C) No.2915/2013, Satish Kumar and others (supra), the Hon'ble High Court modified the order to the extent that it restricted the total emoluments payable by GNCTD to Craft Instructors as follows : Basic Pay in the grade + Grade Pay + Dearness Allowance + House Rent Allowance + Transport Allowance with further direction that within six weeks a decision would be conveyed to the respondents on the applicability of the Maternity Benefits Act 1961 and if the Act is found applicable the benefits

thereof shall be granted to the contract appointed Craft Instructors.

17. The applicants' case simply is that in view of various judgments cited by them, there is no scope for the respondents to deny them the same benefits as have been granted by the respondents in compliance of the Court's orders to others similarly placed. On the other hand, the respondents have also cited several judgments to take the stand that the Hon'ble Supreme Court has held that contractual employees are not entitled to get regular pay scales and particularly that doctrine of "equal pay for equal work" does not apply to contractual employment and further that the Courts should approach in such matters with restraint and interfere only if they are satisfied that the decision of the government is patently irrational, unjust and prejudicial to any particular section of employees.

18. The first issue to be answered is whether the orders/ judgments cited by the applicants as precedents would apply in the present case. In this regard, we refer to the judgment of the Hon'ble Supreme Court in **Bharat Petroleum Corporation Ltd. and another Vs. N.R. Vairamani and another**, JT 2004 (8) SC 171 and specifically to paragraphs 8 and 10 of the judgment where their Lordships have discussed the principle of precedent as follows:

> "8. Courts should not place reliance on decisions without discussing as to how the factual situation fits

> in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes….."
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> xxxx xxxx xxxx xxxx
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> "10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

Again in **Shikshan Prasarak Mandal Vs. State of Maharashtra**, the Hon'ble Bombay High Court vide its judgment dated 17.09.2009 in Writ Petition No.4835/2002 held as follows:

> "11. It is clear from the above dictum that precedents are to be applied with due regard to facts while adhering to the principles of "ratio decidendi". Procedents are described as, "Authorities to follow in determinations in Courts of Justice". Precedents have always been greatly regarded by the Sages of the Law. The Precedents of Courts are said to be the laws of the Courts; and the Court will not reverse a judgment, contrary to many Precedents. Even for a precedent to be binding, it cannot be without judicial decision or arguments that are of no moment. To be a good precedent, it has to be an adjudged case or decision of a court of competent jurisdiction considered as furnishing an example or authority for an identical or similar case or a similar question of law afterward arising. It is the ratio understood in its correct perspective that is made applicable to a subsequent case on the strength of a binding precedent. In a recent judgment, a Full Bench of this court in the case of State of Maharashtra v. Prashram Jagannath Auti, 2007(5) Mh. L.J. 403 : 2007 (5) BCR 847, while referring to the binding precedents, held as under: -

"The ratio is variously defined to be the relation between two magnitudes of the same kind in terms of quality and quantity. Ratio decidendi is the reason for deciding as reasoning is the soul of decision making process. It is formulation of an opinion by the Judge which is necessary in the facts of the case for determination of the controversy. In the case of C.D. Kamdar v. State of Orissa, (1985) Tax L.R. 2497, expressing its views in relation to the binding precedents, the Court held as under: -

"Mr. R. Mohanty, the learned counsel for some of the petitioners submitted that the power of the Board under section 90(7) of the Act is to levy fees simpliciter. He cited the case reported in (1978) 34 Cut LT 122 (SC) (Laxmidhar Sahu v. Supdt. of Excise Berhampur) in support of the contention. Reading the entire judgment, the contention as raised by Mr. Mohanty, is not spelt out. A Decision is an authority only for what it actually decided and not for what may logically follow from it. Every judgment must be read as applicable to the particular factors proved, or assumed to be proved, since the generality of the expressions, which may be found there, are not intended to be expositions of the whole law but governed or qualified by particular facts of the case in which such expressions are to be found. See AIR 1983 SC 1246. (Sreenivasa General Traders etc v. State of Andhra Pradesh). The case of Laxmikanta Sahu (supra) was considered by the Supreme Court in AIR 1975 SC 1121 : (1975 Tax LR 1569) (Harsankar v. Dy. Excise and Taxation Company). In para 61 at page 1134 it has been observed that in that case it was expressly contended on behalf of the State of Orissa that the levy was a tax and not a fee. The decision being based on a concession did not involve the determination of the point whether the fee levied under section 90(7) of the Act is a fee simpliciter."

"12……. This is extremely pertinent especially in the current era of globalisation where the entire philsophy of society, on the economic front, is undergoing vast changes. Besides this well accepted precept, there are exceptions to the rule of precedent. There are judiciously accepted exceptions to the rule of precedent and they are decisions per incuriam, sub-silentio and stare decisis. These

> principles explain when and where a precedent, which is otherwise a good law, necessarily need not be accepted in subsequent judgments if it fully satisfies essentials of these exceptions."
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> xxxx xxxx xxxx xxxx
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> "16. The analysis of the above enunciated principles show that a judgment would be applicable as precedent to the subsequent case only where ratio decidendi is squarely applicable to the facts of a subsequent case. The Courts or Tribunals are expected to follow the law of precedent subject to well accepted limitations."

Also in **Divisional Controller, K.S.R.T.C. Vs. Mahadeva Shetty and another**, AIR 2003 SC 4172, the Hon'ble Supreme Court held as follows:

> 23…….The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."

Further in **Bank of India and another Vs. K. Mohandas and others**, (2009) 5 SCC 313, it has been held as follows:

54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in Quinn vs. Leathem, 1901 AC 495, is worth recapitulating first:

> "Before discussing Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before -that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logically at all."

This Court has in long line of cases followed the aforesaid statement of law.

55. In State of Orissa vs. Sudhansu Sekhar Misra, AIR 1968 SC 647, it was observed:

> ".... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

56. In the words of Lord Denning:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

57. It was highlighted by this Court in Ambica Quarry Works Vs. State of Gujarat, (1987) 1 SCC 213:

> "18....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."
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> 58. In Bhavnagar University vs. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.
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> 59. This Court in Bharat Petroleum Corporation Ltd. vs. N.R. Vairamani, (2004) 8 SCC 579, emphasized that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which the reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases.''

In **B. Shama Rao Vs. The Union Territory of Pondicherry**, (1967) 2 SCR 650, a five Judge Bench of the Hon'ble Supreme Court held as follows:

> "In view of the intense divergence of opinion except for their conclusion partially to uphold the validity of the said laws it is difficult to deduce any general principle which on the principle of *stare decisis* can be taken as binding for future cases. It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein."

Further in **General Manager Northern Railways and another Vs. Sarvesh Chopra**, JT 2002 (2) SC 445, their Lordships held as follows:

> "9……. A decision of this Court is an authority for the proposition which it decides and not for what it has not decided or had no occasion to express an opinion on……..."

In this regard, we also refer to judgment of the Hon'ble Supreme Court in **Chandra Prakash and others Vs. State of U.P. and another**, AIR 2002 SC 1652 and specifically to para 22 of the judgment which reads as follows:

> "22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghubir Singh held that a pronouncement of law by a division bench of this Court is binding on a division bench of the same or similar number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of Parija (supra) held that:
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> > "But if a bench of two learned judges concludes that an earlier judgment of three learned judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a bench of three learned judges setting out the reasons why it could not agree with the earlier judgment. If, then, the bench of three learned judges also comes to the conclusion that the earlier judgment of a bench of three learned judges is incorrect, reference to a bench of five learned judges is justified."

19. When we examine the judgments cited by the learned counsel for the applicants, we find that in Ms. Elisha Floria Boaz (supra), the Tribunal relied on some earlier judgments of the Tribunal, which in turn had followed the ratio of the judgment arrived at in **Dr. (Mrs.) Sangita Narang and others Vs. Delhi Administration etc.**, (1988) 6 ATC 405 decided on 18.12.1987 by this Tribunal in which the ratio decided was:

> "Pay – Equal pay for equal work – Principle – Applicants employed as doctors on ad hoc basis – Instead of granting them regular scale, Government granting them salary on fixed pay – Held, principle violated – Further held, benefits like leave, continuity in service, House Rent Allowance, etc. cannot be denied to ad hoc appointees – Constitution of India, Article 39 (d)."

20. Of course, the facts of the two cases are completely different. In Sangita Narang (supra), the applicants were Junior Resident Doctors in a recognized hospital. They registered themselves with the Employment Exchange for sponsorship to the government departments and consequent upon sponsorship of their names by the Employment Exchange, they received offers from the Directorate of Health Services, Delhi Administration. Moreover, they were *ad hoc* doctors and not short term contract employees as in the present case.

21. In Victoria Massey (supra), the applicants were Staff Nurses and the background was that the Staff Nurses of various hospitals run by the Government in the Union Territory of Delhi had resorted to indefinite strike commencing on 5.05.1998. Although action under the ESMA had been declared, the

Administration had simultaneously invited applications from qualified Nurses to come and join the hospitals and there was even offer for regular appointment. The applicants had after a formal interview been permitted to join during the second week of May, 1998. Therefore, here also the applicants belonged to a different organization and to a different post. There was a formal interview and there was even offer for regular appointment. Again the facts and circumstances involved are completely different from the present case.

22. The case of Satish Kumar (supra) also relates to different cadre and relies basically on the decision of the Tribunal in Victoria Massey (supra).

23. From a reading of the judgment of the Hon'ble High Court in Raj Rani Chachra (supra), it would appear that here also the matter related to Nurses, which again is a different cadre.

24. From the above judgments, it would be clear that (a) the facts of the present case and the facts of cases cited by the learned counsel for the applicants are widely different; and (b) the *ratio decidendi* in Sangita Narang (supra) is regarding appointment on *ad hoc* basis and not on contract basis and thus it cannot *ipso facto* be applied in the present case. Therefore, we are of the view that the ratio laid in judgments cited by the

applicants cannot be used as precedents to decide the instant case.

25. We are, however, concerned with a larger issue that arises from this matter which is whether, whenever government adopts the route of contractual employment, they are legally bound to extend such employees pay in the same Pay Band and Grade Pay as that of a regular employee holding such designation along with D.A., HRA etc. or does the government have the freedom to take persons on contract on some fixed remuneration. No doubt, this would have wide spread administrative as well as financial ramifications. In fact, the ramifications of financial burden might lead a situation where government may curtail such contractual appointments, thus depriving several aspiring persons seeking opportunity of employment from a source of livelihood. These aspects, therefore, need to be carefully weighed.

26. We have gone through the judgment cited by the respondents in Jasmer Singh and others (supra) where the Hon'ble Supreme specifically addressed the issue whether daily wage employees have a right to same pay as of regular employees. It held that daily rated workers cannot be treated at par with regular employees for purposes of their wages nor can they claim minimum of the regular pay scale of the regularly employed.

27. In Kumari Priti Chopra (supra), again the issue of "equal pay for equal work" came up. The petitioner Kumari Priti Chopra was appointed on contract for a limited period and she was demanding increase in salary at par with regular workmen. The Hon'ble High Court held as follows:

> "12. Moreover, the petition lacks material particular about the duties being performed by her and the duties which are performed by regular employees, appointed as well as sales persons. It is also not stated as to what are the recruitment rules for appointment to the post of sales persons and whether she fulfilled all these qualifications and, therefore, can be treated at par with those who are appointed as sales persons on regular basis. The duties which are performed by sales persons are also not mentioned. It is only stated that she is performing the same duties as are performed by other sales persons. In the absence of this material it is not possible to arrive at any definite conclusion in this petition."

28. In Utkal University Vs. Jyotirmayee Nayak (supra), the issue was whether Library Attendants appointed on consolidated salary could claim regular pay scale as given to similarly situated employees of Utkal University. The Hon'ble Supreme Court held as follows:

> "5. Under these circumstances, the question of regularisation of services of the respondents does not survive. At any rate the High Court was right in rejecting their claims for regularisation and the respondents have not challenged the same by filing any appeal against that order. As regards the direction for payment of salary on par with the similarly placed employees in the University, we find it difficult to sustain the direction given by the High Court. It is not disputed that the respondents do not have any appointment orders on the basis of which they could claim pay-scales or a regular salary. Except the office order dated 2.12.1994, there is

> nothing to support the claims of the respondents for payment of salary as is admissible to the regular employees of the University. One sentence in the order dated 2.12.1994, that the respondents could "draw their salary accordingly as per rules", cannot give any right to them. That sentence cannot be read in isolation. The said office order must be understood in the light of the appointment orders issued to the respondents."

29. In Manoj K. Mohanty (supra), the doctrine of "equal pay for equal work" again came to be examined by the Hon'ble Supreme Court. This was a case of Typist/ Junior Assistant appointed temporarily on a consolidated pay. They were seeking regular pay scale and the Hon'ble Supreme Court held as follows:

> "(A) Constitution of India, Articles 14, 16 and 39 – Equal pay for Equal Work – While allowing the claim for equal pay for equal work it must be seen that there is material relating to other comparable employees as to the qualifications, method of recruitment, degree of skill, experience involved in performance of job, training required, responsibilities undertaken and other facilities in addition to pay scales.
>
> (B) Constitution of India, Articles 14, 16 and 39 – Equal Pay for Equal Work – Respondent appointed temporarily as Typist/ Junior Assistant in 1990 on a consolidated pay – Worked as such for a period of 5 years – He was not appointed through regular process meant for regular appointment – Not regularized – Claim regular pay scale – High Court allowed the claim – Challenged – Burden on respondent to establish that he has a right to claim equal pay for equal work – No details or materials were produced before High Court for comparison in order to apply the principle of equal pay for equal work – Order of High Court to pay regular pay scale not sustainable and hence quashed."

30. In Mahendra L. Jain (supra), the issue that arose was of regularization as well as "equal pay for equal work" and the Hon'ble Supreme Court held as follows:

> "43. The appellants having been employed on daily wages did not hold any post. No post was sanctioned by the State Government. They were not appointed in terms of the provisions of the statute. They were not, therefore, entitled to take the recourse of the doctrine of "equal pay for equal work" as adumbrated in Articles 14 and 39(d) of the Constitution of India. The burden was on the Appellants to establish that they had a right to invoke the said doctrine in terms of Article 14 of the Constitution of India. For the purpose of invoking the said doctrine, the nature of the work and responsibility attached to the post are some of the factors which were bound to be taken into consideration. Furthermore, when their services had not been regularized and they had continued on a consolidated pay on ad hoc basis having not undergone the process of regular appointments, no direction to give regular pay scale could have been issued by the Labour Court. [See Orissa University of Agriculture & Technology and Another vs. Manoj K. Mohanty, [(2003) 5 SCC 188]."

31. In West Bengal Minimum Wages Inspectors Association and others (supra), the question involved was whether the respondents therein holding the post of Inspector, Agricultural Minimum Wages, were entitled to parity in pay scale with those holding the posts of Inspector (Cooperative Societies), Extension Officers (Panchayats) and KGO-JLRO (now Revenue Officers). What the Hon'ble Supreme Court held in the case has already been cited in para 13 above.

32. What emerges from the above quoted judgments is that the settled law is that contractual employees who have not come in through a regular appointment procedure, have no right to

claim the same pay scale and other benefits as accrued to the regular employees. However, in Victoria Massey (supra) and Satish Kumar and others (supra), this Tribunal has passed orders granting such benefits to some contractual employees. The Hon'ble High Court upheld the decision of the Tribunal in Satish Kumar (supra) but modified the order to the extent that Craft Instructors should be given Basic Pay, Grade Pay, D.A., HRA and Transport Allowance. We have already discussed this earlier and explained why in our opinion these cannot be treated as precedence.

33. In view of overall principle as laid down by the Hon'ble Supreme Court, we are of the opinion that the ratio that contractual employees have no right to claim emoluments at par with regular employees of same designation still holds the field. Thus the government can appoint employees on contract on consolidated salary, which is not the same as the pay and allowances given to a regular employee. If held otherwise, there are several implications. We give here one such instance. It is common practice now-a-days in government offices that some of the group `D` jobs which were being undertaken by permanent government employees are now got executed by outsourcing to a contractor who places the services of such staff based on bidding process and subject to provisions of the Minimum Wages Act. These hired staff, though not government employees, perform the same task as a Multi Tasking Staff or say cleaner/ sweeper etc. If the veil of this outside contractor is lifted, then all such staff would claim remuneration equivalent to those of

similar regular staff. In our view, the order of the Tribunal in Victoria Massey (supra) and the judgment of the Hon'ble High Court in Satish Kumar and others (supra) are specific to the facts and circumstances of those cases and will not overturn the ratio laid down by the Hon'ble Supreme Court in the judgments cited above.

34. In this particular case, it is clear that respondents needed services of some technical supporting staff in their Training Colleges as a stop gap arrangement till the posts are filled up on regular basis. They took some people on contract basis on consolidated remuneration. The process of appointing them was through a walk-in-interview only. The response to the advertisement made was poor but because teaching was suffering, the respondents proceeded to appoint some persons. In fact, many of them have already left the job in search of better opportunities outside. So we are of the view that there is nothing illegal in the process keeping in view the judgments of the Hon'ble Supreme Court and the applicants cannot claim benefit of Victoria Massey (supra) and Satish Kumar and others (supra) as a matter of right.

35. In view of above discussion, we find no merit in this OA and it is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

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