

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 4034/2013

Reserved on: 06.05.2016
Pronounced on: 17.05.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Ms. Sita Mundu
Sister Grade II
All India Institute of Medical Sciences,
Ansari Nagar,
New Delhi-110029

2. Mr. Rameshwar Prasad Meena
Sister Grade II
All India Institute of Medical Sciences,
Ansari Nagar,
New Delhi-110029

... Applicants

(Through Ms. Kamlakshi S. Chauhan, Advocate)

Versus

All India Institute of Medical Sciences
Through its Director,
Ansari Nagar,
New Delhi-110029

... Respondents

(Through Shri R.K. Gupta with Shri A.K. Singh, Advocates)

ORDER

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

The applicants are Staff Nurses appointed on contract basis by the Respondent – All India Institute of Medical Sciences (AIIMS). They were initially appointed on consolidated monthly salary of Rs.11,750/-, which was later increased to Rs.28,000/-. This OA has been filed for the following reliefs:

“(a) direct the respondent to grant same pay and benefits to the applicants at par with regular staff nurses working with the respondent in terms of the law settled down by the Hon’ble High Court and Hon’ble Supreme Court of India along with arrears from the date of present OA.”

2. Learned counsel for the applicants states that other Staff Nurses in AIIMS receive a total salary of Rs.56,800/- and in this regard, they have filed pay slip issued by AIIMS in respect of one Ms. Jisha K. Shaji, Sister Grade II for the month of March 2013, which indicates that the total pay and allowances is indeed Rs.56,800/-.

3. It is stated that when this matter was placed before the Tribunal, it ordered on 3.12.2014 that the respondents may verify the position whether Ms. Jisha K. Shaji, Sister Grade II is indeed getting salary of Rs.56,800/- and clarify on this aspect also through an affidavit. On 22.01.2015, the Tribunal considered the affidavit filed by the respondents but it was noted that the affidavit only states what is being paid to the applicant but it does not clarify the same in terms of Victoria Masseys’ case during arguments by both counsel. The Tribunal allowed the respondents to file an affidavit by 7.02.2015. It is stated by the learned counsel for the applicants that this affidavit has not been filed by the respondents.

4. Learned counsel for the applicants drew our attention to the order dated 23.07.2008 in OA 1330/2007, **Mrs. Victoria Massey Vs. National Capital Territory of Delhi and others** decided by a Full Bench of this Tribunal where the prayer was for

payment of salary at par with regular staff on the principle of equal pay for equal work. The OA was allowed. This matter came up before the Hon'ble High Court in W.P.(C) 8764/2008. Herein, the Hon'ble High Court vide order dated 22.05.2009 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 respondent will, therefore, be entitled to those benefits."

The Special Leave Petition against this order was dismissed by the Hon'ble Supreme Court vide order dated 9.07.2009. According to the learned counsel for the applicants, the order of the Tribunal in Mrs. Victoria Massey (supra) thus attained finality.

5. Learned counsel for the applicants also relied upon judgment of the Hon'ble High Court in W.P.(C) 6798/2002, **Sonia Gandhi and others Vs. Govt. of NCT of Delhi and others**, which again reiterated the decision in Mrs. Victoria Massey (supra) that contract employees would be entitled to wages in the minimum of the pay scale applicable to regular employees but not increments. This order of the Hon'ble High Court dated 6.11.2013 was assailed before the Hon'ble Supreme Court but the SLP was dismissed vide order dated 3.03.2016.

6. In order to reiterate that the contract employees should be given salary at the minimum of the pay scale given to the regular employees, the learned counsel also cited the following judgments:

- i) **Rajesh Kumar Sharma and others Vs. Govt. of NCT of Delhi and others**, W.P. (C) 3769/2013
- ii) **North Delhi M.C.D. Vs. Rajesh Kumar Sharma and others**, CC 21580/2013
- iii) **Govt. of NCT of Delhi and others Vs. Raj Rani Chachra and others**, W.P. (C) 8791/2011
- iv) **Govt. of National Cap. Ter. of Delhi and others Vs. Raj Rani Chachra and others**, SLP (C) No.18552/2012

7. In the background of these judgments, it is argued by the learned counsel for the applicants that the respondents have to fix the salary at the minimum of the scale at par with the regular staff nurses and the OA should be allowed.

8. Learned counsel for the respondents pointed out to the fact that both the applicants were contract employees. They were initially given a consolidated salary of Rs.11750/-, which was later raised to Rs.28,000/- with effect from 6.09.2010 at par with other contractual Sister Grade – II. He further stated that the term of contract of both the applicants has expired on 30.06.2014 but due to the interim order passed by this Tribunal, they are continuing even now as Sister Grade – II on contract basis. It has also been stated that both the applicants appeared in the regular selection process for the post of Sister Grade – II held in the years 2006, 2009 and 2013 but they could not qualify.

9. Learned counsel for the respondents drew our attention to the judgment dated 5.10.2005 of the Hon'ble Supreme Court in **State of Haryana and others Vs. Charanjit Singh and others**, Appeal (Civil) No.6562/2002 and specifically drew our attention to para 20, 21 and 22 of the judgment, relevant portion of which we quote below:

"20.These are cases of persons employed on contract. To such persons the principles of equal pay for equal work has no application.....It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging same duties.....

21.It was held that by their very nature of employment they cannot be equated with regular employees. It was held that recruitment rules and service conditions do not apply to such persons. It was held that their responsibilities cannot be equated with those of regular employees.

22. Thus it is clear that persons employed on contract cannot claim equal pay on basis of equal pay for equal work....."

It is argued that in the above judgment, the Hon'ble Supreme Court has categorically held that the principle of equal pay for equal work does not apply in respect of persons employed on contract; they have no right to regular post until they are duly selected and appointed; they are not entitled to the same pay as regular employees by claiming that they are discharging same duties; that their responsibilities cannot be equated with those of regular employees. It is stated that this judgment was delivered by a three Judge Bench of the Hon'ble Supreme Court and the judgments of the Tribunal and the High Court cited on behalf of

applicants will not override the judgment of the Hon'ble Supreme Court in Charanjit Singh (supra). Moreover, even the SLPs dismissed, were dismissed by a Division Bench of the Hon'ble Supreme Court and since the judgment in Charanjit Singh (supra) was delivered by a larger Bench of three Judges, the ratio laid down by the larger Bench would prevail. In view of the ratio of the Hon'ble Supreme Court in Charanjit Singh (supra), the claim of the applicants to seek salary at par with regular staff would be impermissible in law. The learned counsel also argued that in case the Tribunal did not consider the Charanjit Singh judgment (supra) while disposing of OA No.1330/2007 then that order of the Tribunal is rendered *per incuriam* and cannot be cited as precedent.

10. In reply, the learned counsel for the applicants stated that Charanjit Singh (supra) has been considered by the Tribunal in Mrs. Victoria Massey (supra). However, she could not point at which place in the order the Tribunal had considered Charanjit Singh (supra).

11. Be that as it may, even if the judgment in Charanjit Singh (supra) was considered by the Tribunal or the Hon'ble High Court thereafter, the legal principle that judgment by a larger Bench of the Hon'ble Supreme Court will prevail over orders/ judgments passed by the Tribunal/ High Court or a Division Bench of the Hon'ble Supreme Court is a well settled principle in law.

12. Therefore, the argument of the learned counsel for the applicants that the ratio laid down by the Hon'ble Supreme Court

in Charanjit Singh (supra) will rule the field has to be accepted. In that case, as already noted earlier, contractual employees have no right to claim salary at par with regular employees either on the principle of equal pay for equal work. In view of this, the OA does not succeed and is accordingly dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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