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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1623/2018 & CAV 142/2018 & CM APPL. 6676-6678/2018

MEDICAL SUPERINTENDENT RAM MANOHAR LOHIA
HOSPITAL Petitioner

Through: Mr. Arun Bhardwaj CGSC along with
Mr. Nikhil Bhardwaj, Advocate with Mr. Shambhu
Kumar, Dy. Director.

versus

GENERAL SECRETARY HEALTH SERVICES CONTRACT
WORKERS UNION DR RAM MANOHAR LOHIA HOSPITAL

..... Respondent

Through: Mr. N.A. Sebastian, Advocate.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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23.02.2018

CAV 142/2018

Mr. N.A. Sebastian, learned counsel for the respondent union is present. Therefore, the caveat is discharged.

CM Nos. 6677-6678/2018 (exemption)

Exemptions allowed subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 1623/2018 & CM APPL. 6676/2018 (stay)

1. By impugned Award dated 05.08.2016, the Central Government Industrial Tribunal (in short 'Industrial Adjudicator') has held that the workmen therein (i.e. LDCs appointed in the year 2010 on contract basis as per list) are entitled to salary and allowances at par with their regular counterparts who are working with the petitioner/Management on the same



post. Pursuant to this Award of the Industrial Tribunal a notice under Section 136 of Delhi Land Reforms Act 1954 dated 22.01.2018 and a final notice dated 09.02.2018 was issued by the Assistant Collector against the petitioner for recovery of Rs.1,72,15,345/-.

2. The learned counsel for the respondent Shri N.A.Sebastian submitted that the Deputy Director of the petitioner/Management had submitted a letter dated 29.03.2017 to ALC to the effect that the Competent Authority had decided to implement the impugned award dated 05.08.2016 immediately and that the contractual LDCs were being paid equally to regular LDCs from the date of Award. He handed over a copy of the letter with two copies of office orders and a copy of rejoinder. Copies have been supplied to learned counsel for the petitioner.

3. Learned counsel for the petitioner after taking a pass over, on instructions, now submits that they have implemented the Award insofar as the payment in difference of basic pay at the minimum of the scale and dearness allowances is concerned. He further submits on instructions that in fact in the file, the Competent Authority has decided not to implement the Award with regard to the payment of allowances i.e. HPCA, Dearness Allowance and HRA. He submits that they are impugning the Award only with regard to entitlement of contractual LDCs to these allowances.

4. Learned counsel for the respondent has placed reliance upon a Division Bench judgment of this Court in WP(C) No.142/2016 titled as **‘Dr.Ram Manohar Lohia Hospital vs. Yogesh Kumar & Ors.’** which has based its findings on the basis of another Division Bench judgment of this Court in WP(C) 8476/2009 titled as **‘NCT of Delhi & Ors. vs. Victoria Massey’** and WP(C) 4863/2012 titled as **‘Deen Dayal Upadhyay Hospital**



represented by its Medical Superintendent & Ors. vs. Mahesh Bhardwaj & Ors.. Paragraphs 7 and 8 of the judgment in ***Yogesh Kumar's*** case (supra) read as under:-

“7. We have heard learned counsel for the parties, considered their rival submissions and also examined the impugned order dated 20.2.2015 passed by the Tribunal. We find that the Tribunal while passing the impugned order has correctly applied the law laid down in the case of Victoria Massey (supra), which was upheld by a Division Bench of this Court. Relevant portion of the observations made by the Delhi High Court reads as under:

“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.

However, next question which arose for consideration is as to whether these respondents were still working on contract basis and have not been regularized can be held entitled to grant of increments as well as promotion. We are posing this question because of directions contained in judgment dated 03/07/07 passed by the Tribunal in O.A. 1857/06 which is the subject matter of writ petition no. 8476/2008. These directions are in the following terms:

“Taking the totality of facts and circumstances into consideration, we come to the conclusion that applicant is entitled to all the benefits in terms of salary, allowances, promotion etc. which have been extended to other Staff Nurses, who were recruited during the period of strike of nurses in the year 1998.”

The legal position in this regard is that casual or contract employees are not entitled to increments and would get pay at the minimum of the regular pay



scale. In the absence of regularization, question of consideration of cases for promotion also would not arise. While that is the position in law, we have no information as to whether other Staff Nurses appointed on contract basis, who had approached the Tribunal and this Court earlier for pay parity and were granted relief, have been granted increments or not. In case the petitioner had given to those nurses appointed on contract basis benefit of increment, then it would be extended to the respondents herein as well on the principle of equality and equal treatment. However, if such a benefit has not been granted to other similarly situated staff nurses appointed on contract basis, then the respondents herein also shall not be entitled to benefit of either increment or promotion. All these writ petitions are disposed of in the aforesaid terms. Petitioner shall out the arrears of salary payable to the respondents in terms of aforesaid directions. Arrears will be calculated from the date when these respondents filed the O.A. If the payment is not made within two weeks, respondents will be entitled to approach the Court for withdrawal of the amount deposited in the Court.”

8. The observations made by the Delhi High Court in the case of Deen Dayal Upadhyaya Hospital represented by its Medical Superintendent & Others (supra), also reads as under:

“11. This is the view taken by the Division Bench of this Court in Victoria Massey’s case.

12. The view taken by this Court has attained finality as far as this Court is concerned because challenge to the decision of the Division Bench before the Supreme Court failed when Leave to Appeal was declined.

13. Impugned order passed by the Central Administrative Tribunal on November 01, 2011 has noted that the view taken by the Full Bench of the



Tribunal in Victoria Massey's case when OA No.1330/2007 was decided was partially modified by a Division Bench of this Court and thus has directed that the respondents would be entitled to the same benefit as was accorded by the Division Bench of this Court in Victoria Massey's case.

*14. The challenge by the writ petitioner by predicating a stand resting on the opinion of the Supreme Court in the decision reported as (2006) 9 SCC 321 **State of Haryana & Ors. Vs. Charanjit Singh & Ors.** and (2009) 9 SCC 514 **State of Punjab & Anr. Vs. Surjit Singh & Ors.** is neither here nor there for the reason as far as this Court is concerned an identical issue of payment of wages to contractually employed para-medics in various hospitals of the Government of NCT Delhi has attained finality and the law of precedent compels us to adopt the same view which was taken by a co-ordinate Bench of this court. This would mean that just as Victoria Massey and other persons who had approached the Tribunal earlier were required to be paid wages at the minimum of the scale which would include all allowances as are paid to regular employees, sans an annual increment, we direct that similar would be the position of the respondents; a view correctly taken by the Tribunal."*

5. At this stage, learned counsel for the petitioner submits that in the impugned Award, Industrial Adjudicator has not mentioned that the contractual workmen would not be entitled to increments and promotional benefits in terms of the Division Bench judgments of this court referred above. He submits that it is also not mentioned that in view of the judgment of ***Mahesh Bhardwaj's*** case (supra), the contractual workmen would be paid wages at the minimum of scale. He submits that impugned orders do not reflect as to how the outstanding amount mentioned in the notice dated 09.02.2018 is calculated.



6. In the circumstances, subject to deposit of 50% of the amount as reflected in the final notice under Section 136 dated 09.02.2018 with the Registry of this Court within six weeks, no coercive steps shall be taken against the petitioner in furtherance to the notices dated 22.01.2018 and 09.02.2018 .
7. Counter affidavit be filed within four weeks.
8. Rejoinder be filed within two weeks thereafter.
9. At this stage, learned counsel for the respondent submits that some litigation expenses may be directed to be paid to them.
10. In the circumstances, a sum of Rs.25,000/- be paid on account of litigation expenses to the respondent within four weeks.
11. List on 12.10.2018.
12. The competent officer of the petitioner shall appear in person with the original file in which decision was taken regarding the implementation of the Award.
13. *Dasti* under the signatures of the Court Master/Private Secretary.

VINOD GOEL, J.

FEBRUARY 23, 2018
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