

Delhi High Court

Sonia Gandhi & Ors. vs Govt. Of Nct Of Delhi & Ors. on 6 November, 2013

Author: Pradeep Nandrajog

\$~R-31A & 31B

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: November 06, 2013

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W.P.(C) 6798/2002

SONIA GANDHI & ORS.

..... Petitioners

Represented by:

Mr.G.D.Gupta, Sr.Advocate  
instructed by Mr.Vikram Saini,  
Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Represented by: Mr.S.N.Gupta, Advocate

W.P.(C) 8093-8102/2003

LINI JAMES & ORS.

..... Petitioners

Represented by:

Mr.G.D.Gupta, Sr.Advocate  
instructed by Mr.Vikram Saini,  
Advocate

versus

GOVT. OF NCT OF DELHI & ORS.

..... Respondents

Represented by: Mr.V.K.Tandon, Advocate with  
Mr.Yogesh Saini, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

PRADEEP NANDRAJOG, J. (Oral)

1. The record of this court would reveal that in the last 3 years it has decided at least 75 writ petitions concerning employees working under the

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Government of NCT of Delhi, the erstwhile Municipal Corporation of Delhi and now the three trifurcated Corporations as also the New Delhi Municipal Council on contract basis. The number of employees who were either writ petitioners or were respondents, depending upon whether their claims were disallowed or allowed by the Tribunal exceed the figure of 2000. These contract appointed employees were working in different departments and against various posts such as Craft Instructors teaching in ITIs; Para-medics of various categories such as Nursing Attendant, Laboratory Attendants,

Laboratory Technicians, Radiographers etc. and Junior Doctors. The issue pertained to entitlement for wages and other benefits. Whereas in some decisions the view taken by the Tribunal was that being appointed pursuant to a contract the contractual employees were bound by the letter offering wages as per the offer of appointment which was accepted and the view taken in some decisions by the Tribunal was that these employees appointed on contract would be entitled to full wages and other benefits as were extended to regular employees. For the latter view, the reasoning of the Tribunal was that a fraud was being played by resorting to contract appointment pending regular appointments and the contractual employment was extended from year to year and lasted for more than a decade.

2. The consistent view taken by this Court was that the contract appointed employees could not be equated with regular employees. Depending upon the pleadings and the office orders which were shown, different Division Benches directed emoluments to be paid and benefits extended; and we highlight that no decision passed by any Division Bench conflicts with another. Depending upon what orders passed by the Departments were shown to the Court, appropriate directions were issued.

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3. The writ petitioners herein are para-medics working as Nursing Attendants, O.T.Technicians, Laboratory Assistants, E.C.G.Technicians and Junior Radiographer in different hospitals established by the Government of NCT of Delhi. All of them render services as contractual employees and have continued to serve in said capacity for over a decade and a half.

4. They have a two-fold grievance against the impugned order dated September 27, 2002 passed by the Tribunal which is challenged in W.P.(C) No.6798/2002 and the order dated November 14, 2003 which is challenged in W.P.(C) No.8093-8102/2003.

5. Order dated November 27, 2002 would reveal that as regards claim for payments, the Tribunal directed a proper application to be filed. And as regards the claim for being extended the benefit of age relaxation when regular employment was resorted to, the Tribunal said that no such direction could be issued. The order dated November 14, 2003 would reveal that the Tribunal was not shown any document that the applicants before it in OA No.2004/2003 had sought benefit of age relaxation.

6. The grievance projected today before us is two-fold. Firstly that the petitioners are not being extended the benefit of the law declared by a Division Bench of this Court on May 22, 2009 in W.P.(C) No.8476/2009 Government of NCT of Delhi Vs. Victoria Massey as also the law laid down by this Court in its decision March 20, 2013 in W.P.(C) No.4641/2012 Government of NCT of Delhi & Anr. Vs. Suman Singh.

7. As we have noted above, a large number of Staff Nurses/para-medics working under the Government of N.C.T. of Delhi as also the Municipal Corporation of Delhi had filed Original Applications in which different view were taken by different Benches of the Tribunal requiring a few Original

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Applications to be referred to a Full Bench of the Tribunal, one of which

was OA No.1330/2007 Ms.Victoria Massey & Ors. Vs. Government of NCT of Delhi.

8. On July 23, 2008, deciding O.A.No.1330/2007 the Full Bench of Tribunal held that contract employees working in various hospitals established by the Government of NCT of Delhi as also Municipal Corporation of Delhi would be entitled to wages at par with the regular employees including increments.

9. The decision of the Full Bench of the Tribunal in Victoria Massey's case was modified by a Division Bench of this Court on May 22, 2009 when WP(C) 8476/2009 Government of NCT of Delhi vs. Victoria Massey was decided. The Division Bench held that contract employees would be entitled to wages in the minimum of the pay scale applicable to regular employees but not increments.

10. Challenge by the Government of NCT of Delhi to the decision of the Division Bench of this Court in Victoria Massey's case before the Supreme Court was unsuccessful.

11. Thus, on November 19, 2012 the Government of NCT of Delhi issued an order which reads as under:-

"GOVT OF NCT OF DELHI  
DEPARTMENT OF HEALTH & FAMILY WELFARE  
9th LEVEL, A-WING, I.P. ESTATE, DELHI SECRETARIAT,  
DELHI-110002.

No.F.1(550)/TRC/H&FW/2012/12026-12061 Dated 19/11/2012

ORDER

Approval of the competent authority is hereby conveyed for payment of the following remuneration to the paramedical staff engaged on contract basis by the Health & Family Welfare Department, Government of NCT of Delhi, with immediate effect:-

- |        |   |
|--------|---|
| (i)    | Basic Pay                                       |
| (ii)   | Grade Pay                                       |
| (iii)  | Dearness Allowance                              |
| (iv)   | Nursing Allowance (for Nurses)                  |
| (v)    | Patient Care Allowance ( for other than nurses) |
| (vi)   | Uniform Allowance                               |
| (vii)  | Washing Allowance                               |
| (viii) | House Rent Allowance                            |
| (ix)   | Transport Allowance                             |

Paramedical staff engaged on contract basis will get pay at the minimum of the pay band of the respective/corresponding post. They will not be entitled to increment in pay or promotion or regularization in service.

This issues with the concurrence of the FD vide U.O.No.624/DS-I dated 16.11.2012.

Sd/-

(SUDHIR KUMAR) SPECIAL SECRETARY HEALTH & FAMILY WELFARE"

12. In spite thereof the Government of NCT of Delhi continued to challenge before the Supreme Court orders passed by this Court that contract appointed employees were entitled to wages and allowances as per the decision of the Division Bench in Victoria Massey's case. Not only did the Supreme Court dismissed the Petition seeking Special Leave to Appeal but passed strictures against the Government compelling the Government of NCT of Delhi to issue an office order on September 03, 2012 which reads as under:-

"To, All the Head of Departments Govt. Of NCT of Delhi.

Sub: Filling of SLPs in the matters, already decided by Hon'ble Supreme Court of India involving the same issues in the similar circumstances.

Sir/Madam, It has been observed by the Hon'ble Supreme Court of India in SLP (Civil) No.18552/2012 titled GNCT of Delhi & Ors. vs. Raj Rani Chachra & Ors., decided on 09/08/2012, that the Govt. Of NCT of Delhi has chosen to file SLP in the matter involving the same issue under the same circumstances, although the similar SLPs already been dismissed by them (copy enclosed). The Hon'ble Supreme Court India has shown its annoyance in the matter and has directed that office to file affidavit stating the circumstances under which the above mentioned LPS was filed.

In order to avoid further annoyance of the Hon'ble Supreme Court of India, all the Head of Departments are advised to ensure that in future the matters, which have already been decided by the Hon'ble Supreme Court of India involving the same issue in the similar circumstances, the SLPs are not filed.

Yours faithfully, Sd/-

Encl: As above (Tarun Sahrawat) Addl.Secretary (Law, Justice & LA)"

13. The two above captioned writ petitions filed in the year 2002 and 2003 have remained pending, and thus as regards the payment which writ petitioners would be entitled to receive, we declare that the same have to be as per the law declared by the Division Bench of this Court on May 22, 2009 in W.P.(C) No.8476/2009 i.e. Victoria Massey's case.

14. But there are other issues which need to be sorted out.

15. Unfortunately, it was not brought to the notice of this Court when Victoria Massey's case was decided on May 22, 2009 that on November 29, 2000, pertaining to contract appointed para-medics. The Government of NCT of Delhi had issued an office order directing that they would be entitled to the following leave:-

- |     |               |                     |
|-----|---------------|---------------------|
| "1. | Casual Leave: | 8 days in an year.  |
| 2.  | Earned Leave: | 30 days in an year. |

- |    |                  |  |
|----|------------------|--|
| 3. | HPL:             | 20 days in an year.  |
| 4. | Paternity Leave: | 15 days.   |
| 5. | Maternity Leave: | 135 days for delivery.                                     |
| 6. | Weekly off:      | 42 days for abortion.                                      |
| 7. | Weekly off:      | as admissible to para-medical appointed on regular basis." |

16. On December 01, 2010, a circular was issued enclosing therewith 'Proforma of consent' to be accorded by those who were engaged on contract basis, condition No.10 of which read as under:-

"Leave admissible to the employees during the Contract Period:

i. Earned Leave will be granted @ two and half days per month of completed service.

ii. The leave will be granted in full days only. iii. Maternity leave as per maternity Benefit Act, 1961. iv. Leave encashment on termination of service or during the currency/enquiry of contract period is not allowed.

v. No other leave is admissible."

17. One Ms.Suman Singh, appointed on contract basis as a Laboratory Technician in the year 2001 when office order dated November 29, 2000 was in vogue had questioned her being compelled to accord consent as per proforma prescribed as per the circular dated December 01, 2010 containing above noted 5 conditions. She had succeeded before the Tribunal. The decision was challenged by the Government of NCT Delhi in W.P.(C) No.4641/2012 Government of NCT of Delhi & Anr. Vs. Suman Singh which was decided on March 20, 2013 by a Division Bench of this Court of which Bench one of us: Pradeep Nandrajog, J. was a Member of. Inter alia, in paragraphs 9 to 14 of the decision dated March 20, 2013, it was observed as under:-

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. Para- medical 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.

10. Just as all work and no play makes Jack a dull boy, all work and no rest would make an employee irritable and snappy. It is in the interest of the employer to ensure that the employee gets adequate rest because a stressed employee cannot give her best.

11. Number of non-working days are assessed all over the world by psychologist, psychiatrist, social scientist and others engaged in the science of human behaviour. Meaning thereby determining the number of working hours and work days of, is not a matter of an executive fait.

12. A lady contractual employee who is working for 11 years would certainly be entitled to maternity leave and so would a male contractual employee to paternity leave. Casual leave would also be a likewise entitlement and so would earned leave.

13. Begar is prohibited in this country by virtue of an Article 23 of the Constitution. This would include not making available leave facility, which we note has been made compensatory by the Government. In that, one can encash the leave. Besides, the Government cannot make a person work in a manner where the health of the person is adversely affected. In fact, jurisdictions abroad compel the employees to take leave and go on a holiday because scientific study show that stress is relieved when a person is away from the daily chores.

14. We note that 30 days earned leave, in the form of 2½ days earned leave for every 30 days service rendered is envisaged by the new condition and so is maternity leave. But we find it absurd that a weekly off is not envisaged. One cannot expect an employee to work 30 days each month without a break. Similarly, for unexpected contingencies in life, casual leave cannot be denied, which it is as per the new office order.

16. We take note of the decision dated May 22, 2009 in W.P.(C) No.8476/2009 as also the decision dated March 20, 2013 in W.P.(C) No.4641/2012 and direct that not only the writ petitioners in the above two writ petitions but additionally all contract appointed employees shall be paid wages by the Government of NCT of Delhi as per the decision of the Division Bench of this Court in W.P.(C) No.8476/2009 and shall be entitled to leave of all kind including maternity and sick leave in terms of the decision in W.P.(C) No.4641/2012.

17. On the subject of regularization the undisputed position which emerges is that over the last two decades i.e. 20 years the Government of NCT of Delhi has not assessed the man power requirement in its various departments and offices resulting in large scale contract appointment being resorted to.

18. With reference to para-medics, as the writ petitioners inform us, more than 50% para-medics working in the hospital to which the writ petitioners are attached are contract appointed para-medics.

19. For the reasons in paragraph 9 to 14 of the decision dated March 20, 2013 in W.P.(C) No.4641/2012, it needs to be highlighted that good governance would require the Government to ensure regular posts being sanctioned commensurate to the public need. It ill serves the interest of the society if requisite number of public posts are not sanctioned.

20. The Constitution Bench decision of the Supreme Court reported as 2006 (4) SCC 1 Secretary State of Karnataka & Ors. Vs. Uma Devi & Ors. held that creation of posts falls within the domain of the executive and Courts cannot issue directions to create post. The Bench also observed that in respect of irregular appointees who have worked for more than 10 years, as a one time measure, the Government should consider regularization.

21. Dealing with a camouflage appointment ostensibly through NGOs, but on lifting the veil, found to be a case of direct appointment by the Government of NCT Delhi of Laboratory Technicians and Radiographers at the Central Jail Tihar, a Division Bench of this Court of which one of us: Pradeep Nandrajog, J. was a Member of had directed the Government to assess requirement of para-medics at Tihar Jail keeping in view the fact that the Original Cadre was sanctioned when in the year 1996 Tihar Jail had a stated capacity of 3600 inmates which grew to 11000 inmates as of the year 2010. The Division Bench directed a one time scheme of regularization to be brought into force on the subject of age bar, the Division Bench noted that the contract appointed employees could not be visited with a disability due to unfair labour policies adopted by the Government.

22. Accordingly, we issue another direction and simultaneously dispose of the two writ petitions. The direction would be that the Government of NCT Delhi would carry out a manpower requirement assessment in all its departments keeping in view the fact that the population in Delhi has crossed 1.7 crore persons. Such number of posts shall be sanctioned as are necessary to provide services to the citizens of Delhi. A one time policy of regularization shall be framed and existing rules pertaining to service in different departments shall be amended. Existing contractual employees shall be considered for appointment to these new posts as per a policy framed.

23. We note that as recent as on October 28, 2013, deciding W.P.(C) No.6260/2013 UPSC Vs. Dr.Akshay Bahadur & Ors., we had taken note of the fact that the Government of NCT of Delhi had tackled the problem of 529 contract appointed Junior Specialists and Doctors by repealing the existing Delhi Health Services (Allopathy) Rules with the Delhi Health Services (Allopathy) Rules, 2009. In the Schedule of Posts, in addition to the existing sanctioned posts 529 posts were added and Rule 6 of the new Rules stipulated that said posts would be treated as on the date of the constitution of the cadre and that 529 contract appointed Junior Specialists and Doctors would be appraised for purposes of their suitability by UPSC and appointment made to the cadre post.

24. We see no reason why Government of NCT Delhi should not do so for other category of posts.

25. To summarize, the writ petitions stand disposed of issuing directions as per paragraphs 13, 16 and 22 above.

26. No costs.

(PRADEEP NANDRAJOG) JUDGE (V. KAMESWAR RAO) JUDGE NOVEMBER 06, 2013 mamta