

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

+ **W.P.(C) 191/1998**

% **Date of decision: 7th April, 2010**

GOVT. OF NCT OF DELHI Petitioner
Through: Ms. Latika Chaudhary, Advocate

Versus

RITA LUTHRA & ORS. Respondents
Through: Mr. Anuj Aggarwal & Ms. Swarnima
Aggarwal, Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

RAJIV SAHAI ENDLAW, J.

1. The petitioner Government of NCT of Delhi in this writ petition impugns the order dated 19th December, 1996 of the Labour Court on an application by the respondents 1 to 38 and three others under Section 33 C (2) of the I.D. Act. The respondents at the time of filing the application under Section 33 C (2) were working as Auxiliary Nurse or Mid Wives with the dispensaries / hospitals of the petitioner. It was their case that they were entitled to recover from the petitioner employer nursing allowance, uniform allowance and washing allowance as per the orders of the Government of India from time to time applicable to them. The petitioner contested the said application pleading that the respondents were not

entitled to uniform allowance and washing allowance on the ground that they were not wearing any specified uniform and the said allowance were not admissible to them. As regard the nursing allowance, the plea of the petitioner was that the said allowance was permissible to certain categories of employees and not to all workmen. The Labour Court however held that it was admitted in the reply of the petitioner that the three other applicants besides the 38 respondents herein were entitled to the nursing allowances.

2. The Labour Court disposed of the application under Section 33C(2) on the basis of admissions of both the parties. It was held that the uniform allowance and washing allowance was applicable only to those nursing personnel who were required to wear uniform in accordance with the standing orders or instructions of the government; the respondents failed to show any standing order or instruction vide which they were required to wear uniform. It was thus held that they were not entitled to uniform or washing allowances. It was further held that it was an admitted fact that the respondents work as nursing personnel and as per government instructions of 11th February, 1987, with effect from 1st October, 1986 the respondents were entitled to nursing allowances at Rs.150/- per month. The Labour Court accordingly computed the entitlement of each of the 38 respondents herein and the other three applicants to the nursing allowances.

3. Aggrieved therefrom the present writ petition was preferred. This Court vide ex parte order dated 14th January, 1998 stayed the implementation of the order. However, subsequently, the petitioner was directed to deposit a sum of Rs.3,00,000/- in this Court and which was ordered to be distributed to the

respondents. On enquiry, the counsel for the petitioner states that in terms of the order impugned in this petition a sum of over Rs.5,00,000/- was due to the respondents and this Court as a condition for stay of the order had directed disbursement of Rs.3,00,000/- only to the respondents. The balance amount remains to be paid. It is also informed that the order in this petition will also have a bearing on the payment of nursing allowance to the respondents for subsequent period.

4. It appears that even though before the Labour Court, the entitlement of the other three applicants besides the 38 respondents herein was not disputed but taking advantage of the said order in these proceedings payment was not made to them also. They applied to this Court and the petitioner agreed to make payments to them. The counsel for the petitioner today states that the payments have been duly made to the other three applicants before the Labour court and who are not respondents herein.

5. The claim of the respondents to the nursing allowance is on the basis of the order dated 11th February, 1987 of the Ministry of Health & Family Welfare and the relevant portion whereof is as under:-

“Sub: GRANT OF NURSING ALLOWANCE TO THE
NURSING PERSONNEL.

Sir,

The question of giving an appropriate allowance to the nursing staff in view of their multifarious duties and responsibilities has been engaging the attention of the Government for some time. After careful consideration the President is pleased to sanction a Nursing Allowance @ Rs.150/- per month to the nursing personnel of all categories at all levels, working in Central Government Hospitals / Institutions /

Hospitals run by the Delhi Administration including Municipal Corporation of Delhi and New Delhi Municipal Committee and centrally funded autonomous bodies like, All India Institute of Medical Sciences, New Delhi, Post Graduate Institute of Medical Education & Research, Chandigarh etc.

2. These orders will take effect from 1st October, 1986”.

6. The contention of the counsel for the petitioner is that in a proceeding under Section 33C(2) of the Act, upon the entitlement of the respondents to the nursing allowance being disputed by the petitioner, the Labour Court had no jurisdiction to adjudicate the entitlement of the respondents and thereafter grant the relief to the respondents. Reliance is placed on *D. Krishnan Vs. Special Officer, Vellore Cooperative Sugar Mill* (2008) 7 SCC 22 laying down that proceedings under Section 33C(2) are in the nature of execution proceedings and presuppose existence of an adjudication of determination of right which has to be enforced; where there has been no adjudication of a right, such right cannot be adjudicated in a proceeding under Section 33C(2) and if the Labour Court does so it is clearly beyond its jurisdiction. Reliance is also placed on *Municipal Corporation of Delhi Vs. Ajudhiya* WP(C) No.1588/1999 decided by a Single Judge of this Court on 11th October, 2006 to the same effect. Post hearing, a synopsis of submissions is filed wherein reference is also made to *Union of India Vs. Babu Lal* 1997 (41) DRJ 106 and *Union of India Vs. O.P. Singh* 39 (1989) DLT 538.

7. Per contra, the counsel for the respondents relies on a Constitution Bench judgment in *The Central Bank of India Ltd. Vs. P.S. Rajagopalan* AIR 1964 SC 743. It was held therein that on a fair and reasonable consideration of

Section 33C(2), it is clear that if a workman's right to receive the benefit is disputed, that may have to be determined by the Labour Court. It was further held that before proceeding to compute the benefit in terms of money the Labour Court inevitably has to deal with the question as to whether the workman has a right to receive that benefit; if the said right is disputed, the Labour Court must deal with that question and decide whether the workman has the right to receive the benefit or not. It was further held that notwithstanding Section 36A in the I.D. Act providing for reference to the Labour Court for interpretation of an award or a settlement agreement, the Labour Court under Section 33C(2) also can interpret the settlement agreement / award. Reference is also made to ***Jeet Lal Sharma v. Presiding Officer, Labour Court*** 84 (2000) DLT 706 where a Single Judge of this Court held that the Labour Court in exercise of jurisdiction under Section 33C(2) has the jurisdiction to determine the question, whether the right exists or not and if the existence of right is established, to then proceed to compute the benefit flowing therefrom. The counsel for the petitioner in the synopsis of submissions has contended that the Supreme Court in ***The Central Bank of India Ltd.*** (supra) ultimately remanded the matter for decision after recording evidence. That is however immaterial; all that it indicates is that in a Section 33C(2) proceeding, if necessary to determine entitlement, evidence can be taken.

8. Perusal of the order impugned in this petition would show that the Labour Court has proceeded on the admissions of the petitioner of the right of the respondents to the nursing allowance. I have enquired from the counsel for the petitioner whether it is the case of the petitioner in the memorandum of petition that it had not made any such admission. The answer is in the negative. The

counsel fairly states that the challenge to the order is solely on the premise of the Labour Court having no right to determine the right of the respondents to nursing allowance, once disputed by the petitioner.

9. The order dated 11th February, 1987 of the Government of India qua nursing allowance is in the nature of a settlement agreement or an award. It records that the question of grant of such allowances had been engaging the attention of the government for some time. The same normally happens when a demand is made by the workmen and considered by the employer. In the present case the petitioner employer in issuance of the order dated 11th February, 1987 appears to have acceded to the demand for nursing allowance. De-hors the admission recorded in the impugned order, I find that even if the said order was to be interpreted by the Labour Court, the same was permissible under Section 33C(2) of the Act. Though in view of the Constitution Bench Judgment (supra) need is not felt to deal with the judgments cited by the counsel for the petitioner but I may notice that the facts in both the said judgments are such as not calling for interpretation of any government order or settlement agreement or award but requiring adjudication of disputed factual claims. In *D. Krishnan* (supra), the claim was on the basis of equal pay for equal work. In *Ajudhiya* (supra) the claim was of the daily rated workers for pay scales as the regular workers. It was in such facts that the courts held that the adjudication of such claims could not be done under Section 33C(2). However, the present case is entirely different. The respondents claiming to be the beneficiaries under the order dated 11th February, 1987 sought computation of the nursing allowance to which they had become entitled there under. Even if it was to be held that it was the case of the petitioner

that the said order did not apply to the respondents, the Labour Court in exercise of jurisdiction under Section 33C(2) was fully entitled to interpret the said order and determine whether the same applied to the respondents or not.

10. To satisfy the judicial conscience, the counsel for the petitioner was permitted to argue and show as to how the respondents are not entitled to the allowance under the said order.

11. The counsel for the petitioner has urged that the order grants nursing allowance only to the nursing personnel working in the Central Government hospitals, institutions etc. It is contended that the respondents work in dispensaries though as Mid Wives / nurses and are thus not covered by the said order. It is further urged that the work of nurses/mid wives in dispensaries is entirely different from work of nurses in the hospital; the nurses in the dispensaries are required to only administer injection etc. and are not required to care for the patient as in the hospital.

12. I am unable to accept the aforesaid contention. The subject of the order is “grant of nursing allowance to the nursing personnel”. It does not make any distinction between nursing personnel in the hospital and in the dispensaries. Similarly the body of the order talks of the nursing staff in general and not of nursing staff working in hospitals only. Again reference is made to the “nursing personnel of all categories at all levels.” The contention of the counsel for the petitioner that the reference is to nursing personnel of all levels working in hospitals only is not acceptable. The reference is not only to hospitals but also to institutions. Hospital is defined in Shorter Oxford English Dictionary as an

institution or establishment providing medical or surgical treatment for the ill or wounded or sick or aged or infirm persons. This definition will cover even the dispensaries in which the respondents are employed. It appears that while issuing the aforesaid order there was no decision to restrict the benefit thereof to nursing personnel in hospitals where patients may spend the night also or that there was any intent to exclude dispensaries where patients generally do not spend the night. Moreover, there is no hard and fast rule. Several dispensaries also have facilities for admitting a few patients overnight. In fact a visit to the official website of the Ministry of Health & Family Welfare dealing with Central Government Health Scheme shows that dispensaries are described as including domiciliary care. The very fact that nursing personnel are employed in the dispensaries also shows the need for nursing care therein also. I thus find that even otherwise no error has been committed in allowing the said allowance to the respondents also.

13. The work of a nurse especially in government hospitals/dispensaries is extremely arduous in nature. Nursing is a noble profession. It is not merely an occupation to earn a living but a benevolent service. The nursing of the sick, said Florence Nightingale is a vocation as well as a profession. Nurses live in the midst of distressing atmosphere and the Tribunals / Courts cannot shut their minds to the said reality while dealing with the issues relating to the nursing profession.

14. I therefore do not feel the need for any further enquiry into the differences between the nurses in hospitals and nurses in dispensaries. Neither any pleadings have been made in this behalf nor any material placed before this Court. The bare statement that the order dated 11th February, 1987 (supra) applies to nurses in

hospitals only and not to nurses in dispensaries is found to be without any merit and fallacious.

15. There is another aspect of the matter. The petitioner has already been made to pay a substantial amount. While allowing such payment there was no direction that the said amounts shall have to be refunded by the respondents. Considering the strata of the social and economic ladder occupied by the respondents, it would be unjust to direct them to refund the said amounts. A large number of respondents may have already retired from their jobs by now. For this reason also, the present is not a fit case for exercise of discretionary jurisdiction.

16. The petition therefore fails and is dismissed with the direction to the petitioner to, within six weeks hereof, pay the balance amount due in terms of the order of the Labour Court to the respondents. No order as to costs.

RAJIV SAHAI ENDLAW, J

APRIL 07, 2010

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