



GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI
DIRECTORATE GENERAL OF HEALTH SERVICES
F-17, KARKARDOOMA, DELHI-110032
(CARE-TAKING BRANCH)

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File No: 9 / 56 /DGHS/CT/HQ/2020-21/

1697-1702
SPEAKING ORDER

Dated:- 12/2/2021

Sub:- Reply to representation of Sh. Sushil Kumar & Ors, as per order dated 08.10.2020, passed by Mr. Justice L. Narasimha Reddy, Hon'ble CAT, Delhi in ref. to M.A. No. 1639/2020 & O.A. No. 1304/2020.

1. Whereas, as per order dated 21.07.1999, Administrative Reform Department, GNCT of Delhi regarding engaging Private Securities and Sanitation Services under Govt. of NCT of Delhi & Order No. F. 6(10)/Cont.-"G-D"/PHC/TRC/2003/Part-I/7860-96 dated 26.11.2007, states "Future vacancies of Nursing Orderlies and Sweeper/Safai Karamcharis in respect of Govt. of NCT of Delhi hospitals/medical Institutions, established prior to 1970 are to be filed-up on outsourcing basis. Accordingly, these services/hiring of manpower i.e. Nursing Orderlies & Sweeper-cum-chowkidaar were deployed/engaged through Pvt. Agency i.e. Balaji Enterprises, M/s Xeam Venture Pvt Ltd. in past. Due to default of outsourced agencies, the Directorate, being the Principal Employer, started to pay wages directly to the respective workers, as per Contract Labour (Regulation & Abolition) Act, 1970.
2. Meanwhile, Delhi Govt. has passed a Cabinet Decision 2323 dated 22.03.2016 conveyed vide letter no. F. 3/3/2016/GAD/CN/dsgadiii/1516-1526 dated 30.03.2016, regarding Payment to Contractual/Outsourced Workers in different Department/organizations under GNCTD. *The Cabinet Decision 2323, dated 22.03.2016, in lieu of Sr. No. 6, which states as follows:*
 - (a) *If the contract is cancelled, immediate steps as warranted should be taken in that case to invite fresh tenders/Bids and a new contractor/firm finalized.*
 - (b) *For work already rendered by a workers(s), the Department may make payment of the due amount of wages to the workers(s) directly and adjust it against bills that would otherwise be due to the contractor.*
 - (c) *In the interim and till a new contractor is selected, the Department shall take all the concerned willing workers into its fold as daily wage workers. This be done for a maximum period of 89 days in one go and only by way of interim measure.*
3. Whereas, in compliance to Cabinet Decision 2323, dated 22.03.2016 F. 3/3/2016/GAD/CN/dsgadiii/1516-1526 dated 30.03.2016, this Directorate has took all willing outsourced worker on daily wage basis as an interim measure and extended their services time to time, due to non finalization of tender.

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4. Whereas, these workers approached Hon'ble CAT in multiple O.A. 645/2017, 446/2018, 2808/2017, C.P. No. 445/2018 etc, which were clubbed by the Hon'ble CAT, being similar applications and dismissed on 10.01.2020 due to no merit in those O.As.
5. Whereas, these workers again approached Hon'ble Delhi High Court in WP(C) 842/2020, CM APPL. 2649/2020 & 4825/2020, Sushil Kumar AND ORS & contested. The Hon'ble High Court passed an order dated 06.02.2020, at point no.18 **"we find no merit in the petitioners' contention that they must be deemed to have become contractual employees of the respondents, which contention we hereby reject. However, we direct that the Delhi Government is bound to comply with the Cabinet Decision No. 2323 dated 22.03.2016 and to ensure that all decisions contained in the Cabinet Decision dated 22.03.2016 shall be scrupulously and punctually enforced, in order to secure the rights of contractual employees, whether hired directly by the Government or engaged by outsourcing through private firms/agencies/contractors."**
6. Whereas, the aforesaid workers approached Hon'ble CAT, where Hon'ble CAT passed an order dated 08.10.2020 in ref. to O.A. No. 1304/2020. Disposed off with the direction, "leaving it open to the applicants to approach the respondents with comprehensive representation. It is needless to mention that as and when such a representation is made, the respondents shall pass orders on its own merits".
7. Whereas, that aforesaid workers represented to the department on dated 30.12.2020 & 18.01.2021.

Whereas, this Directorate in lieu of representations received hereby informs as follows:-

- a) Whereas, the applicants have been deployed initially through Outsourced agencies and in compliance to **F. 3/3/2016/GAD/CN/dsgadiii/1516-1526 dated 30.03.2016** (Cabinet Decision 2323) & Labour Law, the Directorate being the Principal Employer, started to pay wages to applicants as per minimum wages Act. As per Consolidated guideline/instruction reg. casual workers vide OM No. 49014/5/2019-Estt.(C), DoPT, GOI, dated 13.02.2020, **Point no. 3 (LEAVE):**
- 3.1 The casual workers may be given one paid weekly off after six days of continues work.
- 3.2 The payment to the casual workers may be restricted only to the days on which they actually perform duty under the Government with a paid weekly off as mentioned above. In addition, they will also be paid for a National Holiday, if it falls on a working day for the casual workers. **[Ref. O.M. No. 49014/2/86-Estt(C) dated 07.06.1988].**
- 3.3 It has further been decided that casual workers working in Offices having a five day week may be allowed one day paid weekly off provided they have worked for a minimum of 40 hours during the said work. **[Ref. O.M. No. 49019/1/95-Estt(C) dated 14.06.2016].** Accordingly "the applicants are being given one paid weekly off".

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Whereas, the applicants demand for grant of minimum wages of the scale of regular employee in the same post, cannot be granted. In this regard, it is informed that vide Order No. F. 6(10)/Cont.-"G-D"/PHC/TRC/2003/Part-I/7860-96 dated 26.11.2007, states "Future vacancies of Nursing Orderlies and Sweeper/Safai Karamcharis in respect of Govt. of NCT of Delhi hospitals/medical Institutions, established prior to 1970 are to be filled-up on outsourcing basis & OM dated 30.04.2010 No. AB-14017/6/2009-Estt (RR), DoPT, Govt. of India, there will be no further recruitment in Group 'D'.

- b) Whereas, the applicants had been deployed through outsourced Agencies, and are thus being paid, in compliance to State Labour Laws and DoPT guidelines.
- c) Whereas, the applicant had been deployed through outsourced agency and are performing duties as per terms & conditions of the Tender for Hiring of Manpower Services through Outsourced Agencies, thus Honorable Supreme Court Judgments, does not cover them.
- d) Whereas, the wages paid to these respective workers are in compliance of State Labour Laws.
- e) In view of fore going paragraphs "a to d", it is informed that there is no violation of Article 14, 16 and 21 of the Constitution of India.
8. Whereas, this Directorate has finalized the tender in r/o
- Sanitation Services
 - Security Services
 - Nursing Orderly
 - Sweeper-cum-Guard (at the level of uploading of technical qualification on GeM portal).

Dr. Nutan Mundeja

Director General Health Services

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Copy to:-

1. All applicants (Nursing Orderly/Sweeper-cum-chowkidaar)

Sushil Kumar, SCC, R/o 6671, Nabi Karim, Pahar Ganj, New Delhi-55

Copy for information:

- Pr. Secretary, H&FW, 9th Floor, Govt. of NCT of Delhi, Delhi-02
- Advocate Ms. Esha Mazumdar, Addl. Standing Counsel, Govt. of NCT of Delhi.
- PS to ADHS (HQ/Vig.)
- In-Charge (Court Case Cell)
- Guard file