
(2006) 09 DEL CK 0158

In the Delhi High Court

Case No : Writ Petition (Civil) No's. 16499-16502 of 2004

Dalip Kumar Jha and Others

APPELLANT

Vs

New Delhi Municipal Council

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

New Delhi Municipal Council Act, 1994 — Section 33, 34, 36

Citation : (2006) 09 DEL CK 0158

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Kuldeep Kumar, for the Appellant; Jyoti Singh and Ankur Chibber, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—The petitioners-Mr.Dilip Kumar Jha, Mr.Javed Akhtar, Mrs.Nazima Farhat and Mrs.Seema Aggarwal-seek a mandamus directing the respondent New Delhi Municipal Council (in short "NDMC") to regularize their services as TGTs and a writ prohibiting the respondent from terminating their services. The petitioners were appointed Teachers on contract basis to the posts of TGTs on different subjects on the basis of an advertisement issued in the newspaper. The opening words of the advertisement said "Applications are invited on plain paper for appointment on CONTRACT BASIS on the following posts to be filled in for NDMC schools. The consolidated salary will be paid as per guidelines of NDMC." The petitioners applied pursuant to this advertisement. They received appointment letters on 6.1.2003 whereby they were appointed "on contract basis on a consolidated salary mentioned against each for the period ending 31.3.2003 or till the regular selection is made whichever is earlier and posted in the schools as per details below." One of the terms of appointment mentioned at the bottom of the letter was "Their appointment on contract basis will not confer any claim for their appointment on regular basis." This appointment appears to have been renewed on similar conditions by subsequent orders of some nature. The

petitioners contend in the petitions that they have been continuously working for the respondent with effect from their initial appointments although there were arbitrary brakes in their service. It is also contended that the respondent requires teachers on regular basis and, in fact, had initiated process of regular recruitment in the year 1994 but still the respondent chose to appoint teachers on contract basis. The petitioners expressed their apprehension that the respondent is going to appoint TGTs and PGTs for its schools on regular basis from outside which, according to the petitioners, is illegal and unjustified. The petitioners then say that certain other teachers similarly placed, appointed on ad hoc basis and continued with arbitrary brakes, filed a WP(C) No. 4247/1998 and in that writ petition an order staying their termination has been passed. The petitioners have mentioned other writ petitions namely WP(C) Nos. 7913/2001 and 6371-76/2004 in which similarly placed Teachers have been given some interim protection against termination of their employment. The petitioners have claimed the reliefs, mentioned above, on the ground that the proposed action of the NDMC to appoint teachers on regular basis in place of the present petitioners is violative of Articles 14 and 16 of the Constitution of India. The writ petitions are opposed by the NDMC, which has filed a counter affidavit contending that the petitioners had agreed to the terms and conditions of appointment which categorically said that their appointment was purely contractual without giving them any right to the post and that the relief prayed for cannot be given to them.

2. learned Counsel for the petitioners made an attempt to argue that Sections 33, 34 and 36 of the NDMC Act give power to create temporary posts and make appointment against those temporary posts and, Therefore, there was nothing irregular in the appointment of the petitioners on contract basis. Reliance is also placed on the judgment of the Supreme Court in the case of Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka and Ors. 1992 SC 677 in which the Supreme Court has made orders for regularization of certain temporary employees.

3. On behalf of the respondent it is contended that all the writ petitions mentioned by the petitioners have since been decided. These writ petitions have been dismissed and the LPAs against the dismissal order as well as the SLP filed against those orders in LPAs have also been dismissed. The judgment in LPA Nos.653-93/2005 dated 6.1.2006 was also passed on similar writ petitions filed by the teachers of the respondent appointed on contract basis. A Division Bench of this Court held that these contract employees had no right of regularization. Reliance has been placed by the Division Bench on the judgment of this Court in the case of Ravinder Kumar v. The Director, AIIMS and Anr., in LPA 2566/2005 decided on 07.12.2005. The Division Bench also held, inter alia, that merely because in some cases the Supreme Court has directed regularization of certain employees, the same will not amount to a precedent, as a mere direction without laying down any principle of law is no precedent. The single Judge of this Court has also decided WP(C) Nos.6335-45/2004 and CM 10859/2004, as mentioned by the petitioners in their writ petitions. The judgment of the single Bench dated

11.2.2005 is perused by this Court (copy supplied by counsel for the respondent). The single Bench held that no right for regular employment has enured to the petitioners. The writ petitions decided by the common judgment were dismissed. It may be said here only that the respondent had given an assurance to the Court that the respondent was not proposing to terminate the services of the petitioners before the expiry of their respective contract periods and they had no intention to replace the petitioners by other teachers who would be engaged on contractual basis and that consequent upon recruitment by means of regular selection process through D.S.S.S.B in the event the petitioners become surplus, the policy of last come first go shall be adhered to.

4. The controversy as to whether the contractual employees can be subsequently regularized has been set at rest by the Constitution Bench judgment of the Supreme Court in the case of Secretary, State of Karnataka and Ors. V. Umadevi and Ors. JT 2006(4) 420. The Supreme Court after examining all the previous judgments on that point has held that such employees were not entitled to regularization irrespective of the length of their service. The very prayer of the petitioners is in the teeth of this Constitution Bench judgment of the Supreme Court. The petitioners, Therefore, cannot expect a relief from this Court in the terms in which they have desired. The petitioners have been continuing in employment despite the conclusion of the contract period by virtue of an order of injunction passed by this Court on 12.10.2004. There is no plea that after 12.10.2004 any fresh appointment has been issued to the petitioners.

5. Although the respondent/NDMC has not given any assurance to this Court in this case as it had given in the cases WP(C) Nos.6335-45/2004 and CM 10859/2004, it will only be fair to direct the NDMC to adhere to the same policy for the present petitioners also.

6. Writ petitions are accordingly dismissed, subject to the direction that the respondent will not replace the petitioners with other contractual employees and in case by virtue of regular appointment the petitioners become surplus, the respondent will follow the rule of last come first