

(2001) 09 DEL CK 0052

In the Delhi High Court

Case No : C.W. No. 5719 of 1999 and C.M. No's. 10358 of 1999 and 6889 of 2001

Darshna and Others

APPELLANT

Vs

Delhi Police Public School

RESPONDENT

Date of Decision : 26-09-2001

Acts Referred:

Constitution of India, 1950 — Article 12
Delhi School Education Rules, 1973 — Rule 105

Citation : (2001) 09 DEL CK 0052

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Sandeep Sethi and Ritika Sawhney, for the Appellant; R.K. Maheshwari and I.B. Gaur, for the Respondent

Judgement

Mukundakam Sharma, J.—The present writ petition pertains to the issue of regularisation of the services of the petitioners. In the writ petition there is also a further prayer for a direction to the respondents to grant parity of pay scales to the petitioners with the regular appointees prescribed in the Schools run by the Delhi Administration.

2. The petitioners were appointed to work in the respondent No. 1/School as sweeper, chowkidar, peon and two of them were appointed as driver and helper of the school bus. Their appointment was purely on part-time ad hoc basis with a stipulation that their services could be terminated without any prior notice. On the date of filing of the writ petition Shri Raju Singh, Sweeper had worked for about 8 years whereas, the petitioner No. 1 joined the School in the year 1992, petitioner No. 14 in the year 1993, petitioner No. 4 in the year 1995, petitioners No. 2 and 5 in the year 1997 and petitioners No. 6 and 7 in the year 1998. The petitioner No. 11 was appointed as the driver of the bus whereas the petitioner No. 12 was the helper of the bus and they were engaged in the year 1996 and 1992 respectively. It is also brought to my notice that the petitioner No. 8 has already left the School whereas the petitioners No. 13, 10 and 9 were engaged

by the respondent No. 1/School in the years 1996 and 1997 respectively.

3. As the petitioners apprehended termination of their services they approached this Court with the present writ petition. While issuing notice, it was ordered that status quo with regard to the services of the petitioners should be maintained. However, during the pendency of the writ petition, the petitioner No. 8 has left the school and, Therefore, so far he is concerned, no cause of action survives.

4. It was contended by the counsel appearing for the petitioners that the respondent No. 1/School sought to exploit the petitioners by treating them as part-time and ad hoc employees and by not paying them regular scale of pay and other benefits at par with employees of their status in other school run by the under the control of the Director of Education. In support of his contention, the learned counsel referred to and relied upon the provisions of Rule 105 of the Delhi School Education Rules, 1973. According to him the Rule confers an indefeasible right in the petitioners to be regularised automatically on the expiry of the First year of appointment or, in case prior approval of the Director is obtained by the School for extension of probation, upon expiry of he extended period of probation. He also stated that since all the petitioners have completed the first year of appointment successfully, they should be deemed to be confirmed in the said post and, Therefore, there could not have been any proposal for termination of the services of the said petitioners.

5. Counsel appearing for the petitioners also submitted that the respondent No. 1/School is a recognised School by the Director of Education and, Therefore, the provisions of Chapter VIII and Rule 105 of the Delhi School Education Rules apply to each of the employee of the Schools howsoever appointed and for whatsoever time period, which according to the counsel is clear from the expressions used in the said Rule 105, particularly the words "every employee". It was submitted by the counsel that since the petitioners have been working continuously for a long period of time without any break and in permanent post, they should be deemed to be confirmed in their post and, Therefore, they should be paid regular pay scales as is being paid to every confirmed employee.

6. Counsel appearing for the respondents No. 1 and 2, on the other hand, submitted that the respondent No. 1/School is not a "State" within the meaning of Article 12 of the Constitution of India and, Therefore, the present writ is liable to be dismissed as not maintainable, particularly, in view of the judgment of the Supreme Court in Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], . It was also disputed by the counsel appearing for the respondents No. 1 and 2 that all the petitioners have been working for ten years as alleged in the writ petition. It was submitted by him that all the petitioners were engaged on part-time and ad hoc basis and ther service could have been terminated at any point of time. It was submitted that the petitioners were not governed by the provisions of the Delhi Education Act and the rules framed therein and they are in the nature of contract employees hired to do work under the terms of contract. It was also submitted

that the petitioners could be considered for regular appointment subject to availability of the vacancies. In this connection, counsel referred to the norms laid down by the Director of Education for having minimum class IV employees for recognised school and also providing guidelines for observing the part-time employees.

7. It was also submitted that the petitioners were not working full time as the services of the petitioners were mainly required only before the school starts and after the school is over and, Therefore, not only the timings were for a specified period but, their services were also part-time and they were not doing full time work. He also contended that reliance sought to be placed by the counsel appearing for the petitioners on Rule 105 of the Delhi School Education Rules is misplaced. According to hi, the said provision would be applicable to such appointments which are made against vacant regular posts and in accordance with the norms laid down by the Department, as full time employees but as the petitioners were appointed on part time ad hoc basis and as they were purely temporary employees and since their appointments were de hors the Rules, the provisions of Rule 105 are not applicable to the petitioners.

8. In the light of the aforesaid submissions of the counsel appearing for the parties, I have perused the records.

9. It is not disputed that in terms of the appointment letters of all the petitioners, their appointment was purely on part-time and ad hoc basis and their services were liable to be terminated without any prior notice. Submission of the counsel appearing for the petitioners was that the said appointments in any case would be appointments within the framework of the Delhi School Education Act and the rules framed therein and, Therefore, the provisions of Rule 105 would be applicable to the case in hand. The Delhi School Education Act and the rules framed therein do not envisage part-time and ad hoc appointment and what it envisages is appointment through the recruitment process as prescribed under the said provisions of the said Act and the rules framed there under which appointment should also be with the prior approval of the Director of Education. While appointing the petitioners, the usual and regular process of selection was not followed and the petitioners were appointed de hors the Rules. The petitioners accepted the said appointment and continued to work with the respondent No. 1/School on the same terms and conditions. It is, however, true that at least one petitioner had served the School for about ten years and the remaining petitioners had served about 8 to 2 years.

10. The contention of the counsel appearing for the respondents No. 1 and 2 was that so far the driver and the helper of the bus are concerned, their services are no longer required as the school has done away with the school bus after the judgment of the Supreme Court in the case of CNG buses.

11. Rules 105 of the Delhi School Education Rules to which reference was made, by the counsel appearing for the petitioners deals with the right to regularisation

on the expiry of the first year of appointment or in case prior approval of the Director is obtained by the School for extension of probation, upon expiry of the extended period of probation. It was submitted on behalf of the petitioners that since the respondent No. 1/School never sought permission from the Director of Education for extension of probation in respect of any of the petitioners, consequently by operation of Rule 105, on the expiry of one year from the respective date of appointment each of the petitioners stood automatically and statutorily confirmed in their respective posts. I am, however, unable to accept the aforesaid contentions as the petitioners were not appointed in accordance with the recruitment procedure prescribed under the Act and the rules framed there under. They were appointed on part-time and ad hoc basis and no approval was also taken from the competent authority at the time of their appointment. They continued to work in the same capacity and, Therefore, it cannot be said that the said appointments were made in accordance with the provisions of the Act and the Rules and, Therefore, on expiry of one year period they should be deemed to be confirmed. The said appointment was de hors the Rules, and, Therefore, the petitioners cannot be treated as confirmed and regular employees. While coming to the aforesaid conclusion, I draw support from the decision of the Supreme Court in High Court of Madhya Pradesh thru. Registrar and Ors. v. Satya Narayan Jhavar; reported in AIR 2001 SCW 3112. In the said decision, it was held that continuation of probation of expiry of maximum period of probation cannot and would not amount to deemed confirmation. In the said case, the Supreme Court has negated the concept of confirmation by implication. IN this connection, reference may be made to the decision of the Supreme Court in 1996 VIII AD 680 (SC) . In the said decision, the Supreme Court had held that unless the employees are appointed on regular basis, according to Rules, after consideration of the claims on merits, there is no question of regularisation of the services. It was further held that persons appointed as part-time employees de hors the rules even though might be working regularly for a long time would not be entitled to regularisation, as appointment on regular basis after selection, according to rules, is a condition precedent.

12. Besides, a specific stand has been taken by the respondents that so far the bus driver and bus helper are concerned, their posts stands abolished as the respondent/school has discontinued the bus service in view of the policy of the Government and directions of the Apex Court that only CNG buses are to ply. Therefore, the services of the said two employees would stand terminated due to abolition of posts and no interference could be made to such termination which is due to abolition of posts.

13. So far the appointees of 1998 are concerned they have worked for a very short period when they approached this Court by filing the present writ petition where notice was issued on 21st September, 1999. So far those employees are concerned, they have no right and title to claim for their regularisation under any circumstance. A stand is also taken by the respondents No. 1 and 2 that all the petitioners were in fact used only for part-time work. Reference was also made to

the norms fixed by the Director of Education wherein the Director has prescribed a number of minimum class IV staff to be had in a recognised school. It is the specific case of the respondents that the petitioners herein are in excess of the aforesaid norms fixed by the director of Education.

14. Counsel appearing for the respondents No. 1 and 2 also sought to rely upon the notification dated 7th June, 1994, issued by the Government of National Capital Territory of Delhi, Directorate of Education. The said communication relates to part-time workers working against sanctioned part-time posts. The said letter was addressed to the Dy. Directors of Education. It was stated therein that mere inclusion of the names of the part-time workers in the seniority list would not confer any right upon the part-time worker for regularisation of his/her services and that the same would be done strictly in accordance with the provisions of recruitment rules approved for eligible Group "D" posts after due verification that the part-time workers has been engaged through Employment Exchange against a sanctioned part-time post and paid out of contingency fund. Although the aforesaid instructions may not be strictly applicable to the respondent No. 1/School but yet certain guidelines could be had as to how the right of part-time workers should be construed and considered.

15. During the course of arguments, counsel appearing for the respondents No. 1 and 2 fairly stated that two of the petitioners could be regularised by the respondents as there are vacancies immediately available. Counsel also fairly stated that two other petitioners could be continued as part-time employees for the present. During the course of his arguments, counsel also stated that at present the respondent No. 1/School has no further vacant posts apart from the aforesaid vacancies and that in case in future if there be any further vacancy, they would consider the case of the petitioners alone for their absorption.

16. I accept the aforesaid statement of the counsel appearing for the respondents No. 1 and 2 and in terms thereof, I direct that the two petitioners according to their seniority position shall be absorbed and their services shall be regularised by the respondent No. 1/School and they shall be paid a regular pay scale as is being paid to other similarly situated employees of the School from the date of their regularisation. It is also directed that the next two persons according to their seniority position and who are petitioners herein would also continue to work as part-time employees so long regular vacancies are not available for them and as and when regular vacancies are available, they shall be regularised as against such posts.

17. So far the other petitioners are concerned, no relief could be granted in their favor for the present as the specific stand of the respondents No. 1 and 2 is that no further vacant post is available in the School in which the said petitioners could be regularised.

18. Unless there is a vacant post, no order for regularisation could be passed. It is, however, ordered that in case in future there is any further vacancy in the

respondent No. 1/School, the same shall not be filled up by any other person except the petitioners who are willing to work as such and only after exhaustion of the said list persons outside the list of the petitioners could be appointed by the respondent No. 1/School. The respondent No. 1/School shall maintain a list of the petitioners, according to their seniority from the date of appointment and as the when there is an appropriate vacancy, the remaining petitioners shall be given the appointment.

19. In terms of the aforesaid observations and directions, the writ petition stands disposed of. Pending application stand disposed of accordingly.