
(2012) 07 DEL CK 0061

In the Delhi High Court

Case No : Writ Petition (C) No. 8834 of 2008

Directorate of Education

APPELLANT

Vs

Smt. Mahendri and Another

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 25F

Citation : (2012) 07 DEL CK 0061

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : V.K. Tandon, for the Appellant; K.K. Aggarwal and Ms. Gayatri Aggarwal, Advocates, for the Respondent

Judgement

Ms. Justice Mukta Gupta

1. A reference was made to the Industrial Tribunal on the following terms, "whether the services of Smt. Mahendri W/o Sh. Rohtash Singh have been terminated illegally and/ or unjustifiably by the management and if so, to what sum of money as monetary relief with consequential benefits in terms of existing laws/ Govt. Notifications and to what other relief is she entitled and what directions are necessary in this respect?". The Learned Industrial Tribunal after recording of the evidence and hearing the parties came to the conclusion that the manner in which the services of the workman were terminated without even giving her notice or notice pay, without giving any compensation and without assigning any reason is absolutely illegal being violative of Section 25F of the ID Act and the principles of natural justice and thus she was entitled to a compensation for a sum of Rs. 75,000/- with interest at the rate of 18% per annum from the date of termination till the date of realization and a litigation cost of Rs. 5,000/-. Learned Counsel for the Petitioner contends that Respondent No.1 was never employed by the Petitioner which being a State functionary can only employ the workman as per its rules and regulations. Respondent No.1 was in fact employed by the parents to cater to the daily needs of their small children

and they contributed to her salary. Respondent No.1 was never paid from the Government grant and hence there being no employee employer relationship, it cannot be held that the termination was illegal or that the Petitioner was entitled to pay compensation of Rs. 75,000/- with 18% interest. It is further contended that in any case interest @ 18% is very high. The onus to prove the employee-employer relationship was on Respondent No.1, who failed to discharge the same. The only evidence produced was the photocopy of the Identity-card. No appointment letter or terms of appointment or termination notice was ever proved because the same was never given to the Respondent. The I-card was issued for security reasons so that she could have ingress to the school premises. Thus, the impugned award be set aside.

2. Learned Counsel for Respondent No.1 contends that admittedly no appointment letter was given to her, however Respondent No.1 was appointed as an Aya in 1992 as a daily wager and when she pressed her regularization, her services were terminated on 1st February, 1999. In the form of the Identity card the Petitioner has recognized her status as the same has not been issued by the principal of the school but by the Petitioner i.e. the Directorate of Education. Further, since the Petitioner is disputing the employer-employee relationship the onus was on the Petitioner to prove the same. The Petitioner did not examine the Principal deliberately and only the Deputy Director of the Petitioner was examined, who admitted that Respondent No.1 was employed by the Principal. Since the Petitioner failed to discharge the onus, Respondent No.1 was liable to the relief awarded and hence the petition be dismissed.

3. I have heard Learned Counsel for the parties. On the terms of reference as stated above, the Industrial Tribunal framed the first issue as to whether the workman/ claimant is not covered within the definition of "workman" as per Section 2(s) of the ID Act. The onus of proof of the same was on the management. To discharge the said onus the Petitioner/management examined Shri B.N. Bajpayee, Deputy Director, District (South) as MW1. His affidavit Ex. MW1/A stated that Respondent No.1 was never appointed by the Principal of Sarvodaya Kanya Vidyalaya, G Block, Saket New Delhi as the Principal was not competent to appoint anybody. It was further stated that Respondent No.1 was engaged by the parents for the convenience of the children of small age which is apparent from the letter dated 17th March, 1999 exhibited as MW1/1. The letter dated 17th March, 1999 Ex. MW1/1 is a letter from the Principal, Sarvodaya school to the Petitioner stating that the members of the parents teacher association took the decision that for the convenience of the children they would make their own arrangements and thus the services of Respondent No.1 was engaged. There is no written order or written record in this regard and that when there were holidays Respondent No.1 was not paid anything. Further letter dated 10th October, 2000 also to the same effect was exhibited. In the affidavit, MW1 has also questioned the authenticity of the I-card as only a photocopy thereof has been placed on record. In cross-examination MW1 has admitted that he has no personal knowledge of the case and he had brought only relevant record. He

further stated that as per the attendance register, the name of Respondent No.1 was not mentioned and it is wrong to suggest that Respondent No.1 was appointed as Aya in the Sarvodaya Kanya Vidyalaya, Saket in 1992-99. He stated that she was employed by the parents of students. In the cross-examination it is admitted that the Principal had appointed Respondent No.1 as Aya in July, 1992.

4. Respondent No.1 when appeared in the witness box as WW1 tendered her affidavit wherein she stated that she was appointed as an Aya by the Principal on a monetary wage of Rs. 250/- per month. The last drawn wage of Respondent No.1 was Rs. 700/- per month. She was working regularly from 7.00 AM to 1.00 PM and when she demanded regularization, her services were terminated on 1st February, 1999 by the Principal, Sarvodaya Kanya Vidyalaya. She has exhibited on record the Xerox copy of the Identity card issued by the Principal of the school, copy of the legal demand notice, copy of the postal receipts and copy of some pages of attendance register. In her cross-examination, Respondent No.1 admitted that she was not issued any appointment letter and her name was not sponsored by the Employment Exchange prior to her appointment. She had no receipt to show that she was getting a salary of Rs. 250/- which was enhanced to Rs. 700/-. She denied that she was appointed by the parents of the student for their convenience.

5. Learned Trial Court on the basis of the photocopy of the I-card issued by the Principal came to the conclusion that Respondent No.1 was a workman and hence held that the termination was illegal and thus directed compensation of Rs. 75,600/- with 18% interest besides litigation expenses of Rs.5000/-.

6. In Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors. (2006) 4 SC 1 following the Constitution Bench in State of Punjab Vs. Jagdip Singh AIR 1964 SC 52 it was held:

13. What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh and Others, . It was held therein: (SCR pp. 971-72)

In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status.

7. In *International Airport Authority of India Vs. International Air Cargo Workers' Union and Another*, , their Lordships held:

24. One of the reasons given by the Division Bench to restore the order of the Tribunal is that the High Court in its writ jurisdiction should not interfere with the award of Industrial Tribunal based on the findings of fact. Reliance is placed on the decisions of this Court in *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, and *R.K. Panda v. Steel Authority of India* 1994 (5) SCC 204. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot re-appreciate evidence. The findings of fact recorded by a fact finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered in writ jurisdiction merely on the ground that the material on which the tribunal had acted was insufficient or not credible. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal. In this case, the grounds on which the union sought relief of absorption and the grounds on which the Tribunal ultimately granted relief are completely different. Having regard to the several decisions in the earlier rounds of litigation, which had attained finality, it is doubtful whether the Tribunal could have considered these issues at all. Even assuming that the tribunal could have considered the said grounds as having risen for decision, the question is whether there was any basis or material for its finding and assumptions. Let us examine the findings.

8. A perusal of the record shows that it is the admitted case of the parties that Respondent No.1 was not employed by the Petitioner. The Principal of a school is not the appointing authority even for a class IV employee. Thus, even if the Principal and the parents teacher association had engaged services of Respondent No.1 for looking after the small children, the same cannot fasten any liability on the Petitioner who had not engaged Respondent No.1. Respondent No.1 cannot be deemed to have been validly appointed to the post. The finding of the learned Trial Court that in view of the I-card issued, it is proved that Respondent No.1 was appointed as an Aya and her services were terminated illegally, is a perverse finding based on no evidence. The authenticity of the I-card has been challenged by the Petitioner. Further, the I-card can also be issued to the people for ingress into the school premises. In view of the admitted position that there was no appointment by the Petitioner, the learned Trial Court

could not have held that Respondent No.1 was a workman in terms of Section 2(s) of the ID Act. Thus, the impugned award is set aside. Petition is disposed of accordingly.