

(1998) 10 DEL CK 0075

In the Delhi High Court

Case No : CW. No's. 2570 of 1996 and 3394 of 1997

Hanuman Mandir Middle School

APPELLANT

Vs

Ms. Saroj Anand and Others

RESPONDENT

Date of Decision : 01-10-1998

Acts Referred:

Delhi School Education Act, 1973 — Section 13, 8

Citation : (1999) 48 DRJ 815

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : R.P. Bansal and P. Nandrajog, for the Appellant; R.D. Chauhan and D.N. Vohra, for the Respondent

Judgement

K. Ramamoorthy, J.—The first petitioner is a middle school. The second petitioner is the Manager of the first petitioner school. The third petitioner is the Chairman of the first petitioner. The fourth petitioner is the Headmistress of the first petitioner, school. The fifth petitioner is the President of Shri Hanuman Mandir Committee.

2. The first respondent claims herself to be a teacher working under the petitioners in the. first petitioner Shri Hanuman Mandir Middle School. On the ground that she was an employee of the first petitioner school, she filed an appeal before the Delhi School Tribunal. By order dated the 30th of April, 1996, the Delhi School Tribunal allowed the appeal filed by the first respondent and directed the reinstatement of the first respondent with all consequential benefits.

3. The case of the petitioners is that the fifth petitioner, Shri Hanuman Mandir Committee was running two schools Shri Hanuman Mandir Middle School which is a recognised one, and the Hanuman Mandir Public School which is not a registered one. The first respondent was appointed in Hanuman Mandir Public School in 1987 by the President of the fifth petitioner who was known to the first respondent. The first respondent was not appointed as a teacher in Shri Hanuman Mandir Middle School. Therefore, according to the petitioners, there

was non-employment of the first respondent by the petitioners and, Therefore, she cannot claim any relief against Shri Hanuman Mandir Middle School. According to the petitioners, the Delhi School Tribunal, without appreciating the defense of the petitioners, on the assumption that the first respondent was employed in Shri Hanuman Mandir Middle School had allowed the appeal.

4. The first respondent had relied upon the order passed by the Delhi School Tribunal, and she has no specific case to plead in the counter.

5. The Tribunal in its order has referred to paragraph 5 of the reply filed by the management school and it has observed that the management had admitted that the first respondent was appointed as a teacher in the recognised aided school. The Tribunal has also assumed that no approval of the Director of Education was obtained. Since no approval of the Director of Education was obtained before the appointment of the teacher, it raised the inference that she was not appointed in a recognised aided school. The Tribunal had referred to certain documents and had come to the conclusion that the first respondent had been taking classes of primary school, that is, Hanuman Mandir Middle School and had been examining answer sheets and had also been preparing the question papers in that school. According to the Tribunal, the documents listed and referred to in its order weigh more heavily in favor of the appellant to show that she was appointed as a teacher in Shri Hanuman Mandir Middle School and had been taking primary classes right from the day one. The admission by the respondents that she had been given some classes though on part-time basis also confirms and supports the plea of the petitioner and for any action of non-compliance of the provisions of the Delhi Education Schools by the respondents, the appellant cannot be allowed to suffer. This is a case of exploitation and also a sort of camouflage inasmuch as the teachers were being taken work of teaching higher classes. Maintaining the record, preparing the question papers, examining their answer sheets right from the day one and when the question of their claim and advantage came up, they were shown the door by saying that they were appointed in a public school which an unrecognised unaided school and meant for nursery classes alone. There is no document which shows that the appellant had ever taken nursery classes during her period of employment.

6. Further reasoning by the Tribunal is some what interesting and the Tribunal would observe:

"This case is solely based upon the circumstances as neither the appellant nor the other five teachers and one clerk who have filed separate appeals were issued any appointment letter though had been teaching primary classes for a long duration."

7. From this, it is very clear that the first respondent was not issued with any appointment letter by Shri Hanuman Mandir Middle School or the Hanuman Mandir Public School. Unless the first respondent establishes her appointment, by producing the appointment letter, in a recognised aided school, she cannot

approach the Tribunal.

8. In her appeal before the Delhi School Tribunal, she stated in paragraph 2:

"That the appellant was appointed as Assistant Teacher under Rule 66(2) of Delhi Education Act w.e.f. 2nd December, 1987 on the monthly salary of Rs.500/- which was to be paid 100 per cent, by the Society, as her salary is not an admissible charge for the assessment of grant-in-aid. That in fact the appellant was paid her salary by the aided school itself from its own income viz. fees and other charges collected from its own students. The Society by using unfair labour practice, first of all used to deposit the fee etc. of the recognised school into the account of unrecognised nursery school called "Hanuman Mandir Public School" and afterwards the appellant used to be paid through the abovementioned unrecognised school."

9. The whole basis of the claim of the first respondent was that she was appointed in the recognised aided school. When that was disputed, the first respondent ought to have produced the appointment letter. Whenever an appointment is made in a recognised aided school, the procedure prescribed under the Delhi Education Act, 1973 and the Rules, 1973 thereunder, should have been followed. Assuming that the first respondent had been appointed in the first petitioner's school without following the procedure prescribed under the Delhi Education Act, 1973 and the Rules, 1973, the first respondent cannot claim any relief, for her appointment itself was not in accordance with law. Any appointment made by the management of the school in violation of statutory rules would not clothe the persons appointed with any right to hold the post. Therefore, the first respondent cannot seek to establish her appointment in the first petitioner school on circumstantial evidence. She would state in the appeal that the management was adopting unfair labour practice by depositing the money collected from the recognised school into the account of unrecognised nursery school. The tribunal has referred to paragraph 5 of the reply filed by the management before it as being conclusive on the question of appointment of the first respondent in the recognised middle school. In paragraph 5 of the reply filed before the Tribunal, the management had stated:

"Denied being false and concocted on the verbal requests of the appellant she was some times given classes to teach in recognised school. She was always aspiring for being a teacher in the recognised school. She was teaching in spare time as extra tuition work to the students. The contents of the para are denied in total."

10. In the order, the Tribunal would observe basing its decision on paragraph 5 of the reply:

"At the very outset the counsel for the appellant has taken me to para 5 of the reply of the respondents to show that the appellant was appointed as Assistant Teacher in the recognised aided school and had been taking classes of that school alone. As per this reply, the respondent has admitted that sometimes she

was given classes to teach in the recognised aided school as she had been aspiring to become teacher in that school and in the spare time she used to take extra classes and tuition etc. also."

11. The Tribunal has not given any finding that there was any appointment order appointing the first respondent as Teacher in Shri Hanuman Mandir Middle School which is a recognised aided school.

12. In the absence of any conclusive evidence, the first respondent cannot claim to have been appointed as Teacher in Shri Hanuman Mandir Middle School. In a matter like this where jural relationship of "master and servant" has to be on the basis of clinching documentary evidence, Court cannot come to a conclusion on the basis of some documents produced to show the duties performed by a particular teacher.

13. The Delhi Education Act, 1973 and the Rules, 1973 there under laid down clearly the procedure for appointment of teachers. The first respondent has not been able to establish that she was appointed as Teacher in accordance with the procedure prescribed under the Act and the Rules.

14. On the materials placed on record, the conclusion is irresistible that the first respondent has not been able to show that she was appointed in 1987 as Teacher in the recognised aided school, Shri Hanuman Mandir Middle School. Accordingly, the order passed by the Delhi School Tribunal cannot be allowed to sustain and the same is quashed. The writ petition stands allowed.

15. There shall be no order as to costs.

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16. The first respondent had filed this writ petition for the enforcement of the order of the Delhi School Tribunal dated 30.4.1996. In view of the fact that the order of the Delhi School Tribunal has been set aside, nothing survives in this writ petition. Therefore, the writ petition No. 3394/97 stands dismissed.

17. There shall be no order as to costs.

18. In view of the judgments in the above writ petitions, no order is necessary in CM.5881/98.