

(2012) 05 DEL CK 0388
In the Delhi High Court
Case No : Writ Petition (C) 1528 of 2012

Harish and Another	Vs	APPELLANT
Lt. Governor, NCT of Delhi and Others		RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Delhi School Education Rules, 1973 — Rule 101, 101(2)

Citation : (2012) 190 DLT 76

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rajiv K. Garg, for the Appellant; V.C. Jha and Ms. Sonia Sharma
Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This writ petition is directed against the order dated 31.10.2011, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (herein after referred to as "the Tribunal"), whereby OA 4182/2010 filed by the petitioner was dismissed. The petitioners were appointed as part-time vocational teachers in terms of a Scheme of the Government introduced in the year 1977-78, purely on contingent basis. The terms and conditions of their appointment indicated that the appointment could be terminated at any time without assigning any reason/notice. It was further stipulated that the appointment would not entitle them to any regular job under the Directorate of Education. The remuneration payable to them was fixed at Rs. 80/- per hour for theory classes and Rs. 50/- per hour for subjective classes, subject to maximum of Rs. 2,000/- per month. The remuneration payable to the petitioners was later increased by Rs. 3,500/- (consolidated) revised per month, subject to their teaching minimum 12 periods per week to qualify for the maximum limit of the remuneration/honorarium. It was also stipulated in the order that the honorarium/remuneration shall be calculated on the basis of actual teaching periods. In the event of the number of periods being less than the prescribed limit, the remuneration was to be reduced

proportionately. While revising the remuneration, it was reiterated that the appointment was purely on contingent basis and could be terminated without assigning any notice. It was also clearly stated that the appointment would not entitle the petitioners to any regular job under the Directorate of Education. The remuneration was further revised to Rs. 5,000/- per month (consolidated), subject to the conditions that they would teach a minimum of 16 periods per week or 64 periods per month, to qualify for the enhanced maximum limit for remuneration. The remuneration was to be calculated on the basis of actual teaching periods and in case the number of periods was less than the maximum prescribed limit, the remuneration was to be proportionately reduced. By the order dated 06.08.2008, the remuneration was increased to Rs. 8,200/- per month w.e.f. 01.07.2008.

By a notification dated 06.07.2009, the remuneration was enhanced from Rs. 8200/- to Rs. 11,140/- in case of Part-Time Vocational Teachers on contract basis who were not qualified as per Recruitment Rules (RRs) for the post of PGT (Vocational) and Rs. 13,160/- for those Part-Time Vocational Teachers on contract basis who were qualified in terms of the said Recruitment Rules (RRs). The revision of remuneration was subject to the condition that they would take 32 periods per week, which is also prescribed for regular teachers and in case the number of periods was less than the prescribed limit, their remuneration shall be proportionately reduced. OA No. 1748/2010 was filed by the petitioners seeking a declaration that they were regular employees of the Government and entitled to half of the salary of regular teachers. They also sought the pay applicable to PGTs on the principle of "equal pay for equal work", from the date they were asked to impart studies for 32 periods in a week. The OA was disposed of vide order dated 26.5.2010, by directing the respondents to consider the representation of the petitioners and pass a speaking order. The representation was rejected by the respondents by a speaking order dated 9.9.2010, which was challenged by them in OA No. 4182/2010. The said OA having been dismissed, the petitioners are before this Court by way of this writ petition. The Tribunal while dismissing the OA filed by the petitioners observed that the issue involved in the matter stood concluded by its decision in OA No. 1748/2010 Vocational Part-Time Teachers" Association And Others v. Lt. Governor of NCT of Delhi And Others. In OA No. 1748/2010 the Tribunal had given a direction to the respondents to fill up Vocational Part-Time Teachers as per the methodology laid down under the Rules of 2000 and consider the applicants after relaxing the age requirement. They were also directed to given weightage for the applicants having been engaged as teachers for a significant period of time. The order passed by the Tribunal was challenged by the applicants before this Court in WP(C) No. 2299/2010. Upholding the decision of the Tribunal this Court held that since the petitioners were never subjected to a recruitment process, they must compete in the open market and they cannot enter in the regular cadre through the backdoor. This Court noted that the equitable benefit to which the petitioners were entitled had already been given to them in the form of age relaxation. The

Tribunal therefore rejected their case on the principle of "equal pay for equal work". With respect to the prayer of the petitioners to pay to them 50% of salary and allowances received by regular teachers, the Tribunal was of the view that the petitioners were not placed similar to the regular employees and therefore no such direction could be issued.

2. During the course of arguments before us the learned Counsel for the petitioners pressed the writ petition only in relation to the prayer for payment of pay and allowances to the extent of 50% of the pay and allowances being paid to regular teachers.

3. The learned Counsel for the petitioners drew our attention to the Cabinet note which was approved vide cabinet decision No. 1394 dated 17.4.2008, thereby upgrading all Part-Time Teachers deployed by Sanskrit, Urdu and Punjabi Academies in the Government Schools of Dte. of Education to Full-Time, and increasing their consolidated remuneration to Rs. 11,140/- in case of TGTs and Rs. 13,160/- in case of PGTs. The reliance upon the said cabinet decision, in our view is wholly misconceived. The said cabinet decision pertains only to those part-time teachers which were deployed by Sanskrit, Urdu and Punjabi Academies, and was not applicable to all part-time teachers employed by Dte. of Education Delhi. A perusal of notification dated 6.7.2009, whereby remuneration of the petitioners was enhanced from Rs. 8,220/- to Rs. 11,140/- in case of PGTs who were not qualified as per Recruitments Rules and to Rs. 13,160/- in case of those who were qualified as per the Recruitment Rules, would show that this notification was issued pursuant to decision No. 1480 taken by the Council of Ministers on 8.10.2008 and conveyed vide order dated 13.10.2008. Thus, cabinet decision No. 1394 was taken on 17.4.2008 and whereas the decision in case of the petitioners was cabinet decision no. 1480 taken on 8.10.2008 and conveyed on 13.10.2008. More importantly, the notification dated 6.7.2009 clearly states that the petitioners would be part-time vocational teachers, who would take 32 periods per week and in the event of number of periods taken by them being less than the prescribed limit of 32 periods per week, the remuneration also was to reduce proportionately. The notification dated 6.7.2009 was extended vide subsequent notifications dated 25.6.2010 and 31.3.2011. Therefore, we cannot accept the contention of the petitioners that they were appointed as full-time teachers vide notification dated 6.7.2009.

The learned Counsel for the petitioners placed reliance on the decision of this Court in WP(C) No. 13296/2009 decided on 17.9.2010, in support of the case of the petitioners for payment of 50% of the wages which were paid to a regular teacher. A perusal of the judgment would show that the petitioners in this case were appointed by Delhi Urdu Academy and were deputed to teach Urdu either in the Senior Secondary Schools or in the Primary Schools. It further shows that though labeled as part-time teachers, they alleged that they were made to perform additional duties and required to be in their school for the entire duration of the classes. The claim of the petitioners before the Tribunal was

based on the principle of "equal pay for equal work". The Tribunal rejected their claim on the ground that they were employed by Urdu Academy which was an autonomous body and therefore they could not be treated at par with regularly appointed teachers in Government schools. This Court noted that, vide order dated 20.6.2008, that the petitioners, pursuant to cabinet decision No. 1394 dated 17.4.2008, had been made full-time teachers with immediate effect and they were to work on full-time as per existing norms of the Department for different categories of teachers. This Court noted that the source of funds utilized to pay the monthly remuneration to the petitioners was either from Government of NCT of Delhi or Municipal Corporation of Delhi, and therefore, Urdu Academy was merely a canalizing agency.

It was observed that Delhi School Education Rules, 1973 prohibited appointment of part-time teachers except in primary schools or in primary classes of a middle level or the senior secondary schools though on a regular basis. It was further noted that as per Rule 101 Sub-Rule (2), the salary of the part-time teacher was to include the allowances which shall be one-half of those of a full-time teacher appointed on a regular basis and the proviso which required that the medical facilities and other benefits excluding pensionary or retirement benefits were also admissible to a part-time teacher, this Court held that part-time teachers could under no circumstances be paid salary and other allowances less than one-half of what was paid to the full-time teachers appointed on a regular basis. The writ petition was therefore disposed of with the direction to the respondents to release the salary to the petitioners, with reference to mandate of Rule 101 of Delhi School Education Rules as explained in the judgment. The arrears were directed to be paid to them w.e.f. 1.1.2000.

However, the petitioners before this Court are not employed by Sanskrit, Urdu or Punjabi Academy. Unlike the petitioners in 13296/2009 full-time status has not been conferred upon the petitioners before this Court since the cabinet decision dated 17.4.2008 does not apply to them.

As far as reliance upon Delhi Education Rules 1973 is concerned, we notice that Rule 101 forms part of Chapter VIII of the said Rules which pertains to Recruitment and Terms and Conditions of Service of Employees of Private Schools other than Unaided Minority Schools. Rule 101 of the said Rules reads as under:

101. Appointment of part-time teachers to be permitted in primary schools or primary stage of any schools--- (1) It shall be lawful for the managing committee of a primary school or the managing committee of a school having a primary stage to appoint for the primary stage, a female teacher on a part-time but regular basis: Provided that not more than twenty per cent of the total strength of teachers of the primary school or primary stage, as the case may be, shall be appointed on a part-time basis.

(2) The salary and allowances admissible to a female teacher appointed on a

part-time but regular basis shall be one-half of those of a full-time teacher appointed on a regular basis:

Provided that medical facilities and other benefits (not being pensionary, provident fund or retirement benefits) admissible to a part-time female teacher shall be the same as are admissible to a full-time teacher.

(3) If any part-time female teacher is appointed on a whole-time basis, one-half of the period of service rendered by such female teacher on a part-time basis shall be reckoned as qualifying service for the purpose of computation of pension and other retirement benefits admissible to her.

It would thus be seen that Rule 101 applies only to private schools and not to Government schools. This Rule does not apply to part-time teachers appointed by Directorate of Education such as the petitioners before this Court. Moreover, this Rule applies only to female teachers, whereas petitioner No. 1 before this Court is a male though petitioner No. 2 is a female. No rule, requiring payment of half of the salary and allowance admissible to a regular teacher to a part-time teacher appointed by Directorate of Education Delhi, has been brought to our notice. Therefore, it cannot be said that there is a statutory requirement for payment of half of the salary of a regular teacher, to a part-time teacher appointed by the Directorate of Education Delhi.

4. As noted earlier by us, the petitioners have never been appointed as full-time teachers. They continue to be part-time teachers despite enhancement in their remuneration coupled with increase in the teaching hours by them. In our view it cannot be said that part-time teachers are similarly situated to full-time teachers. The whole of the time of a full-time teacher is at the disposal of the Government whereas the part-time teachers are not required to remain present in the school throughout the working hours. Once they have taken classes in the periods allocated to them in a particular day they are at liberty to leave the school. This, however, is not permissible in the case of full-time teachers. Moreover, in case of part-time teachers if there is a time lag between the periods allocated to him on a particular day nothing prevents them from leaving the school during that intervening period. A full-time teacher can be asked to take extra classes and no extra remuneration is payable to them for taking such classes. Part-time teachers on the other hand cannot be compelled to teach more than 32 periods per weeks. Therefore, it cannot be said that the part-time teachers are similarly situated to full-time teachers. For the reasons stated hereinabove we find no legal infirmity in the impugned order dated 31.10.2011. The writ petition is devoid of any merit and is hereby dismissed without any order as to costs.