

(2015) 05 DEL CK 0161
In the Delhi High Court
Case No : Writ Petition (C) 3589 of 2015

Kanta Devi

APPELLANT

Vs

Sarvodaya Kanya Vidyalaya and Others

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2015) 3 LLJ 89

Hon'ble Judges : Deepa Sharma, J

Bench : Single Bench

Advocate : Shiv Prakash Pandey, Raghav Pandey and Arunima Dwivedi, for the Appellant; Gursharan Singh, Advocate, Arvind Kumar, Deputy Education Officer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Deepa Sharma, J.—Vide the present writ petition, the petitioner has challenged the award dated 18th March, 2014 whereby the learned Labour court has held that the petitioner was not entitled to any relief since there was no relationship of an employer and an employee between the petitioner and the respondent nos. 1 and 2 and that she was engaged by PTA (parent-teacher association) and was also paid her salary /honorarium from the PTA fund and that PTA was not an "industry" within the meaning of Section 2(J) of the Industrial Disputes Act.

2. Aggrieved by the said findings of the learned Labour Court, the petitioner vide the present writ petition has challenged the impugned award on the grounds that the learned labour court was wrong in overlooking the fact that number of similarly placed workmen junior to her were regularized. She was paid a meagre salary/wages of Rs. 500 per month which shows that she was not even paid as per the minimum wages.

3. It is further submitted that learned Labour Court ought to have passed an award in her favour holding that she was the employee of respondent No. 1. It is

further submitted that Labour court had failed to appreciate that respondent No. 2 being part of Government and having control over the working and functioning of respondent No. 1 being a school run under the provisions of Delhi School Education Act illegally acted in allowing respondent No. 1 to hire the petitioner and being paid wages from the funds of PTA (Parents Teachers Association).

4. On these contentions, it is prayed that the impugned award be quashed.

5. I have given due consideration to the arguments of the learned counsel for the petitioner as well as of learned counsel for the respondent who had attended the Court, although no notice has so far been issued to the respondent.

6. The petitioner has placed on record the copies of the pleadings filed before the learned Labour Court. From statement of claim, it is apparent that the claim of the petitioner before the learned Labour Court was that she was an Aaya /water woman, appointed in August 1995 and worked till June 2003 and her last drawn wages were Rs. 700 per month which were paid to her from the PTA fund. She challenged her termination w.e.f. 1st July, 2003 as illegal. She moved an application before the Central Administrative Tribunal, which was dismissed vide order dated 12th July, 2005. She had also alleged that some part time employees named therein were regularized but her services were illegally terminated.

7. The defence of the respondents was that there was no relationship between the claimant and the respondent as the claimant was engaged by the PTA and was drawing salary from PTA fund. No appointment letter or any I card had ever been issued by the respondents. The plea of the respondent was also that pursuant to the order/memorandum dated 5th April, 2004, it was made clear to the District North East that workers engaged by PTA were not covered under the prevailing Guidelines/instructions of part time workers. The respondents had also taken the plea that vide Memorandum/order of Directorate of Education order No. DE/(16) (3) 93/Et/16140-92 dated 01.10.2002 endorsed by DDE-North East vide order dated 23.10.2002, there was complete ban on creation/filling up of non-plan funds and appointment of Daily Wages/Contract basis.

8. The learned Labour Court has dealt with the matter in dispute between the parties and on the basis of the evidence clearly held that the petitioner was engaged through PTA fund. The Court in para 13 of the award has observed as under:-

"13. In the cross-examination the workman throughout admitted that she was verbally appointed by the principal of Management No. 1 and was engaged through PTA fund. She also admitted that a person who is appointed through PTA does not come within the ambit of regular employee and also that she had been paid her entire honorarium till she worked in the school through PTA. She also denied any knowledge if any employee has been regularized after imposition of ban on 21.10.1998. She also admitted that her attendance used to be marked in the PTA register and that she never served the management as a permanent

employee."

9. These facts conclusively establishes the fact that petitioner was employed by the PTA and was paid from the PTA fund.

10. The petitioner has also taken the plea that her juniors working in the same capacity were regularised while she had been discriminated. In order to substantiate her contention, she had examined Vice Principle as WW2 who had produced the record of Sh. Khichu Singh, Sh.Joginder Singh and Smt. Kamlesh whom the workman had alleged were regularized though they too were appointed by the PTA, but the court found that the record produced by WW2 did not show that these three employees were ever appointed through PTA. She even examined Sh. Khichu Singh as WW3, but he had not supported her and deposed that he was never appointed by the responded from PTA fund and that he had been drawing the salary from the contingency fund. Also, her witnesses WW4, Sh. Joginder Singh and WW5, Kamlesh did not support her. The petitioner, therefore, had failed to prove on record that she had been discriminated, or that any employee getting wages from PTA fund, was regularised. It is thus an admitted as well as proved fact on record that petitioner was drawing her wages from PTA fund. There is no dispute that PTA fund is the private fund created for the welfare of the students and the teachers, by no stretch of imagination can be said to be a government fund and she was thus engaged by PTA which is the private body, not indulging into any commercial activity. PTA is an independent body, who was not made a party by the petitioner.

11. It is argued by the petitioner that the fact that she was issued I-card shows that she was engaged at monthly wages of Rs. 500/- by respondent. This argument has been considered by Id. Labour Court. The labour Court found that the I-card neither bore signatures of the issuing authority nor the stamp of either of the respondents. Learned Labour court has also referred to the admission of workman in her cross-examination wherein she had stated that she was never appointed by Management No. 2 and that no appointment letter was issued to her, no procedure for selection of a Government employee was followed at the time of her appointment and that she had been receiving salary/ honorarium from the PTA fund and that her attendance used to be marked in the PTA register and that she never served the management as a permanent employee.

12. These admissions on the part of the workman clearly establishes that she was not under the employment of respondent nos. 1 and 2 but was engaged by the PTA and paid out of the PTA fund. The petitioner had not raised any claim against the PTA and the PTA is not a party either before the Labour Court or before this court.

13. Although, it is not pleaded by the petitioner either before the learned labour court or in the present writ petition but it is also argued that any notification restraining the persons employed by the PTA from being considered for regularisation is bad in law and is liable to be set aside. The learned counsel has

relied on the finding in the cases of Miss. Mohini Jain Vs. State of Karnataka and others, AIR 1992 SC 1858 : (1992) 4 JT 292 : (1992) 2 SCALE 90 : (1992) 3 SCC 666 : (1992) 3 SCR 658 : (1992) 2 UJ 331 , Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Others, (2012) CriLJ 3516 : (2012) 1 Crimes 241 : (2012) 2 SCALE 682 : (2012) 5 SCC 1 : (2012) AIRSCW 3660 : (2012) 2 Supreme 36 and Renu and Others Vs. District and Sessions Judge, Tis Hazari and Another, AIR 2014 SC 2175 : (2014) AIRSCW 1303 : (2014) 3 JT 1 : (2014) 3 LLJ 257 : (2014) 2 SCALE 262 .

14. The findings in these cases does not support the petitioner.

15. In the case of Miss. Mohini Jain (supra), the issue before the court was related to the notification of the Karnataka Government permitting the Private Medical Colleges in the State of Karnataka to charges tuition fee from the students other than those admitted to the "Government seats". It is apparent that the issue before this court is entirely different and thus the findings given by the Supreme Court in the case are of no relevancy in the present case.

16. In the case of Ramlila Maidan Incident (supra), the issue under consideration related to the dimensions of the legal provisions in relation to the exercise of jurisdiction by the empowered officer in passing an order under Section 144 of the Code of Criminal Procedure, 1973, the court had considered the question whether the action taken by the public authority was within its statutory power or not?

17. The findings in the case of Renu and Ors. (supra), does not even support the case of petitioner, the recruitment of Group "D" employees in the courts was an issue therein. The Supreme Court in para 8 has clearly held as under:-

"8. As Article 14 is an integral part of our system, each and every state action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, AIR 1992 SC 789 : (1992) 1 JT 394 : (1992) LabIC 847 : (1992) 2 LLJ 452 : (1992) 1 SCALE 294 : (1992) 4 SCC 99 : (1992) 1 SCR 565 : (1992) 1 SLJ 201 : (1992) 1 UJ 676 ; State of Haryana and others Vs. Piara Singh and others etc. etc., AIR 1992 SC 2130 : (1992) 5 JT 179 : (1993) 2 LLJ 937 : (1992) 102 PLR 547 : (1992) 2 SCALE 384 : (1992) 4 SCC 118 : (1992) 3 SCR 826 : (1992) 3 SLJ 34 : (1992) 2 UJ 692 ; Prabhat Kumar Sharma and others Vs. State of U.P. and others, AIR 1996 SC 2638 : (1996) 6 JT 579 : (1996) LabIC 2268 : (1996) 5 SCALE 404 : (1996) 10 SCC 62 : (1996) 3 SCR 424 Supp : (1996) 3 SLJ 21 : (1996) 2 UJ 643 ; J.A.S. Inter College, Khurja, Uttar Pradesh and others Vs. State of Uttar Pradesh and others, (1996) 6 AD 48 : AIR 1996 SC 3420 : (1996) 5 SCALE 292 : (1996) 10 SCC 71 : (1996) 3 SCR 96 Supp ; M.P. Housing Board and Another Vs. Manoj Shrivastava, AIR 2006 SC 3499 : (2006) 101 CLT 580 : (2006) 109 FLR 194 : (2006) 3 JT 73 : (2006) 2

LLJ 119 : (2006) 2 SCALE 572 : (2006) 2 SCC 702 : (2006) SCC(L&S) 422 : (2006) 2 SLJ 464 : (2006) AIRSCW 1235 : (2006) 2 Supreme 354 ; Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, (2006) 3 JT 348 : (2006) 2 LLJ 215 : (2006) 2 SCALE 619 : (2006) 2 SCC 716 : (2006) SCC(L&S) 434 : (2006) 3 SLJ 196 ; and State of Madhya Pradesh and Others Vs. Ku. Sandhya Tomar and Another, (2013) 136 FLR 300 : (2013) 1 LLN 397 : (2012) 12 SCALE 561 : (2013) 1 SLJ 295 .

18. The petitioner, admittedly not appointed as per the procedure for selection of Government employees but was appointed by PTA and paid from PTA fund.

19. It is also apparent by way of present writ petition, the petitioner has not challenged the constitutionality or validity of the notification. The only challenge made by the petitioner is that of the impugned award and her prayer in the present writ petition is to quash the impugned award. This case is squarely covered by the principles laid down by Supreme Court in Union of India and Anr. vs. Chotelal and Ors, reported in (1991) 1 SCC Cases 554. In this case, the Supreme Court has dealt with the question whether the dhobis appointed to wash the clothes of cadets at NDA, Khadakwasla and being paid from regimental fund can be said to be working on a civil post. The Supreme Court has clearly held that the regimental fund was credited under the management of the commanding officer of the institution from the monthly dhobi allowances which were granted to each cadet and the dhobi worked out of that fund and therefore they cannot be said to have been engaged by the Ministry of Defence. It is further observed that under the provisions of defence services regularization no. 801 (B), regimental fund was defined as to mean comprising all funds, other than public funds, maintained by a unit.

The court has held that said fund cannot be held to be a public fund by any stretch of imagination and the dhobis paid out of such fund can be held to be holders of civil posts within the Ministry of Defence.

20. In the present case admittedly, the Parent-Teachers Association maintained its own funds. The petitioner was admittedly being paid out of the said fund. It cannot be therefore said that she had become an employee of respondent nos.1 and 2.

There is no substance in the writ petition. The same is dismissed with no order as to costs.