(1988) 10 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Petition No. 799 of 1987

Kapoor Chand and Others — APPELLANT

Vs

Delhi Administration and Others — RESPONDENT

Date of Decision : 26-10-1988

Acts Referred:

Citation : (1989) 37 DLT 43 : (1989) 16 DRJ 83

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : H.S. Parihar, A.S. Chandhiok, S.P. Srivastava and A.K. Jain, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The principal question that arises for decision in this writ petition is if a driver and a conductor of a school bus are employees within the meaning of Section 2(h) of the Delhi School Education Act, 1973 (for short ''the Act'') and, if so, whether they are entitled to salaries, allowances and other prescribed benefits, if any, as required u/s 10 of the Act. u/s 2(h) of the Act, an ''employee'' means a teacher and includes every other employee working in a recognised school. Section 10 of the Act reads as under :-

"(1)The scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority : Provided that where the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of any recognised private school are less than those of the employees of the corresponding status in the schools run by the appropriate authority, the appropriate authority shall direct, in writing the managing committee of such school to bring the same up to the level of those of the employees of the corresponding status in schools run by the appropriate authority : Provided further that the failure to comply with such direction shall be deemed to be non-compliance with the conditions for continuing recognition of an existing school and the provisions of Section 4 shall apply accordingly. (2) The managing committee of every aided school shall deposit, every month, its share towards pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits with the Administrator and the Administrator shall disburse, or cause to be disbursed, within the first week of every month, the salaries and allowances to the employees of the aided schools."

(2) Nine petitioners, 4 drivers and 5 conductors of school buses, owned and run by the second respondent school, which is a recognised school under the Act, have filed the present petition. They claim parity in their pay with the drivers and conductors of the Delhi Administration. One of the petitioners, a driver, died during the pendency of this petition and his legal representatives have been brought on record. There are three respondents. The first respondent is the Delhi Administration which, in effect, is the appropriate authority within the meaning of Clause (e) of Section 2 of the Act. The second respondent as noted above, is the school in question, and the third respondent is the Society which runs the school. When originally the petition was filed, there were only two respondents, the school and the Delhi Administration. Objection was raised by the school that it was being run and owned by the Society which had not been imp leaded as a party. The petition was. Therefore, sought to be amended and the Society was made as the third respondent. The Society then raised an objection that managing committee of the school was different from the Society and that managing committee was also a necessary party. ''Managing committee'' has been defined in Section 2(n) of the Act to mean the body of individuals who are entrusted with the management of any recognised private school. Mr.A.K. Jain, learned counsel for the school and the Society, however, did not press his objection that managing committee should have been imp leaded as a party. In these proceedings, Therefore, I would take it that the Society also represents the managing committee of the school as well.

(3) It is not disputed before me that the petitioners are the drivers and conductors of the school buses of the second respondent and would fulfill the requirements of the Motor Vehicles Act, 1939 pertaining to a driver and a conductor. It is also not disputed that the respondent school has four buses which are exempt from payment of road tax under the aforesaid Motor Vehicles Act being buses owned by the school for the students. It is also not disputed that the second respondent is a recognised and aided school receiving aid in the form of maintenance grant from the first respondent.

(4) The petitioners claim that though they are employees of the school they have not been granted benefits of pay scales as recommended by the 4th Pay Commission although benefits on the basis of the 3rd Pay Commission were earlier granted to them. For this purpose they approached the respondents but

as they failed in getting any positive response from them, they filed the present petition. They seek a direction to the respondents to implement the recommendation of the 4th Pay Commission and to make payments to them in accordance therewith and also to treat them at par with the other employees of the school in the matter of service conditions and benefits including the scales of pay and allowances, pension, gratuity, provident fund, etc. The petitioners also seek a direction to the first respondent to bring the petitioners'' scales of pay and allowances etc, up to the level of those of the employees of corresponding status in the schools runs by the appropriate authority.

(5) On rule being issued, the respondents filed their respective affidavits-in-reply.

(6) The Director of Education, Delhi Administration, stated that the petitioners were not employees u/s 2(h) of the Act and Section 10 and other provisions of the Act could not be made applicable to them. It was stated that their posts had not been approved in the ''Post Fixation'' by the first respondent and they were thus not amongst the approved staff of the school and no grant-in-aid on their account was being given to the school. Then, it was stated that posts of the petitioners had neither been sanctioned nor approved by the director of Education and the petitioners had not been recruited with and/or subject to the approval of the first respondent. Thus, according to the first respondent benefits, if any, of the 4th Pay Commission could not be claimed by the petitioners.

(7) The reply filed by the other respondents is somewhat the same though in little more detail. Their contentions are that the Act and the Rules do not apply to the petitioners as only three categories of employees are covered, namely, the teachers, ministerial staff and class Iv employees, and that the petitioners do not fall in any of these categories. There are no recruitment rules as regards the drivers and the conductors and they are not among the approved staff of the school. The petitioners were also not appointed with the approval of the Director of Education or the Administrator, their posts having neither been sanctioned nor approved in accordance with the Act and the Rules. The petitioners do not form part of the staff of the school and their salaries are given from a fund called the ''Bus and Management Fund'' which has two separate sub-heads, i.e. he Bus Account and the Management Account. It is contended that the income and expenditure under these two sub-heads are kept separate and that this fund is separate from the School Staff Account from which salaries etc. of the approved staff are paid and that the management transfers 5% being its share of contribution from the Management Fund to the School Staff Account. As to why facility of the buses is made available, these respondents contend that a large number of students are of tender years, but, at the same time they submit that excellence in teaching may have no connection with the facility of buses being provided in the school. Then, it is submitted that the income of the managing committee and the school is not of such an amount that the present demands of the petitioners could be met. Lastly, but in the alternative, they submit that if the Delhi Administration covers the petitioners for grant-in-aid, it may be possible for

the managing committee to help the petitioners.

(8) During the course of hearing of the petition, it was submitted by Mr. Jain, and again in the alternative, that in any case the petitioners would come within the definition of ''existing employee'' as given in Section 2(i) of the Act. Under this clause, ''existing employee'' means an employee of an existing school who is employed in such school immediately before the commencement of the Act, and includes an employee who was employed in such school for a period of not less than twelve months immediately preceding the 2nd day of September, 1972. I do not think anything turns on this submission as I am holding that the petitioners are employees of the school within the meaning of Clause (b) of Section 2 of the Act. Further, Mr. Chandhiok appearing for the Delhi Administration had no opportunity to meet this argument. Only the first two petitioners are stated to have been appointed drivers prior to the enforcement of the Act, which is stated to have come into force with effect from 9th April 1973.

(9) At this stage, it may be useful to refer to certain provisions of the Act and the Rules. As the preamble would show, the Act is meant to provide for better organisation and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto. ''Aid'' means any aid granted to a recognised school. ''Aided school'' means a recognised private school which is receiving aid in the form of maintenance grant. The word ''prescribed'' means prescribed by Rules made under the Act. The aid may cover such part of the expenditure of the school as may be prescribed, and no payment out of the aid given for salary, allowances and provident fund of employees of the school shall be made for any other purpose : (Sub-sections (3) and (4) of Section 6. Section 4 deals with recognition of schools by the appropriate authority but recognition granted to a school shall not by itself entitle any school to receive aid. Chapter Vi of the Delhi School Education Rules 1973 (for short ''the Rules'') deals with grant-in-aid. Rule 73 prescribes that there shall be two categories of aid, namely, (a) maintenance grant, and (b) building grant. Maintenance grant is of two kinds, namely, (a) recurring maintenance grant, and (b) non-recurring maintenance grant. Recurring maintenance grant includes staff grant, provident fund grant, medical benefit grant, grant for the acquisition of essential equipments of the school, grant for the purchase of books and journals for the school library, pension and retirement benefit grant, etc. Recurring maintenance grant is given to an aided school at the rate of 95% of the difference between the approved expenditure on the items in relation to which recurring maintenance grant may be made and the income from fees and such other items as may be specified by the Director of Education, Delhi. This is Rule 74. Under Rule 75, approved expenditure for recurring maintenance grant shall comprise salaries of the staff appointed with the approval of the Director to the extent of the number of posts which have been sanctioned and approved by the Director for the purpose of aid in accordance with the post-fixation made by the Director from time to time. Then non- recurring maintenance grant includes contingent grant, rent grant, hostel grant, depreciation grant for school and

hostel, grant for equipment, furniture, games and sports materials and the like, biennial and triennial grants for the purchase of books for the library etc. Every application for grant- in-aid by a school is to be in Form Ii which form has been annexed to the Rules and would form part of the Rules. If reference is made to item 9 of this Form, it will be seen that it pertains to the teaching staff-ministerial staff and class Iv staff. Rules also specify the conditions for grant-in-aid. u/s 2(v), ''school property'' means all movable and immovable property belonging to, or in the possession of, the school and all other rights and interests in, or arising out of, such property, and includes land, building and its appurtenances, playgrounds, hostels, furniture, books, apparatus, maps, equipment, utensils, cash, reserve funds investments and bank balances. Section 7 refers to management of the school property of every aided school which is required to furnish a statement annually giving particulars of the school property as may be prescribed. Rule 93 falling under Chapter Vii of the rules dealing with school property, requires every aided school to furnish in Form Iv particulars of all movable properties of the school. Rule 94 places restriction on the transfer of any school property movable or immovable. Chapter Iv of the Act deals with the terms and conditions of service of employees of recognised private schools. This has to be read with Chapter Viii of the Rules. I have already set out Section 10 dealing with salaries of the employees above Section 17 refers to fees and other charges that could be levied by an aided school, and Section 18 deals with school fund. To school fund is credited any aid granted under the Act, the income accruing to the school by way of fees, charges or other payments, and any other contributions, endowments and the like. Then under Sub-section (2) of this section, the school fund and all other funds, including the Pupils Fund, established with the approval of the Administrator, shall be accounted for and operated in accordance with the Rules made under the Act.

(10) The respondents do not treat the petitioners as employees of the school. They do not treat the buses as school property within the meaning of the Act. According to them, in Form Ii particulars of the drivers and conductors and in Form Iv those of buses owned and run by the school are not to be specified. As noted above, the posts of drivers and conductors, i.e. the petitioners, have not been approved and sanctioned by the appropriate authority and no recruitment rules have been framed by the appropriate authority for the drivers and conductors of the buses of the private aided schools.

(11) During the course of hearing of the petition, I required the first respondent to file an affidavit showing as to whether any school run by the Delhi Administration in Delhi was having school buses and if so what were the emoluments being paid to the drivers and conductors of those buses and further, if any aided private school was having buses the salaries of the drivers and conductors of which were being reimbursed by the Delhi Administration under the Act and the Rules. This affidavit was filed. It was stated that except for two schools there was no other school in the Union territory of Delhi in which buses were being run and/or drivers and conductors were working and the expenditure

was being borne by the Delhi Administration. The two schools referred to are the Govt. Model Senior Secondary School, Ludlow Castle, Delhi, and Rashtriya Virjanand Andh Kanya Vidyalaya, a school for blind girl students. It is stated that the first school was established keeping in view the facility to be provided to the children of Govt. servants staying in bulk around the area of Raj Niwas. A few years later it was found that children, who were from the Govt. flats and were occupying any Govt, accommodations, were not able to reach the school in time for paucity of conveyance and since a large number of students coming to the school came from the Govt. accommodations around Raj Niwas, the request of the school to allow it to keep its own bus was accepted. The pay scales admissible to the drivers therein were stated to be Rs 950 to Rs. 1500. and the conductors were being paid a consolidated pay of Rs. 489.00 . In the Rashtriya Virjanand Andh Kanya Vidyalaya. an aided school meant for blind girl students, it was stated that since it was difficult to arrange conveyance for the girls, special bus was provided to the school. There are only one driver and one conductor who are regular employees and get full scales of pay, the scale of pay of the driver being Rs. 950-Rs. 1500 and of the cleaner Rs. 750-Rs. 950. It was stated that payment was being made to the driver and the conductor as per rules. It will thus be seen that there are rules regarding recruitment of drivers and conductors of school buses and payment to the drivers and conductors is being made as per rules.

(12) The petitioners filed an affidavit in answer to the affidavit filed by the Delhi Administration. They stated that pay scales for the drivers and conductors of the Delhi Administration were Rs. 950-1500 and Rs. 750-950 respectively and these scales were as per pay scales recommended by the 4th Central Pay Commission and which had been approved by the Delhi Administration. The petitioners then stated that there were several aided schools as well as private recognised schools in the Union territory of Delhi which were running buses. Some of these schools mentioned were Nutan Marathi Senior Secondary School, Queens Marry School, Subzi Mandi Bapu Adarsh Vidyalaya, Rajinder Nagar, Modern School, Delhi Public School, St. Thomas School, Springdales School, Manav Sthali School, Frank Anthony Public School, and Guru Harkishan Public School. It is stated that in all these schools drivers and conductors are getting pay as per scales approved by the Delhi Administration and mentioned above. It is then stated that the New Delhi Municipal Committee is also having school buses in some schools where the drivers and conductors are having pay scales of Rs. 1300-2000 and Rs. 950-1400 respectively.

(13) Mr. Chandhiok, learned counsel for the Delhi Administration, submitted that there were certain instructions issued by the Delhi Administration that a recognised private school, which received aid, should admit students of the area in which the school was situated. No such instructions were produced in spite of my having given opportunity for the purpose. This argument appears to be based on the plea that a school need not have a bus for the need of its students. I do not think this argument to be of any consequence, particularly in view of the fact

that a large number of schools in Delhi are having school buses. It is a matter of common knowledge that in Delhi admissions to schools are quite a difficult proposition. Students have to come from far off places. Moreover, school bus would appear to be the safest mode of conveyance for a student to go to school. Death stalks Delhi roads and cyclists and the pedestrians are the worst sufferers. It cannot be said that for students of tender years to go to school in a school bus and for that purpose for a school to maintain a bus, is not necessary. Under the Rules hostel attached with school can entitle the school for grant-in-aid, meaning thereby that it maybe necessary to have a hostel for a school. There appears to be no reason why school buses cannot be necessary for a school. An argument was also raised that then a school may run a canteen and claim grant-in-aid. This issue is not before me but then if reference is made to Rule 50(xiii), a school has to make arrangements for supply of good drinking water to the students and to provide suitable facilities to enable the students to take refreshments, lunch or the like. There appears to be no reason why a school cannot run a canteen providing wholesome food to the children, effectively preventing them from eating unhygienic food from the hawkers outside the school which is quits a common sight in Delhi.

(14) Mr. Parihar, learned counsel for the petitioners, referred to a decision of the Supreme Court in Frank Anthony Public School Employees'' Association Vs. Union of India (UOI) and Others, in support of his submission that the petitioners were employees of the school and thus entitled to the reliefs claimed. In this case, teachers of an unaided minority school sought parity in pay scales with the teachers of Govt. schools u/s 10 of the Act though Section 10 was not applicable to an unaided minority school. As a matter of fact, u/s 12 of the Act, Chapter Iv of the Act containing Sections 8 to 11 was made inapplicable to an unaided minority school. The Supreme Court held that Section 12 which made the provisions of Chapter Iv inapplicable to unaided minority institutions was discriminatory and void except to the extent that it made Section 8(2) of the Act inapplicable to unaided minority institutions. The Supreme Court, Therefore, granted declaration to that effect and directed the Union of India and the Delhi Administration and its officers to enforce the provisions of Chapter Iv, except Section 8(2), in the manner provided in the Chapter in the case of the Frank Anthony Public School.

(15) Since school bus is a necessity it has to be held that the petitioners are ''employees'' of the school as they are working in the school. Section 10 is immediately attracted in their case. It was contended by Mr. Jain that in any case the petitioners cannot claim parity of pay with the drivers and conductors of a school bus in a Govt. school. He said that school bus in the Govt. Model Senior Secondary School, Ludlow Castle, was an exception, and it had been brought on record by the Delhi Administration that there was no other Govt. school where there was a school bus and no grant-in-aid to any private recognised school was being granted in respect of drives and conductor of the school buses owned and run by those schools. Mr. Jain said that the grant-in-aid to the school for blind

girls stood as a class of its own. His argument proceeded on the basis that for the petitioners to claim parity, they must show that they were employees of corresponding status in schools run by the Delhi Administration. He said that for the petitioners to succeed they must show that there were school buses generally in Govt. schools where drivers and conductors had been employed. I do not think this argument to be correct. Government may not run school buses for its schools for varying reasons, may be even .for paucity of funds. After all the resources of a State are not unlimited. But then there are Rules as framed by the Delhi Administration for recruitment of drivers and conductors and their pay scales. Then the argument was that ''employees'' mentioned in Sub-section (1) of Section 10 of the Act would be those employees covered under Sub-section (2) of that section. Again, I do not think that this argument is correct. Sub-section (1) is applicable to any recognised private school whether aided or not, Sub-section (2) applied only to an aided school. Also, if it was otherwise, the Supreme Court would not have issued directions as it did in the page of Frank Anthony Public School Employees'' Association (supra). I am of the opinion that the petitioners being employees of the school are entitled to same scales of pay and allowances etc. as provided to the drivers and conductors of the school buses run by the Delhi Administration. It is not material for that purpose that school should get grant-in-aid or there has to be any post-fixation or approval or sanction by the Director of Education. That stage would arise only when the Administrator decides to give aid for that purpose. Rules do not prescribe that the school would be entitled to grant- in-aid in respect of drivers and conductors of a school bus. No direction can, Therefore, be issued to the first respondent to provide grant to the school for that purpose, as was contended by Mr. Jain as any such direction would be contrary to the Act and the Rules. As already noted above,. Sub-section (3) of Section 6 of the Act provides that aid may cover such part of the expenditure of the school as may be prescribed. The fact that the school has no sufficient funds to meet the expense of increase in .salaries of the drivers and conductors is not a circumstance for me to take into consideration in the present case. I do hope, however, that since running a school bus is necessary for a school and the conductor and driver would be employees of the school, the Delhi Administration would provide necessary grant-in-aid treating the buses as school property and the drivers and conductors as employees entitled to grant-in-aid.

(16) In the circumstances, Therefore, a direction will issue to the first respondent requiring respondents Nos. 2 and 3 to bring the scales'' of pay of the petitioners and other allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits at par with driver and conductor of the school bus of a school run by the Delhi Administration. To that extent, the petition is allowed and the Rule is made absolute. Petitioners will be entitled to costs. Counsel''s fee Rs. 500.00 .

