
(2006) 07 DEL CK 0049

In the Delhi High Court

Case No : Writ Petition (Civil) No"s. 10019-20 of 2005

Lady Irwin College Society and Another

APPELLANT

Vs

Sushila Devi and Others

RESPONDENT

Date of Decision : 27-07-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 2

Citation : (2006) 133 DLT 175 : (2006) 111 FLR 816

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Rajender Dhawan and Shafali Dhawan, for the Appellant; Sanjeev Rarh, for Respondents No. 1 and 2, for the Respondent

Judgement

Manju Goel, J.—The petitioners in these writ petitions challenge the Award of the Presiding Officer, Labour Court No. II, Delhi in I.D.No. 250/2002 on the reference with the terms:

Whether the services of Smt. Sushila Devi w/o Sh. Brajesh Rana and Smt. Saroj W/o Sh. Mahender Singh, have been terminated illegally and, or unjustifiably by the management, and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Government notification and to what other relief they entitled and what directions are necessary in this respect.

2. The Award says that Mrs. Sushila Devi was working as a Teacher w.e.f. 23.10.1990 and that from 1.1.2001 she was not being paid her salary despite notice given by her Mrs. Saroj, the other "workman" before the Labour Court was appointed as a Helper Teacher with the respondent. She was also claiming her salary w.e.f. 1.1.2001. The Award says that the management was proceeded ex parte as no one appeared on behalf of the management despite service of notice. Mrs. Sushila Devi and Mrs. Saroj led evidence by way of filing affidavits and documents. The Labour Court held that the services of Mrs. Sushila Devi and Mrs. Saroj have been terminated illegally and unjustifiably by the management and that they were entitled to reinstatement along with full back wages with

consequential benefits.

3. The Award is challenged on various grounds. However, the one ground which is pressed today is that Mrs. Sushila Devi and Mrs. Saroj were not "workman" and, Therefore, the Labour Court had no jurisdiction. Mrs. Sushila Devi and Mrs. Saroj, were Teacher and Helper Teacher respectively. It was held by the Supreme Court in the case of Miss. A. Sundarambal v. Government of Goa, Daman and Diu and Ors. (1998) 4 SCC 42 that teachers were not workmen. This conclusion flows from the very definition of "workman" as given in Section 2(s) of the Industrial Disputes Act, which is to the following effect:

"Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 of 1934); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

4. The word "teacher" does not find place in any of the descriptions of workman given in this definition. The Hon"ble Supreme Court also analysed this very definition and concluded as under:

We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as "workmen" within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as "workmen" as defined under the Act. It is not possible to accept the

suggestion that having regard to the object of the Act, all employees is an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *May and Baker (India) Ltd. v. Workmen* precludes us from taking such a view. We, Therefore, hold that the High Court was right in holding that the appellant was not a "workman" though the school was an industry in view of the definition of "workman" as it now stands.

5. Learned Counsel for the respondents says that the two teachers in question were, in fact, not teachers as they were actually doing the work of tailoring and knitting, as without actually doing the work of tailoring and knitting, the subject cannot be taught. There is no dispute with the proposition that it is not the designation but the nature of duty which determines whether an employee is a workman or not. A teacher cannot teach unless he performs the art which he is teaching. In the present case since the teachers were teaching tailoring and knitting, they were naturally be doing tailoring and knitting by way of demonstration and that will not change the nature of their duty from teaching to tailoring. Further, there is no allegation anywhere in the claim petitions before the Labour Court that although they were called teachers they were actually technical workers performing the duties of tailoring and knitting. I, Therefore, find no force in the argument of the learned Counsel for the respondents that despite being teachers, the two employees were actually workmen falling within the definition of Section 2(s) of the Industrial Disputes Act. Since these two employees/respondents were not workmen, they could not have invoked the jurisdiction of the Labour Court. They were not entitled to any of the benefits of the provisions of the Industrial Disputes Act. The reference of the dispute could not have been made to the Labour Court. Nor could the Labour Court have made an Award.

6. The impugned Award is, accordingly, set aside. This will, however, not preclude the two workmen from seeking their remedy, as may be appropriate, in accordance with law.

7. The respondents have made an application u/s 17-B of the Industrial Disputes Act. In view of the foregoing, no relief can be given to them u/s 17-B. The application of the respondents in this regard is also dismissed.