

(2015) 01 DEL CK 0254

In the Delhi High Court

Case No : Writ Petition(C) No. 3164/2012

Maharaja Agrasen Model School

APPELLANT

Vs

Workmen Through Vyapar Tatha Udhyog Karamchari Sangh

RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Delhi School Education Act, 1973 — Section 10

Citation : (2015) 5 AD 37 : (2015) 217 DLT 593 : (2015) 1 LLJ 706

Hon'ble Judges : Suresh Kait, J.

Bench : Single Bench

Advocate : Shobha and Raghav, for the Appellant; Suryakant Singla and Shanto Mukherjee, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Suresh Kait, J.—The present petition is directed against the award dated 01.10.2011, whereby the respondents/workmen were held entitled to get wages as per the recommendations of the 6th Pay Commission from the date of granting the same to other similar employees of the petitioner School.

2. Briefly stated, the respondents/workmen raised an industrial dispute mainly on the ground that the petitioner School was found to be discriminating the similar Group "D" employees on the basis of wages given to them. Some of the employees of the School were given wages as per their necessities of life, but the other employees of the similar grade, i.e., respondents herein were not being given wages as per their requirement but as per the Minimum Wages Act, which is less than the wages received by the other employees of the School.

3. In addition to the above, the respondents/workmen raised other issues which have not been granted by the learned Tribunal; therefore, those issues are not being discussed in this judgment.

4. On failure of the conciliation proceedings, the Competent Authority vide order

dated 16.06.2008 referred the dispute to the learned Tribunal for adjudication. Term No. 1 of the reference is necessary to adjudicate the present petition, therefore, the same is reproduced as under:-

"1. Whether demand of the pay scales at par with other group D category employees of the school to workmen whose names are given in Annexure A; is justified; and if so, what directions are necessary in this respect?" 5. Ms. Shobha, learned counsel appearing on behalf of the petitioner School submitted that the learned Tribunal has exceeded its jurisdiction and gone beyond the reference by awarding wages as per the recommendations of the 6th Pay Commission to the respondents who all are either employed on temporary basis or for fixed period of one year on consolidated remuneration. Even the respondents do not have the requisite qualifications as on the date of their appointments as stipulated in the Recruitments Rules. None of the respondents were appointed through any selection process.

6. Moreover, in their statement of claims, the respondents did not claim wages as per the recommendations of the 6th Pay Commission. The respondents failed to establish and name any of the Group "D" employees of the School, who was getting more salary than the respondents and especially getting remunerations as per the recommendations of the 6th Pay Commission. However, the learned Tribunal has relied upon the affidavit of the Principal of the School examined as MW1. During her cross-examination, she specifically stated that though one Tara Chand was getting regular pay scale according to the recommendations of the 6th Pay Commission, however, he was not a Group "D" employee. Despite, the learned Tribunal in the impugned award observed that MW1 Smt. Samita Amit, Principal of the School, in her cross-examination deposed that Tara Chand is working as a Peon and is being paid wages according to the recommendations of the 6th Pay Commission.

7. Ms. Shobha submitted that admittedly the respondents are Group "D" employees, however, they were not regular employees and not selected through a regular selection process. Therefore, they cannot be equated with the regular employees of the petitioner School. The equal pay can be demanded for the equal work. The respondents failed to establish that their nature of job was equal to the other employees of the School.

8. She submitted that the relief cannot be granted beyond the recommendations made to the learned Tribunal. There was no averment made in the reference regarding payment of wages as per the 6th Pay Commission, therefore, the learned Tribunal has exceeded its jurisdiction, which is not permissible under the law.

9. To strengthen her arguments on the issue raised above, the learned counsel has relied upon the case of State Bank of Bikaner and Jaipur Vs. Om Prakash Sharma, , wherein the Apex Court held as under:-

"12. In the instant case, the Award of the Labour Court suffers from an illegality,

which appears on the face of the record. The jurisdiction of the Labour Court emanated from the order of the reference. It could not have passed an order going beyond the terms of the reference. While passing the Award, if the Labour Court exceeds its jurisdiction, the Award must be held to be suffering from a jurisdictional error. It was capable of being corrected by the High Court in exercise of its power of judicial review. The High Court, therefore, clearly fell in error in refusing to exercise its jurisdiction. The Award and the judgment of the High Court, therefore, cannot be sustained. Consequently, the appeal is allowed and the judgment of the High Court is set aside. The award is set aside to the extent of order of reinstatement with back wages. The writ petition filed by the appellant in the High Court is, thus, allowed." 10. Learned counsel further submitted that the appointments of the respondents were purely temporary / contractual and for a fixed period extending from time to time. Moreover, the respondents/workmen have not represented the claim regarding pay scale and pay equivalent to the regular employees of the petitioner School.

11. To strengthen her arguments, learned counsel has relied upon the case of Union of India (UOI) and Others Vs. K.V. Baby and Another, , wherein the Apex Court held as under:-

"3. The respondents, however, contend that pending their absorption they must be paid the same salary as regular employees, as they are doing similar work. They have also contended that the Railways have the same disciplinary control and power over them as over their regular employees. The Tribunal has accepted this contention and granted them the same emoluments as the regular employees. However, persons who are engaged on the basis of individual contracts to work on a commission basis cannot, by the very nature of their engagement, be equated with regular employees doing similar work. Their appointment and mode of selection, their qualifications cannot be compared with regular employees. The Recruitment Rules and service conditions of Southern Railways do not apply to these employees. Since they are not regular employees on the cadre of Railway Catering Service, we fail to see how they can contend that they are subject to the disciplinary jurisdiction of the Railway authorities under the relevant Rules. Their responsibilities cannot be equated with the responsibilities of regular employees. Our attention has been drawn in this connection to a decision in the case of State of Haryana and Others Vs. Jasmer Singh and Others, (to which one of us was a party), where this Court has, for reasons set out therein, declined to equate daily-rated workers with regular employees for similar reasons. In a subsequent case of State of Haryana Vs. Surinder Kumar and others, employees who were engaged on a contract basis were not considered as on a par with regular employees for the purposes of their salary and other benefits. In the case of T.I. Madhavan, Gen. Secy., All India Railway Catering Services Workers' Union Vs. Union of India (UOI) and Others, also, this Court, although it did not go into this question, directed that the salary of a regular employee can be paid to such employees only from the date of their absorption. In the premises, the appeals are allowed and the impugned

judgment of the Tribunal is set aside. However, the respondents are entitled to absorption in the same manner as directed in T.I. Madhavan, Gen. Secy., All India Railway Catering Services Workers' Union Vs. Union of India (UOI) and Others, and will be entitled to salary as regular employees from the date of their absorption." 12. Also relied upon the case of Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty, , wherein the Apex Court held as under:-

"10. The High Court before directing to give regular pay-scale to the respondent w.e.f. September, 1997 on the principle of "equal pay for equal work" did not examine the pleadings and facts of the case in order to appreciate whether the respondent satisfied the relevant requirements such as the nature of work done by him as compared to the nature of work done by the regularly appointment Junior Assistants, the qualifications, responsibilities etc. When the services of the respondent had not been regularized, his appointment was on temporary basis on consolidated pay and he had not undergone the process for regular recruitment, direction to give regular pay-scale could not be given that too without examining the relevant factors to apply the principle of "equal pay for equal work". It is clear from the averments made in the writ petition extracted above, nothing is stated as regards the nature of work, responsibilities attached to the respondent without comparing to the regularly recruited Junior Assistants. It cannot be disputed that there was neither necessary averments in the writ petition nor any material was placed before the High Court so as to consider the application of principle of "equal pay for equal work".

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15. In view of what is stated above, we find it difficult to sustain the direction given by the High Court in the impugned order to grant regular pay scale to the respondent admissible to Junior Assistant from the month of September, 1997. Hence, we set aside the said direction and allow the appeals to that extent with no order as to costs."

13. Learned counsel further submitted that the respondents/workmen were not appointed through a regular selection process and as per the Recruitment Rules, rather they are back door appointees, therefore, they cannot be even regularized as per the case of the Secretary, State of Karnataka and Others Vs. Umadevi and Others, , wherein the Supreme Court held as under:-

"43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition

among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

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45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on

the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India."

14. Learned counsel for the petitioner School further submitted that the doctrine of equal pay for equal work cannot be applied in every case automatically. For applying the aforesaid doctrine, large number of factors including method of recruitment and educational qualifications are relevant for determining equivalence. Therefore, the said doctrine requires equality to be established whereas in the present case, the respondents have failed to establish that they were regular employees, their nature of job was similar to the other employees of the petitioner School and that they were recruited as per the Recruitment Rules and equipped with the eligible qualifications.

15. On the aforesaid issue, learned counsel for the petitioner has relied upon the case of Official Liquidator Vs. Dayanand and Others, , wherein the Supreme Court observed as under:-

"93. The respondents" claim for fixation of pay in the regular scale and grant of other monetary benefits at par with those appointed against the sanctioned posts has been accepted by the High Courts on the premise that their duties and functions are similar to those performed by regular employees. In the opinion of the High Courts, similarity in the nature of work of the company paid staff on the one hand and regular employees on the other hand, is by itself sufficient for invoking the principle of equal pay for equal work, In our view, the approach adopted by the High Courts is clearly erroneous and directions given for bringing

about parity between the company paid staff and regular employees in the matter of pay, allowances etc. are liable to be upset." 16. Also relied upon the case of State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , wherein the Supreme Court held as under:-

"24. Thus it is clear that persons employed on contract cannot claim equal pay on basis on equal pay for equal work. Faced with this situation it was submitted that all these persons were in fact claiming that their respective appointments were regular appointments by the regular process of appointment but that instead of giving regular appointments they were appointed on contract with the intention of not paying them regular salary. It was admitted that the Petitions may be badly drafted and such a contention not put forth specifically. The High Court has disposed of these Petitions also on the footing that the principle of equal pay for equal work applied. We therefore set aside the impugned orders in these cases also and remit the matters back to the High Court for disposal. The High Court shall permit these Petitioners to amend their Petitions to make necessary averments and will also permit the Respondents in these cases to file replies to the amended Petitions." 17. While concluding her arguments, learned counsel for the petitioner submitted that the learned Tribunal had no power to grant relief beyond the reference made by the Competent Government. There were only 6 sanctioned posts and 13 employees were working at the relevant time in the petitioner School, who were getting salary more than the minimum wages. All these aspects have not been considered by the learned Tribunal and the petitioner had no occasion to lead evidence beyond the reference sought. As per the Recruitment Rules, none of the respondents/workmen fulfilled the required qualifications of a regular employee and the petitioner School does not have any antecedents of the claimants, therefore, did not lead evidence before the learned Tribunal to establish that the respondents/workmen were not regular employees of the School and hence not entitled to the benefits of the 6th Pay Commission.

18. Moreover, the respondents/workmen though mentioned in their statement of claims regarding 6th Pay Commission and Section 10 of the Delhi School Education Act, 1973, (hereinafter to be referred as "the Act?"), which is not sufficient and does not enlarge the scope of the reference. Moreover, section 10 of the Act does not apply to an employee who is not regularly appointed through the proper procedure.

19. On the other hand, Mr. Suryakant Singla, learned counsel appearing on behalf of the respondents/workmen submitted that the petitioner has made altogether a new case in the present petition as no evidence was produced before the Tribunal with respect to the contentions now raised. The petitioner, for the first time, is urging that the respondents/workmen were temporary and ad hoc employees of the School and not employed according to the Recruitment Rules and as such were not regular employees.

20. Mr. Singla submitted that 17 employees in respect of whom the dispute was

referred were permanent employees of the Management and had been working for long years. During her cross-examination, MW1 accepted that Group "D" employees were being paid wages as prescribed by the 6th Pay Commission. Accordingly, the learned Tribunal has directed the same wages to be paid to the respondents/workmen.

21. Learned counsel further submitted that the petitioner Management, being an unaided recognized private school, has to work under the provisions of the Delhi School Education Act, 1973, and the Rules framed there under. Section 10 of the Act provides that scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognized private school shall not be less than those of the employees of the corresponding status in school run by the appropriate authority.

22. To strengthen the above submission, learned counsel for the respondents/workmen has relied upon the case of Ms. Payal Gupta Vs. Lt. Governor of Delhi, The Director of Education, Delhi, The Manager, Cambridge School, Srinivaspuri, New Delhi and The Principal, Cambridge School, Srinivaspuri, New Delhi--> , whereby held that all the employees of private unaided schools are entitled for the wages and allowances and benefit equal to the Government schools employees.

23. As far as the plea of adequate educational qualifications is concerned, such plea was neither raised before the learned Tribunal and nor any evidence thereto has been produced by the petitioner School. Therefore, the issue raised belatedly by the petitioner School has no bearing on the award passed by the learned Tribunal.

24. Learned counsel further submitted that the term of reference was that whether demand of the pay scales at par with other Group "D" category employees of the School is justified and if so, what directions were necessary in that respect.

25. The learned Tribunal has recorded in the Award that in the cross-examination, Principal of the petitioner School deposed that Tara Chand, one of the employees of the School working as a Peon was being paid wages according to the recommendations of the 6th Pay Commission. Thus, MW1 had accepted that the benefits of 6th Pay Commission were being given to the Group "D" employees of the School. Therefore, there was no justification in paying only the minimum wages to the respondents/workmen. The petitioner did not mention in their written statement that the respondents were temporary employees and were not entitled to the benefit of 6th Pay Commission. Moreover, suggestion was put to the Principal in her cross-examination that the respondents/workmen were entitled to get wages according to the recommendations of the 6th Pay Commission. Even thereafter, the petitioner did not lead any evidence regarding the qualifications, appointment and status of the respondents/workmen.

26. Learned counsel further submitted that the judgments relied upon by the

learned counsel for the petitioner are not applicable in the facts and circumstances of the present case. The learned Tribunal has passed the order under the Industrial Disputes Act, 1947, whereas the cases relied upon by the petitioner relate to the Public Sector and service law is applicable therein.

27. In case of K.V. Baby (supra), the employees were on contract and commission to be paid on the business transacted by them, however, Southern Railways was not paying any salary to them. Whereas, in the present case, the respondents are working on the salary since long with the petitioner School.

28. Even in case of Manoj K. Mohanty (supra), the employee was seeking regularization of his services as a Junior Assistant with effect from 21.07.1990. Whereas the present case is not of regularization, but for granting of pay equivalent to the other Group "D" employees of the petitioner School.

29. Even in case of Uma Devi (supra), the employees were on temporary/contractual/daily wages and were seeking regular employment, whereas the case of the respondents herein is different, therefore, the said judgment is not applicable in the facts and circumstances of this case.

30. In case of Daya Nand and Ors. (supra), the employees were recruited by the Official Liquidator to look after the assets of the companies in liquidation, hence, their appointment was for a particular purpose and for limited time, therefore, the said judgment is also not applicable in the facts and circumstances of the present case.

31. Learned counsel submitted that the respondents/workmen were working with the Petitioner School since long. They all were regular employees and the Petitioner School was deliberately not paying them salary in terms of the 6th Pay Commission. Moreover, the present petition is under the judicial review. This Court need not to reappreciate the evidence and take into notice the facts which were not before the learned Tribunal.

32. Also relied upon the case of Mrs. Veena Sharma and Others Vs. The Manager, No. 1 Air Force School and Others, , wherein the learned Single Bench of this Court held that:-

"21. I am, Therefore, of the considered opinion that the respondent school is bound by the terms of Section 10 and has to ensure payment of salary and allowances and also extend all terms and conditions of service to its employees at par with those of employees of corresponding status in schools run by the appropriate authority, as per Section 10 of the Act." 33. I have heard the learned counsel for the parties.

34. The reference to be adjudicated by the Tribunal was that whether demand of the pay scale at par with other Group "D" employees of the School is justified and if so what directions are necessary in this respect.

35. The petitioner School has urged before this Court that respondents /

workmen were temporary and ad-hoc employees of the petitioner School and were not employed according to recruitment rules. Therefore, they are not entitled to get the emoluments equivalent to other regular employees of the School.

36. The dispute of 17 employees was referred who are permanent employees of the Management and are working with the petitioner School since long. The petitioner is an unaided recognized private school and is functioning under the provisions of the Delhi School Education Act, 1973 and the Rules framed there under. Section 10 of the Act provides that 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 in the employees of the corresponding status in School run by the proper Government. This issue has been decided in the case of Veena Sharma (Supra).

37. Moreover, in the case of Cambridge School Teachers' Association (Supra) it is held that all the employees of private unaided Schools are entitled for the wages and allowances and benefits equal to the Government School Employees.

38. It is admitted by MW1, Principal of the petitioner School in her cross-examination that one of the Group "D" employees namely Sh. Tara Chand, who was working as a peon in the petitioner School was being paid wages according to the recommendations of the 6th Pay Commission. Thus, the petitioner School has admitted the benefits of 6th Pay Commission are being paid to the Group "D" Employees of the School. Therefore there was no justification in paying only the minimum wages to the respondents / workmen.

39. It is pertinent to mention here that the petitioner did not mention in their written statement filed before the Tribunal that the respondents were temporary employees and were not entitled to the benefit of 6th Pay Commission. Moreover, a suggestion was put to the Principal in her cross-examination that the respondents were entitled to get wages according to the recommendations of the 6th Pay Commission. Even thereafter, the petitioner failed to lead any evidence regarding the qualifications, appointment and status of the respondents / workmen.

40. It is not disputed by the petitioner School that the respondents / workmen have been working with the petitioner School since long. Appointment letter of Sh. Jorawar Singh, for example, referred as under:

"Ref.No.MAMS/P.F.-104/92-93 Dated: 30.06.1992

APPOINTMENT LETTER

Dear Sh. Singh,

Ref., your application and subsequent interview for the post of peon; you are hereby appointed as peon on the consolidated salary of Rs.700/- P.M. The appointment is purely temporary. You will be on probation period of one year.

The probation period can be extended by another year."

41. In the case of Umed Singh v. Presiding Officer and Anr. rendered in W.P.(C) No. 6847/2009 on 19.12.2013, this Court held as under:-

"7. There is no gainsaying that the scope of interference in an award by the High Court in exercise of its power of judicial review under Article 226 of the Constitution of India is limited. High Court cannot sift and weigh the evidence adduced before the Labour Court or Industrial Tribunal to take an independent view than what has already been taken by the Industrial Adjudicator upon appreciation of evidence. High Court will step in only if it is shown that Award is based on no evidence or is perverse. In case award suffers from any manifest error of law or jurisdiction then also High Court will interfere with the award. However, if award is based on some evidence then High Court will not interfere with the same. Question of adequacy or sufficiency of evidence has not to be gone into." 42. The petitioner has failed to establish that the award is based on no evidence or is perverse. Also failed to establish that the award suffers from any manifest error of law or jurisdiction. Therefore, this Court cannot sift and weigh the evidence adduced before the Tribunal to take an independent view other than what has already been taken by the industrial adjudicator upon appreciation of evidence.

43. The findings of fact recorded by the Tribunal cannot be disturbed so long as they are based upon some material relevant for the purpose. The exercise of power of judicial review should, as far as possible, sustain the award made by the Industrial Adjudicator instead of picking holes here and there on trivial points and ultimately frustrating the entire adjudication process by striking down the award on hyper technical grounds.

44. In view of above discussion on facts and settled law, I find no discrepancy in the order passed by the Id. Tribunal.

45. Accordingly, the petition is dismissed with no order as to costs.