

(2006) 10 DEL CK 0101

In the Delhi High Court

Case No : Writ Petition (C) No. 4429 of 2005

Mareshwar Prasad

APPELLANT

Vs

Nehru Yuva Kendra Sangathan

RESPONDENT

Date of Decision : 01-10-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2006) 10 DEL CK 0101

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Inderjit Singh and Kul Bhushan, for the Appellant; Rana Ranjit Singh and Ajay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the award dated 13.12.2004 whereby learned Tribunal

answered the reference against the petitioner

2. Briefly, the facts are that the Respondent No. 1 decided to impart computer education to under privileged class on "no profit no loss basis" and

for this purpose it employed the petitioner as an instructor-cum-in-charge of the Center at monthly payment of Rs. 3,000/-. Services of petitioner

were terminated on 31st July, 1997. Petitioner raised an industrial dispute which was referred for adjudication in the following terms:

Whether the action of the management of Nehru Yuva Kendra, Ghaziabad in terminating the services of Shri Maheshwar Prasad, Ex. Computer

In-charge w.e.f. 01.08.1997 is legal & justified? If not, what relief the workman is entitled to?

3. The Tribunal came to the conclusion that petitioner was being given

honorarium. There was no employer-employee relationship. One of the conditions of his appointment was that he would not claim regularization. The Tribunal also observed that case of the petitioner related to Neharu

Yuva Kendra, an organization of the type "Jawahar Lal Nehru Rozgar Yojana". There was no question of reinstatement of the petitioner since the project had to come to an end.

4. The counsel for the petitioner argued that the documents proved by petitioner showed that he was getting salary and not honorarium and these documents have been ignored by the Tribunal. Since the petitioner was getting a salary and while appointing him he was not informed that his service was for any project, the termination was illegal.

5. Tribunal relied upon letters annexures R1 and R2 in order to arrive at a conclusion that the petitioner was not an employee of the respondent. A

perusal of these letters would show that the computer programme course was started in Ghaziabad on "no profit no loss basis" to help the

downtrodden and poor class. A fee of Rs. 1,400/- was being charged for the entire year from each student. The programme was closed down

since there was serious complaint about the functioning of the computer training center and it was adversely affecting the image of the respondent.

6. Almost similar circumstances were there before the Supreme Court in Surendra Kumar Sharma Vs. Vikas Adhikari and Another, wherein the

termination of the petitioner was caused by abolition of post consequent upon the scheme having been abolished for non-availability of funds.

Supreme Court held that the Appellant was a daily wager in the scheme and he knew it well that his employment would come to an end with the

ending of the scheme. When the post against which he was working got abolished for want of funds he could not claim any right to continue on it.

7. In the present case, the petitioner knew that computer center was opened for the poor at "no profit no loss basis". It could be closed down for

want of funds or for want of students. It was being run by a society having limited funds and the moment programme came to an end the petitioner

had to leave the service. The Petitioner was employed on a consolidated amount and in his appointment letter it was made clear that he would not

claim regularisation. This condition was there only because there was no permanent post. Programme of computer education could come to an end

any time. The petitioner cannot claim right over any post. With the closure of training centre, the services of petitioner were bound to come to an end. He has no right of reinstatement or compensation.

8. The Tribunal has not considered aspect of "workman", it seems this issue was not raised. However, the petitioner was a computer instructor, he was the in-charge of computer center. It cannot be said that he was a "workman". An instructor is in the category of a teacher. Supreme Court in

Ahmedabad Pvt. Primary Teachers' Association v. Administrative Officer and Ors. in 2004 (1) SSC 755 has held that a teacher was not a

workman. Even otherwise, in order to qualify to be a "workman" an employee has to satisfy the definition u/s 2(s) of Industrial Dispute Act. He

has to be the one - performing either manual, skilled, unskilled, operational, clerical or supervisory work. In case of supervisor his salary should not

be more than Rs. 1,600/-. An in-charge of computer center cannot be said to be a person performing manual, skilled, unskilled, operational or

clerical job. Petitioner was overall in-charge of the computer center, and was giving instructions to the students & teaching computer science. I

consider he was not a "workman".

9. In view of my discussion above, I consider that this writ petition has no force and is hereby dismissed. No order as to costs.