
(2004) 08 DEL CK 0127
In the Delhi High Court
Case No : CW. 5446 of 2002

Mrs. Florence Joel

APPELLANT

Vs

Mater Dei School and Others

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Citation : (2004) 113 DLT 511 : (2004) 76 DRJ 421 : (2005) 104 FLR 44

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : S.K. Shukla, for the Appellant; M. Dias and S.K. Shandilya for Respondents Nos. 1 and 2, Aditya Madan, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Rule.

With the consent of parties writ petition is taken up for disposal.

2. Petitioner, by this writ petition assails the order dated 17.7.2002, passed in appeal by the Delhi School Tribunal. Mr.Shukla, submits that petitioner was an illiterate widow, who had been engaged by Mater Dei School as a class IV employee. This was done in January, 1983. Her duties were washing clothes, cooking food, dusting and cleaning residential quarters of the Sisters and the chapel where the Sisters prayed. It is further claimed that petitioner was also cleaning the class rooms. Respondent-School and its Society did not issue any appointment letter to the petitioner. Petitioner"s services were terminated vide letter dated 5.7.1996 w.e.f. 15.7.1996. It is stated that respondent Society, which ran the School paid a sum of Rs.13,288/- towards settlement of dues. Petitioner was not paid the regular salary and other retiral benefits, as paid to other employees. At the time of settlement, gratuity and compensation of 15 days each for every completed year of service was paid.

3. Respondents have filed the counter affidavit, denying the relationship of Employer and Employee between the Petitioner and School. It is stated that

petitioner had approached the Sisters of the School, as she found herself in misery on account of ill-treatment by her husband, who was alleged to be a drunkard. It is stated that purely as a humanitarian gesture, petitioner was given the job of cleaning, washing and attending to the cooking needs of the Sisters as also to clean the Chapel as part time domestic help. The Sisters, it is stated, are residing within the School premises. It is stated that the Sisters of the School had treated the petitioner as a member of the family and all her four children received free education and considerable financial assistance was given at the time of marriage of the daughters. Be that as it may, the question arising for consideration is whether petitioner was an employee of the School or not ?

4. Mr.Shukla submits that School is run by the Society. He places reliance on Municipal Corporation of Delhi Vs. Children Book Trust reported at 47 (1992) DLT 424 to submit that the Society is to control the Managing Committee of the School and in this case the payments, which were made to the petitioner for settlement of dues, were made by the Society. He submits that as such relationship was established between the petitioner and the School. Petitioner was not the personal employee of the Sisters or Nuns. He also places reliance on Kapoor Chand and Others Vs. Delhi Administration and Others, . In this case, the conductors and drivers of the School bus were held to be employees of the School.

5. Mr.Shukla further in support of his contention stated that the School magazine is the mirror of the activities of the School and petitioner's photograph appears in the School magazine along with other members of the staff/employees. This amply showed that she was part of the family of the Mater Dei and her status was no different from that of regular employees.

6. I have heard Mr.M.Dias, in opposition. He has reiterated the contents of the counter affidavit, as filed and submits that this was not a case where the employer employee relationship between the Petitioner and School is at all established. There is no appointment letter issued to the petitioner, who is stated to have worked for over more than 13 years. Moreover, he submits that in none of the declarations/returns filed before the Directorate of Education, petitioner figured in the list of employees. He further explains that petitioner was part time domestic help. She was looking after the Sisters/Nuns. She used to clean and cook food for them. She was residing at Baba Kharak Singh Marg. The payments made to her were by the Society, since nuns having renounced the world, do not normally maintain any establishment. Their expenses and needs are all met by the Society. Hence the Society was providing them this facility of part time domestic help.

7. I have heard counsel for the parties and noted their contentions and have also perused the impugned order of the Delhi School Tribunal. I find that there is no infirmity in the order of the Delhi School Tribunal. Petitioner has failed to produce any appointment letter. It is not disputed that regular employees of the School were paid different scale and their names figure in the returns filed with the

Directorate of Education and other statutory authorities. Petitioner did not figure in any of the staff list. The presence of photographs in school magazine shows that she was well treated and looked at as part of Mater Dei family. It does not make her an employee. The absence of the petitioner in any of the returns or staff list filed by the School with the Authorities as also the attendant circumstances negate the plea of being employee of School. The acceptance of salary of part time employee by her for all the 13 years without any reservation or protest does not lend any credibility to claim of being a regular employee of the School. I may notice that as a humanitarian gesture of help extended by the Society is sought to be used as a lever for asserting the claim of regular employment with the School. Not only this, the Society of the School while terminating the arrangement with the petitioner has taken care to provide her the amounts, which would be payable even for gratuity and compensation for each year of service.

8. In view of the foregoing discussion, there is no ground to interfere with the order passed by the Delhi School Tribunal. The writ petition is devoid of merit and is, accordingly, dismissed.