

(2007) 05 DEL CK 0157

In the Delhi High Court

Case No : WP (C) No. 8899 of 2004

Mrs. Poonam Malhotra (Tamar)

APPELLANT

Vs

Arya Model School and Another

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 226, 32

Citation : (2007) 140 DLT 248 : (2007) 114 FLR 1086

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : S.P. Minocha, for the Appellant; Sanjeev Ralli and Sujata Kashyap, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—Rule. With the consent of counsel appearing for the parties the matter is taken up for final hearing.

2. The petitioner who got employment as a nursery teacher with respondent No. 1 school is aggrieved with the order dated 24.03.2004 passed by

respondent No. 2, the Directorate of Education, Government of NCT of Delhi. The petitioner has sought quashing of the said order and has

claimed reinstatement with full back wages and other perks/allowances etc. against respondent No. 1 school. The brief background of facts

necessary for deciding the present writ petition inter-alia are that earlier the petitioner had filed a writ petition bearing CWP No. 7538/2003 on the

same grounds and vide orders dated 18.11.2003 this Court in CWP No. 7558/2003 and CMP No. 12863/2003 gave the following directions:

Counsel for the petitioner concedes that the offending acts of the respondents have not been brought to the notice of the Directorate of Education

who, under the Delhi School Education Act, 1973 has ample powers to look into the grievances which have been raised in the writ petition.

Counsel says that liberty be granted to the petitioner to withdraw the writ petition to enable the petitioner to make a representation to the

Directorate of Education. Liberty granted. Writ petition is dismissed as withdrawn, however, it is directed that on the petitioners making a detailed

representation to the Directorate of Education, the same shall be processed and within four weeks of receipt of the representation, the same would

be considered and disposed of by a detailed speaking order which shall be intimated to the petitioner.

3. Pursuant to the said directions respondent No. 2 had passed impugned order dated 24.03.2003 and operative portion of the said impugned

order is reproduced as under:

Keeping in view the above facts and after carefully going through the file and various documents placed on record, it is quite clear that Mrs.

Poonam Malhotra, (the petitioner) was appointed as Nursery Teacher on ad-hoc basis in an un-recognized school where she worked up to

31.03.2002. She was not allowed to continue with effect from 1.4.2002 but she filed the petition in Nov., 2003 and thus, no fresh directions can

be given for reinstating her services in the Respondent school after a long gap of 19 months. However, strict directions are issued to the

management of Arya Model School to immediately abandon the practice of recruiting teachers on ad-hoc basis and seek the approval of the

Director of Education for the recognition of its Nursery Wing, as per rules on the subject.

4. Being dissatisfied with the said order passed by the Directorate of Education the petitioner has filed the present writ petition challenging the said

order as well as claiming reinstatement on the post of Nursery Teacher with respondent No. 1 school. The claim of the petitioner is that she was

employed as a Nursery Teacher w.e.f. 15.11.1999 on a monthly salary of Rs. 3000/- on adhoc basis and this temporary arrangement was

extended from time to time by respondent No. 1 till 31.03.2002, thereafter, the petitioner was not allowed to resume her duties. The petitioner

further stated that the petitioner was being forced to deposit Rs. 1400/- per month in some Donation Box (Danpatra) which was kept by the

school in the school premises and when she had refused to contribute towards danpatra she met with the said fate of her removal. Petitioner further stated that her monthly salary was increased within this period and she also became a member of the Public Provident Fund, 1952 and necessary deductions towards the provident fund out of her monthly salary were being deposited. The petitioner further stated that the Principal of respondent No. 1, school, got five letters signed by the petitioner without mentioning any date on these letters so as to use them for some ulterior purposes. The petitioner has stated that neither appointment letter was issued in her favor nor any termination order was passed by respondent No. 2 and, Therefore, the petitioner is aggrieved with such illegal and arbitrary acts of respondent No. 1. On the other hand, the case of respondent No. 1 as set out in the counter affidavit is that there is no infirmity in order passed by the Directorate of Education as the petitioner was never vested with any legal right on the post of Nursery Teacher. The petitioner was appointed as adhoc teacher on a temporary basis and her temporary employment was being extended from time to time till 31.03.2002. The petitioner did not undergo any selection process and was just appointed on trial basis as per her own request made in July 2000. The petitioner was fully aware of the fact that her appointment was temporary and she had no vested right on the said post. The respondent has placed reliance on various letters signed by the petitioner herself through which she had approached respondent No. 1 school seeking appointment on the post of nursery teacher and subsequent extensions sought by the petitioner from time to time. Last such letter dated 02.04.2002 was addressed by the petitioner whereby the extension for three months was given till 31.03.2002.

5. I have heard counsel for the parties. The main thrust of arguments of Mr. S.P. Minocha, counsel for the petitioner is that as to how a recognized school can employ teachers in such a fashion where no appointment letters are issued and no termination orders are passed. He also submitted that every recognized school has to follow the provisions of Delhi School Education Act and Rules framed there under. He further submitted that the decision to make the petitioner as a member of Public Provident Fund Scheme 1952 and deductions towards Provident Fund contribution from

salary itself is indicative of the fact that she was not a temporary employee but was a permanent employee.

6. Per contra on the other hand, counsel for the respondent submitted that the petitioner was well aware of the nature of her employment and due

to this reason alone she had never taken any action against respondent No. 1 management for a period of more than fourteen months. Counsel for

the respondent also pointed out that on 28.04.2003 she had obtained experience certificate under her own signatures, although she had applied to

obtain the said certificate much earlier than the said date. The contention of counsel for the respondent is that till 28.04.2003 she did not take any

action and it is only in September, 2003 for the first time that the legal notice was sent by the petitioner.

7. Counsel for the respondent has relied upon the judgment of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs.

Umadevi and Others, to support his proposition that adhoc/temporary employee cannot claim regular appointment on the expiry of the term of his

appointment. Counsel for the respondent further contended that any deduction towards provident fund from the salary of the petitioner and the

consequent deposit made by the school with the EPF Authorities cannot confer any right on the petitioner to claim regular employment as such a

deposit by the school with the PF department is a statutory obligation which the respondent school was legally bound to comply with. Counsel for

the respondent has also disputed procurement of five undated letters from the petitioner. The counsel has stated that the letters were actually

written by the petitioner from time to time seeking her extension of temporary/adhoc service. Counsel has also submitted that the petitioner herself

had approached the respondent school to seek employment on adhoc basis and it is not that the respondent had invited any application for filling

any vacancy of teacher.

8. It is not in dispute that the petitioner was appointed as an adhoc teacher pursuant to her own request made in July 2000 and this

temporary/adhoc employment of the petitioner was extended by the respondent school from time to time which ultimately came to an end on

31.03.2002. The petitioner did not raise any grievance against her alleged termination till September 2003 and it was only on 11.9.2003, for the

first time, the petitioner had sent the legal notice. The petitioner in para 9 of the writ petition has categorically admitted her status to be that of an

adhoc employee. Para 9 of the petition is reproduced as under:

That the petitioner was employed as Nursery Teacher by the respondents No. 1 to 5 (hereinafter called the Managing Committee of the School)

through Shri Mahavir Batra, the then Manager of the respondent school, with effect from 15.11.1999 on a monthly salary of Rs. 3000/- on adhoc

basis and this arrangement continued till June, 2000.

The above monthly salary of Rs. 3000/- was paid to the petitioner in cash on signing the receipt in the accounts register maintained by the

Managing Committee on or about in the first week of every English Calendar Month.

9. In para 14 of the petition although the petitioner has claimed that her appointment on the post of Nursery Teacher was confirmed but she herself

has stated that no appointment letter to this effect was issued by the Management of the school. The contention of the petitioner that she was made

permanent is clearly falsified from the fact that the petitioner was given the experience certificate vide certificate dated 30.07.2002 which was

obtained by the petitioner herself under her signatures on 28.04.2003 clearly stating that the petitioner had worked with the respondent school as a

Nursery Teacher on adhoc basis. The petitioner not only maintained complete silence after her alleged termination at the end of March 2002 but

even did not initiate any action immediately after the receipt of experience certificate dated 28.04.2003. It is only through legal notice dated

11.09.2003 that the petitioner for the first time challenged the alleged action of the respondent school preventing her to join duties w.e.f.

01.04.2002. The case as set out by the petitioner does not inspire any confidence. It is unimaginable that a person who was declined to join her

duties on 1st April, 2002 would not take any action till 11.09.2003 even after obtaining experience certificate in the month of April, 2003. The

petitioner was not selected through proper selection process and the appointment of the petitioner was merely on adhoc basis. Therefore, merely

on the strength of her being continued on adhoc service she cannot be said to be entitled for appointment in the respondent school on permanent

basis. It would be relevant to refer to the following observations of the Hon''ble

Supreme Court in the case of Umadevi (Supra) which reads as under:

35. The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or adhoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

36. 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 $\frac{1}{2}$ not at arms length $\frac{1}{2}$ 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 succor 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.

10. Based on the aforesaid discussion and the observations of the Supreme Court, I do not find any force in the submissions of counsel for the

petitioner. The petitioner cannot claim any special advantage due to deduction of provident fund from her salary as by depositing the PF

contribution, the Management of the school was merely discharging statutory obligations. As far as other contentions raised by the petitioner,

highlighting the malpractices being practiced by the respondent school/The Director of Education, are concerned, there cannot be any dispute as

the Director of Education has to ensure strict adherence of various provisions of Delhi School Education Act and the rules framed there under,

wherever applicable.

11. Respondent No. 2, i.e., the Director of Education is directed to ensure that said directions given in the order dated 24.03.2004 have been duly

complied with by the management of respondent school. The Hon"ble Supreme Court of India in its various pronouncements has also deprecated

the practice of adhoc appointments de hors the rules and, Therefore, this practice of adhocism needs to be put to an end. The Government of

NCT through their Education Department must take suitable measures to see that no exploitation of teachers take place and against regular

vacancies the appointment be made on regular basis after following the proper procedure as per law.

12. With these observations, the writ petition is dismissed.

13. Rule discharged.