

(2006) 03 DEL CK 0247

In the Delhi High Court

Case No : Writ Petition (C) 4555, 4556, 4557, 4558, 4559, 4560, 4561, 4562, 4563, 4564, 4565, 4566, 4567, 4568, 4569, 4570, 4571 and 4572 of 2006

Ms. Neema Tiwari and Others

APPELLANT

Vs

MCD and Another

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Delhi Municipal Corporation Act, 1957 — Section 92

Citation : (2006) 110 FLR 367

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : A.K. Shukla and M. Fais Farooqui, for the Appellant; Shivinder Chopra and Ruchita, for the Respondent

Judgement

S. Ravindra Bhat, J.—Issue Notice. Mr. Shivinder Chopra and Ms. Ruchita accept notice on behalf of respondents and state that the matter can be heard and finally disposed off.

2. All the petitioners are claiming the relief of regularization as Primary Teachers. They also seek release of regular pay scales and benefits as per the Rules and Regulations applicable to permanent teachers in the Schools of the Respondent Municipal Corporation of Delhi.

3. The petitioners claimed to be working in the various schools of the Respondent No.1 (hereafter referred to as "MCD"). They were engaged as Primary/Nursery/ Drawing/Music and PET Teachers on various dates in 2001 and thereafter. It is averred and contended on their behalf that all the petitioners responded to advertisements issued by MCD calling for applications for the posts; they were holding the requisite qualifications. After having successfully participated in the process, they were selected and eventually appointed.

4. Learned counsel contended that the petitioners could not have been kept on

contract basis that since even as per the MCD, admittedly they hold the requisite qualifications. Having undergone the prescribed recruitment procedure, they ought not to have been kept on temporary/ contract basis specially when the posts were permanent.

5. Learned counsel for the petitioner has relied upon the judgment of the learned Single Judge in WP(C) No.3568/03 and connected cases which was decided on 26.9.2005. The Court there was concerned with appointments made to the post of TB Health Visitors/ Laboratory Technicians. They too were engaged on consolidated/ fixed monthly salary. The Court had directed their regularization and consequential fixation of seniority from the date of they reported for duty in accordance with service records of the employees.

6. Learned counsel for the petitioner has also relied upon the judgment of this Court in CW No. 2683/2002 and connected cases, decided on 21.11.2003. In those proceedings, the petitioners were also engaged on contractual basis as teachers by MCD. Their initial appointment was for three months but was subsequently extended from time to time. The Court held that there can be no quarrel with the proposition that terms of the contract would bind both the parties. However, the Court also took into consideration the special nature of duties discharged by teachers in the Society in general and after noting it and the levels of contractual wage, concluded that the differentiation was not based on any rational foundation. The Court held as follows :

14. It is no doubt true that the Corporation was forced not to give regular appointment to the petitioners because its hands were tight, in that, the Delhi State Services Selection Board was taking it's own time to make recommendations. The action of the Corporation to resort to contract employment, Therefore, cannot be faulted with. However, while so doing, in my opinion, petitioners ought to have been paid wages in the minimum of the grade payable to regularly appointed teachers. It was conceded at the bar, that the minimum wage of a teacher under the Corporation with allowances, when inducted in service is approximately Rs. 8,500/- p.m.

15. The justification given by the Corporation for paying a lesser wage to the petitioners is that whereas the petitioners are only required to teach, regularly appointed teachers are assigned additional duties like maintenance of records, supervision of mid-day meals etc.

16. The doctrine of equal pay for equal work embodied in Article 39B has been read by the courts as part of the larger concept of equality enshrined in Article 14 and 16 of the Constitution of India. Courts have interpreted the doctrine to mean the person holding similar posts and discharging similar duties are entitled to same wages. In some cases, quality in the nature of work and degree of responsibility have been held to be accepted factors justifying payment of different salaries to apparently similarly situated persons. Assignment of ancillary and inconsequential duties, in my opinion cannot be an acceptable factor to

differentiate between the petitioners are regularly appointed teachers. It has not been denied by the corporation that as far as teaching is concerned, petitioners are performing the same duties as regularly appointed teachers.

17. For the reasons stated above, writ petitions filed are allowed partly. The conditions incorporated in the letters/ order of appointment of the petitioners limiting their salary to Rs.5,000/- p.m. is quashed. Mandamus is issued to the MCD to pay to the petitioners, during the term of their employment, wages in the minimum of the grade payable to regularly appointed teachers. It is clarified that wages would mean the total emoluments which are being paid to regularly appointed teachers.

With these directions, both the petitions stand disposed of.

7. Learned counsel for the respondent submitted that when the petitioners accepted appointment originally in the year 2001, they were aware of their rights. The advertisements too were for contract appointments. No doubt, appointments were holding requisite qualifications, and had responded to advertisements. They discharged their duties, however, as Contract Teachers. It was also contended that the recruitment of regular teachers is through a separate procedure and had to be resorted to by a requisition to the Delhi Services Selection Board under the provision of Section 92 of the Delhi Municipal Corporation Act.

8. It was contended that the petitioners cannot be treated as regularly appointed teachers since the method of recruitment in their case is different. In so far as the claim for equal salary is concerned, counsel for the respondent contended that the petitioners accepted the emoluments without demur and indeed accepted the employment itself in those terms. Therefore, they cannot contend that the salary of contractual teachers is less than the scale prescribed.

9. Having regard to the fact that the petitioners were appointed on contractual basis pursuant to recruitment process which itself explicitly clarified that the posts were for a tenure or a definite period, they cannot seek regularization. That apart, there is no material to controvert the respondents' assertion that the posts in these proceedings have to be filled through requisition to the DSSB.

10. In this view, even though the job requirement of teachers may be wide, it would not be a sound discretion to direct regularization. It was contended during the course of proceedings that the respondents are likely to issue advertisements inviting applications from eligible candidates and for permanent posts. In such an event, if the petitioners apply their cases shall be considered in accordance with law and the respondents may also consider appropriately the manner in which their previous experience can be taken into account, along with their past performance, and other relevant considerations.

11. As far as the question of equal pay is concerned, I am of the opinion that the justification given by the respondents cannot be accepted. It has been held that

the choice exercised by compulsion (option to accept contractual employment, or unemployment which is really no choice at all). In other words, the decision of the petitioners to accept employment on a fixed salary cannot be held against them for all times to come particularly when the MCD found it expedient to utilize their services for more than five years. Additionally this Court in *Ajay Kumar and Others* has directed that in similar cases teachers ought to be paid the minimum in the pay scale.

12. Accordingly, the respondent MCD is directed to ensure that with effect from 1.3.2006 the petitioners are paid salary equivalent to the minimum of the grade payable to the regularly appointed teachers, for equivalent posts. As clarified in the judgment dated 21.11.2003 the wages/ salary shall be the total emoluments being paid to the regularly appointed teachers. It has also been held in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, that services of ad hoc or contractual employees cannot be substituted by another set of such employees and in the event of termination, the posts can be only filled by a regularly recruited candidates. The respondents are accordingly directed to ensure that in the event of discontinuation of the petitioners services, no contractual/ or ad hoc teacher is appointed in their place. In the event of it becoming necessary to engage contract teachers for the duties they are discharging, the petitioners shall be given preference or continued as the case may be.

13. The petitions are disposed of in the above terms. No costs.

14. dusty to both the parties.