
(2006) 02 DEL CK 0151
In the Delhi High Court
Case No : LPA 716 of 2004

N.C.T. of Delhi

APPELLANT

Vs

Champa Devi

RESPONDENT

Date of Decision : 06-02-2006

Acts Referred:

Citation : (2006) 128 DLT 611 : (2006) 87 DRJ 598 : (2006) 109 FLR 794

Hon'ble Judges : Markandeya Katju, C.J.;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Avnish Ahlawat and Latika Chaudhary, for the Appellant; Rama Shankar, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 28th April, 2004

2. Heard learned counsel for the parties and perused the record.

3. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same, except where necessary.

4. By means of the writ petition, the petitioner had prayed for a direction to the respondents directing respondent No. 3, The Principal, Govt. Girls Sr. Sec. School No. II, Kidwai Nagar, New Delhi, not to terminate her service.

5. It is alleged in para 2 of the writ petition that the petitioner was appointed in the Govt. Girls. Sr. Sec. School No. II, Kidwai Nagar, new Delhi, as a Class IV employee on ad hoc basis in May, 1991 as a Helper in Home Science Department. Thereafter, she was called through the Employment Exchange for interview and the Selection Committee found the petitioner suitable for the post of Home Science Helper. The petitioner was appointed on 18.11.1991 as a Helper on the salary of Rs.489/- per month.

6. It is alleged in para 4 of the petition that although the petitioner was

appointed as Home Science Helper but she was made to work as a Peon, water woman as well as helper. It is alleged that she has been working continuously for more than seven years. However, no appointment letter was given to the petitioner although she requested for the same several times. It is alleged that the petitioner has completed 240 days of service and is entitled to regularization. She prayed several times for regularization and other benefits but to no avail and instead the respondent No. 3 threatened to terminate her service. It is alleged that some other fellow employees were regularized, whereas the petitioner is still temporary and is getting salary of Rs.489/- per month for the last seven years. She made several representations but to no avail and hence the writ petition.

7. A counter-affidavit in the writ petition has been filed by respondents No. 1 and 2 and we have perused the same.

8. It is alleged in para 4 of the counter-affidavit that the petitioner was engaged by the Parents Teachers Association (PTA) and not by respondent No. 2, the Director of Education. The PTA was a necessary party but has not been impleaded and hence the writ petition deserves to be dismissed.

9. It is stated in the counter-affidavit that the PTA of the School is not a Government institution.

10. In para 5 of the counter-affidavit it is stated that the petitioner was kept only for 10 months and was paid salary for 10 months. It is denied that she has been working continuously for several years.

11. In para 7, it is stated that since the petitioner was engaged by the PTA, there was no question of issuing any appointment letter to her. The petitioner was never paid from the Government funds. Her signatures were never obtained on the proper acquittance roll. Her signatures were obtained on an ordinary receipt for the amount paid to her just for the sake of record.

12. As regards Smt. Subashini, she was a congenital paid staff and was regularised by the Department of Education as per Rules. On the contrary, the petitioner was not working on a permanent capacity and she had only been privately engaged by the P.T.A. Hence, the question of regularising her does not arise as her job is not of a permanent nature. Only permanent and regular employees are entitled for the benefit of annual casual leave etc., and hence the petitioner, not being so, is not entitled to the same.

13. From the facts of the case, we are of the opinion that there is no merit in the petition and it should have been dismissed but it has wrongly been allowed by the learned Single Judge. We are of the opinion that the petitioner was only engaged by the Parents Teachers Association and was not a regular employee of the School.

14. In the impugned judgment, the learned Single Judge has observed:-

It is strange that the principal of a Government school has allowed a private

employment to be effected in this manner.

15. In our opinion, there was no bar to such engagement of the petitioner. No rule has been shown to us which prohibits it.

16. Since the petitioner was never appointed by respondent No. 2, hence, obviously, she cannot be regularized nor be made to pay the salary of Home Science Helper.

17. For the reason given above, this appeal is allowed. The impugned judgment of the learned Single Judge is set aside.