

(2008) 07 DEL CK 0139

In the Delhi High Court

Case No : Writ Petition (C) 4826 of 2002

Prem Kumar and Others

APPELLANT

Vs

N.D.M.C.

RESPONDENT

Date of Decision : 24-07-2008

Acts Referred:

Citation : (2008) 07 DEL CK 0139

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Rajiv Garg, for the Appellant; Jyoti Singh and Ankur Chibber, for the Respondent

Judgement

Pradeep Nandrajog, J.—For linking education to productivity, by enhancing individual employability with emphasis on improving the productive skills of young students of Senior Secondary Schools, a scheme named "Educational Vocation Guidance" was framed by the Government of India in the year 1990-91 with the prior approval of the Planning Commission.

2. The scheme envisaged imparting vocational skills to students. Obviously, teachers had to be put in place to impart the vocational skills.

3. The scheme was introduced in many government schools in Delhi.

4. On 7.8.1990, the New Delhi Municipal Committee (NDMC) considered the agenda item which was circulated vide resolutions (date unknown). The resolutions adopted have been annexed as Annexure P-2. The authenticity whereof is not in dispute. It adopted the Educational Vocation Guidance Scheme.

5. Inter alia, the committee resolved, vide item No. 5, to create posts of part-time vocational teachers. Simultaneously, vide item No. 6, the recruitment rules for the posts were approved.

6. It was recorded in the resolutions that necessary budget has been sanctioned for the posts.

7. It was simultaneously resolved that process be initiated to fill up the posts as per the recruitment rules.

8. By way of a public advertisement dated 26.9.1991 applications were invited to fill up the posts clearly indicating to the candidates that the applications were invited for post of vocational teachers on "part-time basis". It was intimated that the emoluments which would be paid would be Rs. 50/- per hour for theory classes and Rs. 25/- per hour for practical training.

9. The select committee was constituted which subjected the applicants to the requisite test resulting in petitioners being appointed as vocational stenography teachers.

10. Rather than issuing appointment letters recording that petitioners were appointed as vocational teachers on part time basis the department resorted to contract term appointments resulting in the petitioners feeling insecure for the reason they had to run from pillar to post each year to continue their employment.

11. Petitioners continued to work as part-time teachers till the year 2002 when instant petition was filed praying that services of the petitioners be regularized. Petitioners state that having been appointed against permanent vacancies after undergoing the selection process and having worked under NDMC for 10 years, they are entitled to be permanently appointed as teachers.

12. In the counter affidavit filed it is stated that the petitioners were appointed on contractual basis and since no posts were sanctioned, petitioners can have no claim for regularization.

13. At the hearing held on 22.7.2008, Learned Counsel for NDMC stressed on the point that the petitioners cannot be appointed as permanent teachers.

14. Unfortunately, NDMC has not comprehended the nature of the petition and appears to be coloured by the request of the petitioners to be treated as regular teachers. It appears that the NDMC is labouring under an impression that the regularization of the petitioners against permanent vacancies would render them akin to teachers working in regular schools established by the Council.

15. It has to be noted that the posts which were sanctioned were not of teachers as conventionally understood but were of vocational teachers, further recording that the post would be of "part-time vocational teachers". Thus, any person who claims a right to be appointed to the post can have a status no more than that of a part-time vocational teacher.

16. On the issue of regularization, suffice would it be to state that the petitioners can seek no more other than permanency in their appointment.

17. In this connection it has to be noted that NDMC created posts of part-time vocational teachers and framed recruitment rules thereto. It is an admitted fact that by way of a public advertisement applications were invited from eligible

candidates by notifying the eligibility norm as per the recruitment rules. It is important to note that candidates were informed that the department was intending to fill up the post of vocational teachers on part-time basis.

18. The process of selection was undergone by the petitioners and all those who had submitted their applications for appointment were considered. Thus, process of selection was followed.

19. The decision of the Hon''ble Supreme Court reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others, be noted. In para 53 it was observed as under:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above-referred to and in light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the service of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

20. It has to be noted that in the instant case the petitioners were selected after undergoing the process of selection and the appointment was made against duly sanctioned posts of part time vocational teachers.

21. I see no reason why petitioners should be required to sign any document recording that their appointment is on contract basis for a period of one year.

22. It needs hardly any clarification that the permanency in the employment of the petitioner under the respondent has not to be as akin to a full-time teacher. The permanency has to be as a vocational teacher on part-time basis.

23. I thus dispose of the petition directing NDMC to treat the petitioners as permanently appointed vocational teachers on part-time basis and pay to the petitioner salary as per policy. For guidance, NDMC may consider adopting the salary paid by the Government of NCT of Delhi to vocational teachers which I

note was a fixed emolument of Rs. 5,000/- per month as of the year 2002.

24. No costs.