
(2019) 03 DEL CK 0002

In the Delhi High Court

Case No : Letters Patent Appeal No. 81 Of 2016

R R Sharma & Anr

APPELLANT

Vs

Jawaharlal Nehru University & Anr

RESPONDENT

Date of Decision : 06-03-2019

Acts Referred:

Constitution of India, 1950 — Article 14, 15

Citation : (2019) 03 DEL CK 0002

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : R.K. Saini, Monika Arora, Harsh Ahuja, Praveen Singh, Ravinder Agarwal, Lekh Raj Singh

Final Decision : Disposed Off

Judgement

Dr. S. Muralidhar, J

1. The challenge in this appeal is to two orders. The first is an order dated 16th May, 2013 passed by the learned Single Judge dismissing WP(C) No. 1481 of 1999, the prayer in which was for a direction to the Respondent Jawaharlal Nehru University (JNU)/Respondent No.1 to fix the salary of the Petitioners, who were working as Mess Advisor/Mess Manager/Mess Maintenance, in an appropriate scale considering the scale of pay of cooks and helpers subordinate to the Petitioners, regularise their services by framing an appropriate scheme and consequently pay them the arrears of the difference of salary. The second order under challenge is dated 4th December, 2015 dismissing CM No. 12411/2015 seeking the recall of the order dated 16th May, 2013.

2. The background facts are that originally there were 26 Petitioners who filed WP(C) No. 1481/1999. It was averred therein that in 1984, JNU took a policy decision to employ Mess Managers/Mess Advisor/Maintenances Managers from amongst Junior Commissioned Officers (JCOs), Non-Commissioned Officers (NCOs) who had completed their service period in the respective armed forces,

on contract basis. It was stated that JNU constituted a Board for interview of such candidates. After due process of selection, Petitioners No. 1 to 24, who were all ex-servicemen, were appointed as Mess Manager/Assistant Manager initially for a period of one year on contract basis to be thereafter continued as such on yearly basis. Amongst the above Petitioners, Petitioner No.25 was appointed as Mess Advisor and Petitioner No. 26 as Maintenance Manager.

3. During the pendency of the writ petition barring Appellant No.1 R.R. Sharma (who was Petitioner No.15 in the writ petition) and Appellant No.2 S. C. Tiwari (who was Petitioner No.18 in the writ petition), the remaining Petitioners ceased to be on the rolls of the JNU. This was confirmed in an additional affidavit dated 6th July 2012 filed by JNU in the writ petition.

4. As far as the present two Appellants are concerned, the fact is that Appellant No.1 Shri R. R. Sharma, an Ex-Serviceman, was appointed as Mess Manager on contract basis, having been sponsored by the Director General Resettlement (DGR), with effect from 24th January, 1994. A copy of the contract which is enclosed with the additional affidavit dated 6th July 2012 of the JNU shows that it was entered into between Shri Sharma and the Dean of Students of the JNU. Likewise, as far as Appellant No.2 Shri S C Tiwari is concerned, he too was an Ex-Serviceman who after being sponsored by the DGR, was appointed as Mess Manager on contract basis with effect from 15th April 1996.

5. It was stated that the services of the two Appellants were continued on year-to-year basis. The services of Appellant No.1 Shri Sharma was discontinued in June 2012 and of Shri Tiwari in July 2015 after the dismissal of the writ petition. Thus, during the pendency of this appeal, neither Appellant has continued as Mess Manager.

6. It was pointed out in the petition that the salary for the Mess Managers was fixed at Rs. 1000/- per month whereas the salary of Mess Advisor was fixed at Rs. 1200/-per month. This was more than the total emoluments of other category of staff serving at that time in the Messes of the hostels i.e. the cooks and helpers. It was stated that in the Messes of the hostels of JNU, there are three categories of employees viz., Mess Managers, Cooks and Helpers. Besides this, there is also one Mess Advisor who supervises the overall functioning of all the Messes of the Hostels. There is a Maintenance Manager who supervises the maintenance part of the functioning of the Messes.

7. The writ petition set out the duties and responsibilities of a Mess Manager as contained in the 'hostel manual' issued by JNU. According to the Petitioners, from the chart of the said duties and responsibilities it is apparent that the responsibilities of Mess Managers are the most onerous and heavy in comparison with the duties and responsibilities of cooks and helpers who work directly under the continuous supervision of the Mess Managers, because of which a conscious decision was taken to fix the salary of the Mess Manager/Mess Advisor/Maintenance Manager as higher than cooks and helpers. It was further stated

that although they had worked for more than ten years continuously, the salaries of the Mess Managers, Mess Advisors and Maintenance Managers was not increased proportionately as had been done in the case of cooks and helpers. As a result, at the time of filing of the petition the Mess Manager or Mess Advisor was receiving a salary less than half of the salary and emoluments of cooks and helpers.

8. It was stated that the Petitioners made a number of representations to JNU from time to time but to no avail. On a token basis, JNU increased the salary of the Petitioners in or around 1990 by enhancing it by Rs.200/- making it Rs.1200/-, thereafter by Rs. 300/- in 1995 and again by Rs. 1000/- in 1997. It was stated in para 12 that the anomaly still persisted as "whereas at present the cooks are receiving salary in the scale of Rs.2000/- - Rs.3500/- total about Rs.6500/- and the helpers are receiving the salary in the scale of Rs.1350/- - Rs.2200/- total about Rs.5700/-. The mess manages are mostly receiving the salary between Rs.2500/- and-Rs.3000/- which is less than half of the cooks and just about half of the helpers."

9. It was averred in para 13 of the petition as under:

"13. That the pay scale of the cooks have been proposed to be revised from Rs.2000-3500 to Rs.6500-10500 and the pay scale of the mess helpers have been proposed to be revised from Rs.1350/- Rs.2200/- to the scale of Rs.4500/- - Rs.7000/-. It is also pertinent to mention here that the university employees manager's Guest House who are receiving salary in the scale of Rs.2000-3500/- which is proposed to be revised to Rs.6500/- - Rs.10,500/-. The duties of the manager guest house are far less than the duties of the mess managers."

10. Aggrieved by the non-payment of salary of a proper pay scale and non-regularisation of the services on the grounds of violation of Articles 14 and 15 of the Constitution of India, the above writ petition was filed praying for the reliefs as noted hereinbefore.

11. The stand of the JNU as stated in the aforementioned additional affidavit dated 6th July 2012 was as under:

"All the posts and their pay scales in respect of all the teachers and employees of the University are sanctioned by University Grants Commission (respondent No.2). However, the University Grants Commission has not sanctioned any post of Mess Manager and no grants are received from the UGC on account of their salary but are paid from the amount collected as Hostel Establishment Charges from the students. The students' Hostel Messes are run on a no-profit -no loss basis, and hence the establishment charges cannot be increased frequently as such increase would impinge upon the meagre resource of the students who belong to all walks of society and hail from far off places."

12. It was further averred by JNU as under:

"Since the arrangement for getting the service of Mess Managers on behalf of

IHA, the contracts were signed by the then Dean of Students in place of Registrar who is only competent officer to bind the University with any contract."

13. The University Grants Commission (UGC), which was impleaded as Respondent No.2 in the writ petition filed a separate affidavit, excerpts from which read thus:

"6. ...That it is further submitted that so far as UGC is concerned, there is no post of Mess Manager/Mess Adviser/Maintenance Manager in existence and the aforesaid posts have never been created or approved by the UGC in the JNU.

7. That in the circumstances, since the post of Mess Manager/Mess Adviser/Maintenance Manager does not exist, therefore, the petitioners have no right to seek continuance as such."

14. The writ petition was finally heard by the learned Single Judge on 16th May, 2013. There was no representation on behalf of the Petitioners in the petition, as no counsel appeared on their behalf. In para 2 the learned Single Judge has formulated the issue as under:

"As per the writ petition, it is not disputed that petitioners were employed on contractual basis. The issue is that can persons such as the petitioners who have not been appointed through the regular recruitment process seek regularization or claim a higher pay."

15. The learned Single Judge referred to the decision of the Constitution Bench of the Supreme Court in Secretary State of Karnataka v. Uma Devi (2006) 4 SCC 1 and observed as under:

"4. The writ petition does not contain averments as to there existing any sanctioned post and petitioners being appointed through regular recruitment process. Counsel for respondent No.2/UGC, in fact, states that there are no sanctioned posts with respect to Mess Managers/Advisors/Maintenance Manager in the respondent No. 1 University. Since the Constitution Bench of Supreme Court in Uma Devi's case (supra) has said that backdoor entry cannot be given to public employments inasmuch as millions are waiting for public employment through the regular recruitment process, petitioners cannot seek regularization and, therefore, this prayer of the petitioners is rejected."

16. As regards the other plea regarding salary was concerned, the learned Single Judge referred to the decision of the Supreme Court in Indian Drugs and Pharmaceuticals Ltd. v. Workmen, Indian Drugs and Pharmaceuticals Ltd. 2007 (1) SCC 408 and declined the relief as it was entirely up to the employer to decide what should be the pay scale.

17. Aggrieved by the above order dated 16th May, 2013 the Appellants herein filed LPA No.660/2013 which came to be disposed of as withdrawn by an order dated 23rd March, 2015 of the Division Bench (DB) which reads thus:

"1. The impugned order passed by the learned Single Judge shows that none

appeared for the petitioners. Rather than to dismiss the writ petition in default, in his wisdom the learned Single Judge decided to decide the writ petition on merits.

2. Only one issue has been decided by the learned Single Judge concerning law declared by the Constitution Bench of the Supreme Court in the decision reported as 2006 (4) SCC 1 Secretary, State of Karnataka Vs. Uma Devi & Ors.

3. Since the learned Single Judge did not have the assistance from learned counsel for the petitioners, it would have been appropriate for the appellant to move an application before the learned Single Judge praying that the order be recalled and liberty granted to the writ petitioners to render assistance and argue the matter.

4. We decline to interfere with the impugned order but permit the appellants to move an application before the learned Single Judge giving reasons as to why counsel assistance could not be rendered when the writ petition was taken up for hearing on May 16, 2013 with prayer to re-decide the writ petition after hearing the counsel.

5. There would obviously be a delay in moving the necessary applications and for which the learned Single Judge would take into account that the instant appeal was filed on May 31, 2013, It was returned with objections and was re-filed on September 05, 2013, and notice was issued in the instant appeal on September 09, 2013 and since then the appeal has remained pending in this Court. Today during arguments it transpired that the impugned order was passed in the absence of representation from the side of the petitioners.

6. Appeal is disposed of as withdrawn granting liberty as per para 4 above.

7. No costs."

18. The Appellants the filed an application CM No.12411/2015 before the learned Single Judge seeking recall of the order dated 16th May, 2013. A separate CM No. 12413 of 2015 was filed by Shri S C Tiwari seeking a stay of a notice dated 12th June 2015 whereby he was informed by the JNU that it had been decided by the Inter-Hall Administration (IHA), which was in charge of the hostels in JNU, that his services as Mess Manager were not required after 13th July 2015. Shri Tiwari's representation dated 29th June 2015 against the said notice was rejected by JNU by its letter dated 7th July 2015.

19. By the impugned order dated 4th December, 2015 the learned Single Judge declined to recall his order holding that the Appellants failed to make a ground for that relief. Accordingly, both the aforementioned CMs were dismissed.

20. When the present appeal was heard before this Court on 23rd August, 2016 the following order was passed:

"The appellants are no longer working and no fresh appointments have been made by respondent no. I.

It has been put to learned counsel for respondent no. I, whether the appellants were paid the minimum wages as per the Minimum Wages Act and in case minimum wages were not paid, will it not be fair and just on the part of respondent No. I to pay the minimum wages.

The question posed, is without prejudice to the rights and contentions of the appellant. Learned counsel for Respondent No. I seeks some time to take instructions.

Relist on 27.09.2016."

21. On 6th July, 2017 the following order was passed:

"It is informed that the representation of the appellant is pending consideration. The respondents are directed to positively take a decision thereon before the next date. In case the representation is not decided before the next date, the Vice Chancellor of the Jawahar Lal Nehru University shall remain present on the next date of hearing.

Renotify on 09.10.2017."

22. Thereafter on 9th October, 2017 the minutes of the meeting dated 5th October, 2017 of a Committee constituted by the Vice-Chancellor to consider the representation of the Appellants was placed before the Court.

The order passed on that date i.e. 9th October, 2017 reads as under:

"Learned counsel for the appellants rely upon a copy of the minutes of the meeting dated 05.10.2017 of a Committee constituted by the Vice Chancellor to consider representations of the appellants [hereafter referred to as "the minutes of the meeting"].

The minutes of the meeting state that the appellants would be entitled to receive minimum wages revised from time to time for the entire period of their engagement. The claim of the appellants was that having regard to the continuous period of service rendered by them, the respondents ought to frame some policy vis-a-vis their regularization.

The two appellants - R.R. Sharma and S.C. Tiwari were working from 1994 and 1996 respectively.

Having regard to their long period of employment, the Court is of the opinion that the facts indicate that this case is eminently one where some policy towards regularising such employees who have put in long spans of more than 10-15 years and continue in employment, should be devised. In this case, we notice that the sole ground for the rejection of the claim was that there were no sanctioned posts. However, the long period of employment and the nature of responsibilities discharged by them clearly disclose the need for such positions and that the respondents availed of the appellants' services on a continuous basis.

Learned counsel for the respondents seeks some time to obtain instructions. List on 30.11.2017.

The copy of the minutes of the meeting is hereby taken on the record."

23. Thereafter on 21st March, 2018 an additional affidavit was filed by JNU in which inter alia it was stated thus:

"Shri R.R. Sharma did not continue the job after June, 2012. That another similarly placed contractual employee as the Appellant, Mr. S.C. Tiwari service was also discontinued after court dismissed his petition for regularization of his service. However, Hon'ble Court desired/directed that the mess managers be considered for one-time settlement and directed the University to pay them minimum wages. After that the services of the mess managers were discontinued.

Further it may be stated that the University is not having any sanctioned post of Mess Manager. Hence, he cannot be appointed on regular basis as their wages were paid out of the funds collected from the students residing in the hostels on no profit no loss basis.

However, IHA does not have policy for regularization of the service of contractual employee.

24. On 21st March 2018, this Court passed the following order:

"Ms. Monika Arora, learned counsel appearing on behalf of the JNU/respondent No. 1 states that although they are going to disburse to the appellants the minimum wages revised from time to time for the entire period of their engagement, however, they do not propose to frame a policy regularising them, in view of their assertion that the appellants were contractually employed against non-sanctioned posts.

In view of the foregoing submission, the JNU/respondent No. 1 is directed to disburse the amounts of arrears of wages that the appellants are entitled to, within a period of six weeks from today, without demur.

List the matter to consider the solitary issue of regularisation on 24.08.2018."

25. This Court has heard the submissions of learned counsel for the parties. As already noted, there were essentially two issues that arose for determination in this appeal. One was whether the Appellants were entitled to emoluments worked out on the basis of the statutory minimum wages. The other was their plea for regularisation of their services.

26. As regards the first issue, it has been satisfactorily resolved with the Committee constituted by the Vice-Chancellor deciding that both the Appellants would be entitled to the statutory minimum wages for the entire period of their service as Mess Managers. The affidavits filed by JNU in this appeal confirm that payment of the differential sum to each of the Appellants worked out on that basis has been made by separate cheques.

27. As regards the plea for regularization of posts, the first fact to be taken note of is that there must be in existence sanctioned posts in which persons like the Appellants can be appointed on regular basis. In Uma Devi (supra), the Constitution Bench spoke of a situation where "duly qualified" persons having been "irregularly" appointed to "duly sanctioned" posts and having continued as such for "ten years or more but without the intervention of orders of courts or of tribunals." It was held that:

"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 the 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 services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of 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." (emphasis supplied)

28. Therefore, in terms of Uma Devi (supra), unless there are duly sanctioned posts against which appointments are made on "irregular" basis, no mandamus can be issued for framing a scheme of regularisation of the services of such "irregularly" appointed persons. In the instant case, unlike the posts of cooks and helpers working on sanctioned posts and whose salaries are governed by the UGC norms, there are no sanctioned posts of Mess Managers. This has been clarified by the UGC on affidavit.

29. It is sought to be argued on behalf of the Appellants that since there was a need for such posts of Mess Managers, the services of the Appellants, although on contractual basis, was continued for long periods of time, 18 years in the case of Appellant No.1 and 19 years in the case of Appellant No.2. It is thus urged that JNU should be asked to submit a proposal to UGC for creating such posts if not already sanctioned.

30. There is a difficulty in accepting the above plea of the Appellants. One fact that requires to be kept in view is that none of the original 26 Petitioners who filed W.P. (C) No. 1481 of 1999, including the present Appellants, is today in service. Only two of the original Petitioners, Shri Sharma and Shri Tiwari, have chosen to continue to litigate the matter in appeal. Going by the age of Shri Tiwari as disclosed in the affidavit dated 15th January 2016 in support of the appeal, his age even as of the date that the IHA decided to discontinue him as Mess Manager was over 60 years. The situation would be no different as regards Appellant No.1. Therefore, even assuming that their plea is accepted, the question of issuing any mandamus to the JNU continue to employ the Appellants as regularly appointed Mess Managers does not arise.

31. Although this Court had in its order dated 9th October, 2017 observed that

some policy towards regularisation of those personnel who have been in 10-15 years? of service had to necessarily be formulated, there is merit in the plea of the JNU that in the facts of the present appeal, with there being no sanctioned posts of Mess Managers, the question of formulating a scheme of regularisation of those appointed as such on contract basis, is an academic exercise. There is no one before the Court who can benefit by such a scheme. Also, the additional affidavit dated 21st March 2018 of the JNU appears to suggest that after the contracts of the present Appellants came to an end, "the services of mess managers were discontinued."

32. Leaving open the question whether in similar circumstances the JNU would be obliged to seek the creation of posts as a precursor to framing a scheme for regularisation in terms of the decision in Uma Devi (supra) for consideration in an appropriate case, the Court declines to issue any direction in that regard as far as the case on hand is concerned.

33. The appeal and pending applications, if any, are disposed of.