
(2001) 08 DEL CK 0056
In the Delhi High Court
Case No : CWP No. 5718 of 1999

Shri Girdhari Singh Negi

APPELLANT

Vs

New Delhi Municipal Council and Another

RESPONDENT

Date of Decision : 27-08-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 39

Citation : (2002) 61 DRJ 161

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Mr. Sanjay Parikh, for the Appellant; Ms. Alpana Poddar, for the Respondent

Judgement

Vikramajit Sen, J.—In this writ petition filed in September 1999 the Petitioner has prayed for the regularisation of his services as an Office Attendant and for the payment of equal pay for equal work. Admittedly, he was appointed in this capacity on 22.12.1997 for a period of six months against a newly created post. He was posted at Sandhya (Home for Senior Citizens), Netaji Nagar, New Delhi, with the prior approval of the Secretary, N.D.M.C./Member-Secretary, New Delhi Palika Parishad, Samaj Kalyan Samiti by Office Order dated 2.7.1998, at a consolidated monthly salary of Rs. 1677/-. On 2.7.1998 this appointment was extended for "a further period of six months with effect from 24.6.1998 on the existing terms and conditions. These facts are not in controversy. This will be evident from a reading of the following extracts of the Counter, which contain the defense of the Respondents in the present petition:

"2. That a post of Room Attendant was created on temporary basis. The Petitioner was appointed as Room Attendant for a period of six months on 22.12.1997. The term of appointment was later extended on same terms and conditions which came to an end on 23.12.1998 and was not extended further. Again a post was created for period of one year and this Petitioner was appointed for a period of one year and once again for a period of 179 days on contract

basis and then for 60 days. The said appointment is also coming to an end on 25.9.1999 and he is required to be given a break on completion of 329 days as per practice prevailing in NDMC regarding such appointment.

7. That the contents of para-7 of the writ petition are partly admitted to the extent of appointment by prior approval of concerned authorities. However, the contentions that the gaps/breaks are artificial in nature are denied. The post created was temporary in nature and were created and necessary gaps were there as per requirement only.

C. That the contents of Ground-C are wrong and denied. The Petitioner was initially appointed on 22.12.1997 which was extended but finally expired on December 1998. The post was again created and Petitioner was again appointed for one year on temporary basis in January 1999. Therefore, the contention of Petitioner that he has worked for more than 240 days is wrong and denied."

(emphasis supplied)

2. Ms. Alpana Poddar, learned counsel for the respondent has strongly urged that the Petitioner has not been dealt with unfairly or has been discriminated against. It is her submission that there should be a prior sanction for an additional vacancy in the post, and that it should be filled up only through the Employment Exchange and after the vacancy is advertised. These factors should have been borne in mind by the Respondent at the initial stage, and certainly at every extension of the Petitioner's services. It cannot weigh at this belated stage when the Petitioner has put in almost four years of service. It also does not legally suffice that the Petitioner will only be replaced by a permanent employee. The annals of the Petitioner's service make it abundantly clear that deliberate breaks in service, of one or two days was effected by the Respondents.

3. It is now an integral part of our jurisprudence that the Government is expected to exemplify the model employer. Legislation is directed not necessarily with governmental agencies in mind since they ought to automatically implement the prevailing legal ethos. In particular, the mandate of Article 39 of the Constitution, for the equal pay for equal work, must be adhered to. It can be expected that welfare and labour protectionist laws may be received with reluctance by private employers, who have to be forced into compliance therewith. Therefore it is indeed alarming when Authorities adopt unfair labour practice, as is the example of the Respondents in the present case. In *Rattan Lal and Others Vs. State of Haryana and Others*, , the Apex Court had viewed the intentional break in service and the policy of adhocism to be in breach of Articles 14 and 16. Another Bench of three Learned Judges in *Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others*, , without reference to any previous decisions ruled that the State Government's policy of appointing ad hoc Teachers for several years, with one day break, paying salaries which were ten rupees less than the minimum payable to regular Teachers was violative of Article 14. It issued directions for continuing the

services of such Teachers, for their regularisation and for payment of salaries on part with the regular Teachers, by implementing the principle of equal pay for equal work. In *Bhagwati Prasad Vs. Delhi State Mineral Development Corporation*, , it was observed that once the appointments were made as daily rated workers and they are allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective post on the ground that they lack the prescribed educational qualification. A coordinate Bench of three Learned Judges had shared the same opinion in *State of Haryana and others Vs. Piara Singh and others etc. etc.*, as under:

"49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

50.

51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell -- say two or three years -- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated April 6, 1990 referred to hereinbefore) both in relation to work-charged employees as well as casual labour."

4. Reverting to the present case, and drawing directly on the directions of the Hon"ble Supreme Court in *Karnataka State Private College case* (supra) it is appropriate (a) that the policy of the New Delhi Municipal Corporation to impose a break in service on completion of 329 days or any other period including one day is struck down as ultra vires (b) the Petitioner shall be paid salary in same scale that is admissible to other employees similarly placed; (c) the Petitioner's services shall be continued till such time as there is a requirement and need for more than four attendants; (d) the Respondents shall expeditiously consider regularising the services of the Petitioner.

5. The petition is disposed off in the above terms.