
(2010) 08 P&H CK 0055
In the Punjab And Haryana At Chandigarh

Smt. Devinder Kaur

APPELLANT

Vs

Child Welfare Council and Others

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2011) 128 FLR 1101 : (2011) 3 LLJ 191 : (2011) LLR 357

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—Petitioner Smt. Devinder Kaur was appointed as Balsewika to run a Creche by the Child Welfare Council working under the Indian Red Cross, Society, Bathinda in the pay scale of Rs. 950-25-1200-30-1560-40-1800/- alongwith permissible allowances on 19.9.1994. Initially, salary of the petitioner was fixed at Rs. 2,824/- p.m. The order of appointment has been annexed as Annexure P1. On 18.1.1994, she was terminated from service on the ground that her services were no longer required as the Child Welfare Council, Punjab (hereinafter to be referred as, "the Council") had decided to close the Creche. Petitioner made a reference under the Industrial Disputes Act, 1947. The termination of the petitioner was upheld by the Labour Court. An award to this effect was pronounced on 18.12.1997. However, the petitioner was held entitled to compensation to the tune of Rs. 22,592/- with interest @ 12% per annum from the date of termination. Later, the Council made certain efforts to adjust the petitioner vide office order dated 30.12.1996, Annexure P2. In this order, it was specifically stated that under the schematic pattern of Indian Council of Child Welfare, New Delhi and adopted by the Council, the petitioner may work as a Balsewika at Rs. 525/- p.m. payable as honorarium. However, on 22.2.1999 vide Annexure P3, due to closure of this Creche of the Council, also the honorary services rendered by the petitioner as Balsewika (Senior Helper) were dispensed with. The concluding portion of the office order, Annexure P3, reads as under:

A cheque for Rs. 525-00 equal to her one month's salary (honorarium) in lieu of notice period is attached.

2. The above-said order, Annexure P3, passed by the President, Red Cross Society, Bathinda is under challenge in the present writ petition.

3. In the reply filed, a preliminary objection has been raised that District Child Welfare Council is not amenable to writ jurisdiction and cannot be termed as State under Article 12 of the Constitution of India. It is admitted that services of the petitioner were dispensed with and one month honorarium was paid in advance as there was financial crunch in the Council which led to closure of the Creche.

4. The present writ petition raises the following two questions for consideration of this Court:

(a) Whether a person who is engaged on honorarium can be termed as an employee and assail his/her removal?

(b) Whether the procedure adopted by the respondents in dispensing with the services of the petitioner is just and appropriate or not?

5. "Honorarium" according to Oxford Advanced Learner's Dictionary means "payment made for professional services". Merriam-Webster's Collegiate Dictionary defines "honorarium" - "a payment for a service". Collins English Dictionary for Advanced Learners describes "honorarium" as "a fee that someone receives for doing something which is not a normal part of their job". From the ordinary dictionary meaning, it is apparent that honorarium is not paid for a regular job but is a token, paid as gratitude for rendering some service. Therefore, in strict words, there is no relationship of employer and employee. It does not involve any salary.

6. In *Rajendra Singh v. District Inspector of Schools Fatehpur* 2001 (3) SCT 12, a part time teacher was equated with an honorary teacher. Therefore, at best honorary worker can be considered as a part time worker. Hon'ble Apex Court in *State of U.P. Vs. Neeraj Awasthi and Others*, has held that part time employees are not covered within the fold of definition of "Employee".

7. Counsel for the petitioner has relied on *State of Haryana Through Director Women and Child Development Department, Haryana, Chandigarh v. Smt. Kanta Devi* 2002 (2) SCT 900 to contend that where a person working on honorarium due to misconduct is terminated, an enquiry ought to be conducted and principles of natural justice should be followed. To the similar effect is a judgment in *Ku. Renuka S. Dhoke v. The Chief Executive Officer, Zilla Prishad, Yavatmal and Ors.* 2008 (1) S.L.R. 627.

8. There is no quarrel with the proposition that where order of removal is stigmatic, an enquiry ought to be held and principle of natural justice should be followed even in case of a person doing honorary work. But in the present case,

order Annexure P3 in no manner impute the character of the petitioner and is not stigmatic in nature. The order specifically states that due to closure of the Creche, the services of the petitioner are not required. Furthermore, a cheque equal to one month's honorarium in lieu of notice period was also given to the petitioner. Thus, it cannot be said that order suffers from any infirmity.

9. A Division Bench of this Court in Darshana Devi Vs. State of Haryana and Others, has relied upon the decision of Hon"ble Supreme Court in State of Karnataka v. Ameerbi (2007) 11 SCC 681 to say that the person working as Anganwadi worker does not hold a civil post and the recruitment process is not governed by the Constitution or any statute. The petitioner was appointed on honorarium. Her selection was neither in pursuance of any advertisement nor her name was requisitioned from the employment exchange. Her appointment was dehors of the rules. Therefore, she has to go dehors of the rules.

10. Thus, the above-said two questions are answered as under:

Firstly, a person working on honorarium is not an employee and is only rendering service for which payment is made as a token of gratitude.

Secondly, since order dispensing with services of the petitioner was not stigmatic in nature and was due to the closure of the Creche as a result of financial constraint, no enquiry was required to be held and there was no need to follow the principles of natural justice.

11. Thus, it is concluded that since the Creche was closed, payment of one month's honorarium in advance in lieu of notice period was a correct procedure adopted by the Council.

12. Hence, the writ Court cannot come to the rescue of the petitioner and the present writ petition is dismissed.