

(2013) 07 DEL CK 0494

In the Delhi High Court

Case No : Writ Petition (C) 2571 of 2011 and CM No. 5485 of 2011

Smt. Gurjeet Kaur and Others

APPELLANT

Vs

GNCT of Delhi and Others

RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 309

Citation : (2013) 07 DEL CK 0494

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Rajiv Dewan, for the Appellant; Abhishek Dua, for Mr. V.K. Tandon, for R-1 to 3, Mr. M.S. Saini, for R-4 and Mr. Sunil Kumar, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—There are ten (10) petitioners in the present writ petition. The petitioners were engaged under a scheme to promote Punjabi language by respondent No. 4/Punjabi Academy. Respondent No. 4 is a society registered under the Societies Registration Act, 1860 and is an instrumentality of State as per Article 12 of the Constitution of India as respondent No. 1 finances/funds and also controls the respondent No. 4. The petitioners were appointed by the respondent No. 4 to the posts of TGT (Punjabi). The appointment letters of the petitioners admittedly in clear cut terms say that their appointments are on part time basis and their appointment is temporary on ad hoc basis. It was further clarified in the appointment letters that the petitioners will not be entitled to seek any appointment under the Government of NCT of Delhi (for short "GNCTD"). The petitioners pursuant to the order dated 20.6.2008 of the respondent No. 1/ GNCTD became full time teachers and their salaries were enhanced. The petitioners were thereafter re-deployed against vacant posts in different schools of respondent No. 1.

2. The petitioners by this writ petition claim two reliefs. The first relief is for

regularization of their services either by respondent No. 4 or by respondent No. 1/GNCTD. The second relief which is claimed is on the basis of doctrine of equal pay for equal work, i.e., the petitioners pray that they should be given the same monetary emoluments as being given to TGT teachers in the schools of respondent No. 1.

3. Before I proceed further it is necessary at this stage necessary to reproduce the ratio of the judgment of the Constitution Bench of the Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, The ratio in Umadevi's case (supra) is as under:

(I) The questions to be asked before regularization are:-

(a)(i) Was there a sanctioned post (court cannot order creation of posts because finances of the state may go haywire), (ii) is there a vacancy, (iii) are the persons qualified persons and (iv) are the appointments through regular recruitment process of calling all possible persons and which process involves inter-se competition among the candidates

(b) A court can condone an irregularity in the appointment procedure only if the irregularity does not go to the root of the matter.

(II) For sanctioned posts having vacancies, such posts have to be filled by regular recruitment process of prescribed procedure otherwise, the constitutional mandate flowing from Articles 14, 16, 309, 315, 320 etc is violated.

(III) In case of existence of necessary circumstances the government has a right to appoint contract employees or casual labour or employees for a project, but, such persons form a class in themselves and they cannot claim equality (except possibly for equal pay for equal work) with regular employees who form a separate class. Such temporary employees cannot claim legitimate expectation of absorption/regularization as they knew when they were appointed that they were temporary inasmuch as the government did not give and nor could have given an assurance of regularization without the regular recruitment process being followed. Such irregularly appointed persons cannot claim to be regularized alleging violation of Article 21. Also the equity in favour of the millions who await public employment through the regular recruitment process outweighs the equity in favour of the limited number of irregularly appointed persons who claim regularization.

(IV) Once there are vacancies in sanctioned posts such vacancies cannot be filled in except without regular recruitment process, and thus neither the court nor the executive can frame a scheme to absorb or regularize persons appointed to such posts without following the regular recruitment process.

(V) At the instance of persons irregularly appointed the process of regular recruitment shall not be stopped. Courts should not pass interim orders to continue employment of such irregularly appointed persons because the same will result in stoppage of recruitment through regular appointment procedure.

(VI) If there are sanctioned posts with vacancies, and qualified persons were appointed without a regular recruitment process, then, such persons who when the judgment of Uma Devi is passed have worked for over 10 years without court orders, such persons be regularized under schemes to be framed by the concerned organization.

(VII) The aforesaid law which applies to the Union and the States will also apply to all instrumentalities of the State governed by Article 12 of the Constitution.

4. The Constitution Bench of the Supreme Court in Umadevi's case (supra) held that there cannot be backdoor entry in public employment. Public employment can only be when there exists sanctioned posts, there are vacancies in sanctioned posts, there are persons who are duly qualified and these duly qualified persons are selected after open competition, viz. by calling candidates through advertisement in newspapers or through the employment exchange. Therefore, if there are no sanctioned posts or no vacancies in sanctioned posts, then, there cannot take place regular appointments even if the recruitment process is through regular method. In the facts of the present case, therefore, we have to see whether there existed sanctioned posts, and vacancies in sanctioned posts in the respondent No. 4 with respect to TGT (Punjabi) teachers when the petitioners were appointed. Nothing in this regard has, however, been averred in the writ petition and no documents have also been filed that, there existed sanctioned posts of TGT (Punjabi) when all the ten (10) petitioners were appointed by respondent No. 4 since the year 1988. In fact, as already stated above, the petitioners were appointed on part time basis. They were employees whose employment as per the appointment letters could be terminated at any point of time. In fact, only much later in the year 2008, by the order dated 20.6.2008, the petitioners were allowed full time duties and there was enhancement of their salaries.

5. The order dated 20.6.2008 was passed pursuant to the Cabinet decision No. 1394 of respondent No. 1 dated 17.4.2008 and that decision has been filed at pages 76 to 85 of the paperbook of the petition. The petitioners, in this regard, will be governed by para 7 of the same, which reads as under:

7. The demand of part time teachers employed by Academies for "regularization of their service" was earlier examined by the Department in light of the Recruitment Rules and judgment of various courts in cases of similar Part Time and Contract Teachers. The Department had also obtained the views of the Services and the Law Department. In view of the same the Directorate of Education thereafter, arrived at a decision that Part Time Teachers can at best be treated at par with the Contract Teachers, who have been given the benefit of age relaxation only to appear in the open competitive examination being conducted by DSSSB for the post of TGT/PGT as a very special case in respect of those who fulfil the required qualification as per of Recruitment Rules.

6. A reference to the aforesaid para shows that the Government considered the

position of persons who were placed similarly to the petitioners, and it was observed that regularization can only be through regular recruitment process i.e. selection process through the Delhi Subordinate Services Selection Board. The only benefit which was given to persons like the petitioners, and other persons similarly situated, was that the age relaxation was given to appear in the open competitive examination. I may note that the Supreme Court in Umadevi's case (supra) has categorically held that Courts will not pass any orders to interdict the regular recruitment/selection process. Therefore, the aforesaid para 7 makes it clear that the petitioners were not entitled to be regularised because of the ratio of the Supreme Court in Umadevi's case (supra) or in terms of the Cabinet decision of respondent No. 1 dated 17.4.2008, and which Cabinet decision obviously would not and has not directed regularization in violation of the ratio of Umadevi's case (supra).

7. In view of the above, I reject the prayer of the petitioners by which they seek regularization to the post of TGT (Punjabi). Of course, I must for the completion of narration clarify that the petitioners are not employees of respondent No. 1 and they are only on deployment in the schools of respondent No. 1. The regularization, therefore, in any case, cannot be by respondent No. 1.

8. The second relief claimed by the petitioners in the writ petition is for the petitioners to be paid equal salary with those teachers who are doing the same work as teachers in the schools of respondent No. 1. The doctrine of equal pay for equal work is now well entrenched in service jurisprudence and this doctrine requires equivalence in qualifications with posts with which similarity is claimed and also similarity of duties with respect to the nature of the job/work in the two posts, besides other factors including hierarchy of promotions.

9. When we refer to the writ petition we do not find that from 20.6.2008 when the petitioners were given full time duties what were the qualifications which were required by respondent No. 1 for appointment as TGT (Punjabi). Also, there are no averments in the writ petition as to how the scope of duties of the petitioners are more or less same as those of other teachers being TGT (Punjabi) in schools of respondent No. 1. Therefore, in the absence of any averments I was inclined to dismiss the writ petition but possibly the petitioners may have a case and with respect to which I say nothing on merits one way or the other, and this writ petition is dismissed reserving liberty to the petitioners to, if they so desire, file a petition pleading the requirements of the doctrine of equal pay for equal work and also satisfy factually as to how the petitioners would be able to take benefit of that doctrine.

10. In view of the above, the writ petition is dismissed so far as the relief of regularization of the petitioners is concerned, however, the petitioners are at liberty to file a fresh petition with respect to claiming the doctrine of equal pay for equal work for the petitioners to claim the same monetary emoluments as the regular TGT (Punjabi) in the schools of respondent No. 1. Parties are left to bear their own costs.