
(1987) 12 DEL CK 0014

In the Delhi High Court

Case No : Civil Writ Appeal No. 1050 of 1984

Uma Chopra

APPELLANT

Vs

R.N. Jindal and Another

RESPONDENT

Date of Decision : 09-12-1987

Acts Referred:

Citation : (1988) 34 DLT 85 : (1989) LabIC 437

Hon'ble Judges : Y.K. Sabharwal, J;S.S. Chadha, J

Bench : Division Bench

Advocate : A.K. Sikri, Madhu Sikri and J.S. Bali, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) The short question for decision in this petition is whether a teacher is a workman or not within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 ("for short "the Act").

(2) The petitioner was appointed as a Trained Graduate Teacher (Deaf & Dumb) on ad hoc and emergent basis in Government Lady Noyce School for Deaf and Dumb by an order issued by the Directorate of Social Welfare, Delhi Administration, Delhi, dated 17th August 1977. This School is under the control and management of the aforesaid Directorate. By an order dated 26th July, 1978 the services of the petitioner were terminated. The petitioner raised an industrial dispute and the Delhi Administration by an order dated 18th July, 1979 referred the dispute between the management and the petitioner for adjudication by the Labour Court. The terms of reference are as under:

"Whether the termination of services of Km. Uma Chopra vide management's order No. 1064 dated 27-7-1978 is illegal and/or unjustified and, if so, what directions are necessary in the matter."

A statement of claim dated 15th September 1979 was filed by the petitioner challenging the legality of her termination of services and claiming re-

instatement with full back wages from the date of termination, till re-instatement with continuity of service

(3) The Labour Court by the impugned award dated 21st February, 1983 answered the reference against the petitioner. The Labour Court has held the management to be an industry under the provisions of the Act. However, the petitioner was held not to be a workman. The Labour Court has held that the work done by the petitioner is not skilled or unskilled manual, clerical or supervisory. It is further held that the work of the petitioner in teaching the deaf and dumb children is neither scientific nor technical in nature. Reference was also made by the Labour Court to the judgment of the Supreme Court in the case of University of Delhi and Another Vs. Ram Nath, . It was held that the said judgment is still a good law for the proposition that the teachers are not workmen.

(4) Shri Sikri, learned counsel for the petitioner, has made two submissions. His first submission is that the Labour Court erroneously relied upon the judgment of the Supreme in Court the University of Delhi's case (Supra) for holding that the teachers are not the workmen. According to the learned counsel, this judgment has been over-ruled in entirety by the Supreme Court in the celebrated judgment of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . Learned counsel submitted that the question as to whether a teacher is a workman or not has been left open by the Supreme Court and it cannot be said that this question stands concluded one way or other by any judgment of the Supreme Court. The second submission put forth by the learned counsel for the petitioner is that the petitioner ,on the facts and in the circumstances of the present case, comes within the definition of "workmen" u/s 2(s) of the Act. According to the learned counsel, the work performed by the petitioner is "skilled manual".

(5) Taking up the first contention first, strong reliance was placed on the observations contained in the aforesaid case of Bangalore Water Supply and Sewerage Board in paragraph 112 at para 581 reading thus :

"c it strange to regard education as an industry ? Its respectability ? Its lofty character ? Its professional stamp ? Its cloistered virtue which cannot be; spoiled by the commercial implications and the raucous voices of workmen ? Two reasons are given to avoid the conclusion that imparting education is an industry. The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not "workmen" by definition. Perhaps, they are not, because the teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, which contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the University of Delhi, proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the

argument."

In order to appreciate the contention of Shri Sikri it is necessary to extract a passage from the judgment of University of Delhi (*supra*) from paragraph 5 at page 1875 which reads thus :

"It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or post-graduate education, are not workmen under S. 2(s), and so, it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of S. 2(s), and any disputes between them and the institutions which employed them are outside the scope of the Act. In other words, if imparting education is an industry under S. 2(j) the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall under S. 2(s). In our opinion, having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers, the omission of the whole class of teachers from the definition prescribed by S. 2(s) has an important bearing and significance in relation to the problem which we are considering. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading Secs. 2(g), (j) and (s) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act."

(6) The contention of the learned counsel is that it is apparent from the reading of the above extracted passage from the judgment of P.B. Gajendragadkar, J. that for deciding the case of University of Delhi the parties had agreed that the teachers are not the workmen and proceeded on that assumption. Further the submission is that it is clear from the aforesaid extracted passage from Bangalore Water Supply and Sewerage Board's case that the matter was left open and that is the reason why Supreme Court said "that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the University of Delhi, proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the argument."

(7) It is well settled that it is the nature of the work that decides the question whether a person is a workman under the Act or not. A combined reading of the aforesaid two judgments of the Supreme Court do suggest, as contended by the learned counsel for the petitioner, that the University of Delhi's case proceeded on a concession given for the purpose of that case by the learned counsel that teachers are not workmen and in Bangalore Water Supply and Sewerage Board's case the matter was left at large to be determined in some future litigation. Had

it not been so, the Supreme Court would have pronounced one way or the other about the teachers being the workmen or not in the aforesaid judgments. None of these two judgments referred to the nature and duties of a teacher for the reason that the Supreme Court was not deciding this question in the aforesaid two cases. In Support of bids contention learned counsel relied upon a single bench's judgment of Kerala High Court in J.Muthaygam v. Manager,Kodalur Estate and another 1982- Lab. Ic 145 wherein after referring to the aforesaid two judgments of the Supreme Court, Khalid, J. came to the conclusion that whether a teacher is a workman or not has been left at large. The learned Judge was of the view that a tailor made answer to the question whether teacher is a workman or not is not easy and the matter has to be considered in the light of the evidence adduced in the case. The matter was remanded back to the Labour Court for reconsideration of the question whether the petitioner in that case was workman or not in accordance with the law and the evidence and in the light of the observations made in the said judgment. I may note a judgment of a Division Bench of the Bombay High Court reported as Miss A. Sundrambal v. Government of Goa, Daman & Diu & Others 1983-2 Lj 491 taking a view contrary to the one taken by Khalid, J. in the aforesaid Kerala said judgment. However, it appears that the aforesaid judgment of Justice Khalid was not brought to the notice of the Bombay High Court as the judgment does not appear to have taken note of it. The Bombay High Court although has extracted the passage, as extracted above, in its judgment, but has said nothing as to why it was said by the Supreme Court that the battle will be waged on a later occasion by litigation and they do not propose to pronounce on it at present. This observation clearly shows that the Supreme Court while deciding Bangalore Water Supply and Sewerage Board's case left the question as to whether teacher is a workman or not at large. To this extent I express my respectful disagreement with the aforesaid decision of the Bombay High Court and I express my agreement with Justice Khalid in the aforesaid judgment of Kerala High Court. I will again advert to the judgment of Bombay High Court in later part of this judgment while considering whether a teacher is a workman or not.

(8) Having reached the conclusion that the question as to a teacher being a workman or not is at large and is not concluded by the judgment of Supreme Court in University of Delhi's case, now let me consider the second contention whether the petitioner is a workman or not. The true test to determine whether an employee is a workman or not depends upon the nature of main duties of the employee. In other words, what is in substance the work which an employee does or was employed to do, would determine whether he is a workman or not. It is the main work which will determine the question as to whether an employee is a workman or not as distinct from incidental work. With the main work there may be small or incidental work. However, the small or incidental work cannot determine as to whether the employee will fall or not within the definition of a "workman". If the main work is, say, manual, clerical or technical, the mere fact that some supervisory work is also done by the employee incidentally or as a

small fraction of his work, that will not take the employee out of the purview of the definition of a workman. Conversely, if the main work is say supervisory, the fact that some small or incidental fraction of work done is manual, clerical or technical etc, that will not bring the employee within the framework of Section 2(s) of the Act. It is not casual or occasional work which a particular employee does which is decisive of what is the nature of his employment nor decisive of the question whether he is employee at all falling within the definition. Incidental work to the main work cannot determine the real nature of duties. It is only the main work which will determine whether an employee is a workman or not. The main work can be determined from letter of appointment, the nature of duties and other attending circumstances. What is the main work the petitioner is doing is the question for determination in this petition.

(9) Shri Sikri conceded, and in my opinion rightly, that normally a teacher would not be a workman within the meaning of Section 2(s) of the Act as it stood at the relevant time. Section 2(s) as it stood at the relevant time reads as under :

" WORKMAN "means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, but does not include any such person- (i) who is subject to the Army Act 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

(10) Section 2(s) has been amended by Act 46 of 1982 with effect from 21st August 1984. However, in this petition the question is not whether the petitioner falls within the scope and ambit of Section 2(s) as amended. The learned counsel conceded, and again in my opinion rightly, that the question is whether the petitioner is a workman or not within the definition of Section 2(s) as it stood prior to the aforesaid amendment. The only clause on which reliance is placed by the learned counsel is "skilled manual". A great emphasis was laid for contending that the work done by the petitioner, on the facts and in the circumstances of the case, is manual in nature. Attention was drawn to a statement made by the petitioner before the Labour Court saying that "Teaching with this school requires special training and technique by the teachers for giving training and teaching the students. The teacher has to teacher the students by lip reading, silent reading, speech, sign method, manual method and there are other methods also". From this statement it was contended that the nature of the duties of the

petitioner are manual. A distinction was sought to be drawn from a teacher teaching normal students on the ground that the petitioner teaches deaf and dumb students. "The contention is that for teaching deaf and dumb students special technique is required and they have to be taught by signs and lip movements etc., unlike normal students. Teaching deaf and dumb students require physical exertion. The work of the petitioner is "manual" and, Therefore, the petitioner is a workman unlike the teachers teaching normal students who are not workmen, is the contention.

(11) Reliance was placed by the learned counsel for the petitioner on *Jai Engg. Works Ltd. v. Iv Industrial Tribunal and others* 1978 1 Lj 282 In my opinion the reliance on the aforesaid judgment of Calcutta High Court is misconceived. The Calcutta High Court was considering a case of a sewing school being run by an industry. While considering the nature of the duties it was also found as a fact that the workmen there were also directly connected with the pushing of sales of Usha sewing machines. The said case is of a little assistance in so far as the facts and circumstances of the present case are concerned.

(12) Manual work comprises of work involving physical exertion as distinct from mental or intellectual exertion. The teachers necessarily perform intellectual duties and their work is mental or intellectual as distinct from "manual". I am not suggesting for a moment that manual work is in any way inferior than mental or intellectual work. The method of teaching, in my opinion ,ordinarily cannot determine the question whether work is manual or intellectual. Teacher is a teacher all the same. The nature ("duties of teacher teaching normal students and a teacher teaching deaf and dumb students are essentially the same. Both impart education to the students. The only difference is in the manner of imparting education. In one way even teachers teaching normal students do some kind of manual work when for instance they write on the black-board, take attendance or take part in other extra curricular activities. But it cannot be said in their case that because of these works their nature of duties are manual and they are workmen. Likewise in the case of the petitioner, the main work is intellectual as distinct from manual and she is not a workman. She also imparts education to students as any other teacher. There is no physical exertion in the method of teaching by signs and lip reading etc. The predominant nature of petitioner's work involves mental or intellectual exertion and not manual exertion. Justice Khalid in another judgment reported in *Venkitaraman v. Labour Court, Ernakulam and others* 1982 1 Lj 454 after considering the nature and duties of the teacher came to the conclusion that the nature of the work that a teacher does is imparting of education which does not partake of the nature of the work mentioned in Section 2(s) of the Act, Similarly in the aforesaid judgment of Miss. A. Sundrambal, (supra) the Bombay High Court on consideration of the nature and duties of the teacher came to the conclusion that petitioner is not a workman. To that extent I am in respectful agreement-with the Division Bench judgment of the Bombay High Court.

(13) The net result of the above discussion is that the petitioner cannot be termed as a workman within the meaning of Section 2(s) of the Act and the Labour Court rightly held her not to be a workman and correctly answered the reference in favor of the management. Accordingly, I would discharge the Rule and dismiss the writ petition leaving the parties to bear their own costs.