

(2007) 01 DEL CK 0070

In the Delhi High Court

Case No : Writ Petition (C) No's. 20330-340 of 2005

Vivek Kumar Khandelwal and Others, Alok Kumar and Others
and Rakesh Kumar Chaudhary and Others

APPELLANT

Vs

Government of N.C.T. of Delhi, Delhi Tapedik Unmalan
Samiti, Ministry of Health, Municipal Corporation of Delhi and
Delhi Nagar Nigam Tapedik Niyantaran Samiti

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 226, 32

Citation : (2007) 137 DLT 49

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Sandeep Gupta, for the Appellant; Arun K. Sharma, for Amiet Andley, for Respondent No. 1, Mansi Gupta in WP (C) 20330-40 and 20381-411/2005 and Saroj Bidawat in WP (C) 21032-48/2005, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—This order shall decide three above said writ petitions wherein similar question of facts and law are involved. The present

controversy pivots around the question whether petitioners, who were employed on contractual basis, are entitled to regularization and equal pay

for equal work ? For eradication/control of tuberculosis a major programme is in operation since 1962. In the year 1993, the Government of India

started a Revised National Tuberculosis Control Programme (to be referred as RNTCP henceforth). Phase I of this programme was launched in

Delhi as a pilot project in one of the Chest Clinics in 1993. In Phase II, the programme was extended to two other chest clinics in January, 1995.

The programme was initially funded by the British High Commission up to 1998

and thereafter, the programme was being funded by the World Bank. Delhi Tapedik Unmulan Samiti, respondent No. 2, which is working under the Ministry of Health, GNCT of Delhi is implementing the above said programme for its full implementation. Each chest clinic was treated as a District Tuberculosis Centre and a District Tuberculosis Society. In April, 1998, Delhi Government/Delhi Tapedik Unmulan Samiti advertised 75 posts of Tuberculosis Health Visitors for working in various District Tuberculosis Society. In September, 1998, respondent No. 2 gave advertisement for 16 posts of Data Entry Operators. The names of the petitioners for the post of Tuberculosis Health Visitor/Laboratory Technician/Senior Treatment Supervisor/ Senior Treatment Lab Technicians and Data Entry Operator were either sponsored through Employment Exchange or the petitioners had applied directly for the said post pursuant to the advertisement. Interviews were conducted which were followed by the medical test. The letters of appointment were issued to the petitioners. They are also holding requisite qualifications to perform the requisite duties of Tuberculosis Health Visitor/Laboratory Technician/Senior Treatment Supervisor/ Senior Treatment Lab Technicians and Data Entry Operator for the said posts.

2. The appointment letter listed the following stipulations. The appointment of the petitioners was for one year. The contract could be terminated without any prior notice and without assigning any reasons. There shall be no increase in the salary and the petitioners will not be entitled to any annual increments, allowances etc. Their services were on contract basis and would not be counted towards the benefit of gratuity etc. Again, their appointments are also on work performance assessment, wherein upon dissatisfaction of the employer, the services could be terminated by one month's notice and the period of employment cannot be claimed by the employee for regular appointment. The petitioners were to be paid a consolidated salary of Rs. 5,000/- per month.

3. The grouse of the petitioners is that the salary of Rs. 5,000/- is even less than the salary of Class IV employee, whereas the pay scale of Tuberculosis Health Visitor/Laboratory Technician/Senior Treatment Supervisor/ Senior Treatment Lab Technicians and Data Entry Operator is much more. It is alleged that similarly qualified persons who are performing the

job of Tuberculosis Health Visitor/Laboratory Technician/Senior

Treatment Supervisor/ Senior Treatment Lab Technicians and Data Entry Operators after their appointment, are discharging duties in various

departments and drawing a proper scale and the petitioners, who, are also performing the same duty are being paid only Rs. 5,000/- per month.

Although, the petitioners are performing the same job, yet, they are not being paid the proper salary and there is discrimination in pay scales. On

the other hand, Delhi Subordinate Selection Services Board advertised for the posts of Data Entry Operators and offered pay scale of Rs. 4000-

6000 and Rs. 4500-7000 and other perks. Again, sword of Damocles has always being hanging over the petitioners' head as their appointment is

time and again being renewed, year after year, after break of a few days.

4. On the above said grounds, the petitioners have filed the present writ petitions with the prayer to issue a writ, order or direction in the nature of

mandamus to direct the respondents to treat the petitioners at par with regular employees with all monetary consequential benefits i.e. equal pay for

equal work, provident fund, gratuity, seniority and the other benefits and direct the respondents to regularise the services of the petitioners.

5. The Division Bench vide LPA No. 2554/2005 with LPA No. 2555, 2676, 2677/2005 held, ""since the petitioners were appointed on

contractual basis under a project, they cannot claim regularization nor salary of regular employee in view of the above mentioned decisions of the

Supreme Court."" This is an indisputable fact that aggrieved by this order, the petitioners had approached the Hon"ble Supreme Court, which, too,

did not find favor with the request of the petitioners. Learned Counsel for the petitioners stated vide ordersheet dated 20.12.2006 that review

petition in the connected matters filed before the Hon"ble Supreme Court had also been dismissed.

6. I have heard the learned Counsel for the parties on the merits of this case. At the very outset, learned Counsel for the petitioners conceded that

in view of celebrated authority reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, , he does not press the writ petition

on the ground of regularization of the petitioners. He, however, vehemently argued that in view of para 44 of the said Judgment, the petitioners are

entitled to equal pay for equal work. In order to understand the position clearly,

para 44 is reproduced as hereunder.

The concept of "equal pay for equal work" is different from the concept of conferring permanency on those who have been appointed on ad hoc

basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of

equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality

enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position

where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue

directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is

necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the

procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka.

Therein, after Dharwad decision The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of

Karnataka and others etc., , the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or

engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give

employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their

defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of

power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their

appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief,

this Court would not grant a relief which would amount to perpetuating an illegality.

7. I see no force in the contention raised by the learned Counsel for the petitioner and the position was further clarified in para 48 and para 55 of

the said judgment which are reproduced as hereunder :

(48) "It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are Therefore overruled.

(55) In cases relating to service in the Commercial Taxes Department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be

paid salary equal to the salary and allowances that are being paid

to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed.

It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether

these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in

the teeth of directions not to do so.

8. Thus, it is clear that there were open eyed execution of agreements between the petitioners and respondents. It was settled that the petitioners

would get an amount of Rs. 5,000/- and nothing else. Moreover, the above said order passed by the Hon"ble Division Bench clearly goes to show

that they cannot claim salary of regular employee. The writ petitions are lame of strength. The writ petitions are, Therefore, dismissed. There will be

no orders as to costs.