

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 13445/2005**

Date of decision: 3rd March, 2009

%

AMAR JYOTI SCHOOL

.... Petitioner

Through Mr.Pankaj Gupta with Mr.Karan Jaon,
Advocates

Versus

**THE GOVT. OF THE NATIONAL CAPITAL
TERRITORY OF DELHI & ORS.**

.... Respondents

Through Mr.Subrata Viswas with Mr.Rakshpal
Singh, Advocates

HON'BLE MR. JUSTICE V.K. SHALI

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J. (Oral)

*

1. The petitioner in the present writ petition has challenged the award dated 4th December, 2004 passed by the Labour Court No., Karkardooma Courts, Delhi in ID No. 241/1999 in the case titled M/s **Amar Jyoti Charitable Trust Vs. Sanjeev Goyal.**

2. By virtue of the impugned award the learned Labour Court had held that the termination of services of the petitioner on 12th January, 1999 was illegal and unjustified, and accordingly, directed reinstatement with continuity of service and 50% of the back wages.

3. That briefly stated the facts of the case are that a reference was made by the Secretary (Labour), Department of Labour, Government of NCT of Delhi in the following terms:

“Whether the services of Sh. Sanjeev Goyal have been terminated and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”

4. After completion of the pleadings, evidence was adduced by the parties. The termination of the services of the petitioner were held to be illegal and for this purpose the learned Labour Court relied upon are exhibit WW1/2 issued by the Directorate of Education under Section 8(2) of the Delhi School Education Act, 1973 wherein it was stated that the approval of the Directorate of Education had not been taken before dispensing with the services of the respondent/workman.

5. The petitioner/management feeling aggrieved by the aforesaid award has filed the present writ petition challenging the award on the ground that the respondent was not a workman, and therefore, the learned Labour Court did not have the jurisdiction to adjudicate the dispute. For this purpose, the contention of the petitioner/management was that admittedly the respondent was working as a teacher with the petitioner/school and the teachers could by no stretch of imagination be said to be a workman under Section 2(s) of the Industrial Disputes Act, 1947. The respondent has filed his reply to the counter affidavit and controverted the plea raised by the petitioner/management. It was contended by the respondent in the counter affidavit that he was not a teacher, but he was only a physical

education teacher, and therefore, he continued to be a workman with the definition of Section 2(s) of the Industrial Disputes Act, 1947 and hence his termination was amenable to the jurisdiction of the Labour Court.

6. I have heard the learned counsel for the parties and gone through the record. The short question which arise for consideration in the instant case is as to whether the petitioner who is admittedly working as a teacher in the petitioner/school could be said to be a workman or not. It is pertinent here to mention that the learned counsel for the petitioner has drawn my attention to the letter dated 5th January, 1999 written by the petitioner wherein he has admitted that he has shown his designation to be a teacher though he calls himself to be a Physical Education teacher. Similarly, in the counter affidavit also this factum is admitted by the respondent that he was working as a teacher of physical education.

7. It has been contended by the learned counsel for the petitioner that the respondent having admitted that he is working as a teacher (though physical education teacher), does not digress from the fact that he remains essentially a teacher.

8. I am in full agreement with this submission of the learned counsel for the petitioner that merely because the respondent is a physical education teacher, he does not cease to be a teacher. His job primarily and essentially is that of a teacher though it may be imparting of teachings of physical exercise to enable the students to keep themselves physically and mentally in a fit condition, so as to enable

them excel in their studies. Therefore, I have no manner to doubt that the respondent/workman is essentially a teacher then the question would arise that as to whether teacher could be constructed to be workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 or not. Section 2(s) of the Industrial Disputes Act, 1947 reads as under:

“[2(S) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory 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, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) Who is subject to the Air Force Act, 1950(45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed in the police service or as an officer or other employee of a person; or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the power vested in him, functions mainly of a managerial nature.]”

9. In **P.S. Ramamohana Rao Vs. A. P. Agricultural University & Anr.** (1997) 8 SCC 350 it has been held that Physical Education Director is working in a university as a teacher in case titled **Miss A. Sundarambal Vs. Government of Goa, Daman and Diu & Ors.** (1988) 4 SCC 42 wherein it is held as under:

“The teachers employed by educational institutions whether the said institutions are imparting primary, secondary,

graduate or postgraduate education cannot be called as 'workman' within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workman as it will render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless. Therefore, the appellant-teacher of the school conducted by the Society of Franciscan Sisters of Mary at Caranzalem, Goa was not a 'workman', though the school was an industry, in view of the definition of workman' as it now stands"

10. In the light of the aforesaid authoritative pronouncements by the Apex Court the respondent by no stretch of imagination could be said to be a workman, and accordingly, no reference could have been made to the learned Labour Court, much less the same could have been decided by it as it lacked jurisdiction.

11. For the reasons mentioned above, the award dated 4th December, 2004 is accordingly set aside. However, the respondent shall be free to take such an appropriate remedy to redress his grievance as may be available to him in law.

No order as to costs.

MARCH 03, 2009
KP

V.K. SHALI, J.