

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

% Judgment Reserved On:27th October, 2010
Judgment Delivered On:24th November, 2010

+ **W.P.(C) 4534/2005**

GURDEV KUMAR Petitioner
Through: Mr.Sachin Chauhan, Advocate

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Ms.Zubeda Begum, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Petitioner Gurdev Kumar is aggrieved by the Judgment and Order dated 24.8.2004 dismissing OA No.1969/2002 filed by him in which he had prayed that directions be issued to the respondents to upgrade the post held by him of 'Demonstrator-cum-Technician' to that of a 'Lecturer'.
2. Gurdev Kumar had preferred OA No.1050/1997 claiming same relief which was disposed of by the Tribunal on 6.2.2001 with a direction to the respondents to examine the claim of

Gurdev Kumar and pass a reasoned order. Complying with the direction issued by the Tribunal a reasoned order dated 15.1.2002 was passed rejecting the claim.

3. Briefly noted, claim of Gurdev Kumar was based on the recommendations of a committee constituted under the chairmanship of Professor J.P.Madan, recommendations whereof were accepted; the recommendations being to upgrade the lowest post of teaching in Engineering Institutions to that of a Lecturer. The Committee had recommended that any post in the teaching cadre, lower than that of a Lecturer be upgraded to that of a Lecturer. It was held vide order dated 15.1.2002 that recommendations of the Madan Committee were accepted and implemented in the year 1988 and the post in question to which Gurdev Kumar was appointed was filled up in the year 1990 and thus the question of upgrading the post as per recommendations of the Madan Committee did not arise.

4. This necessitated Gurdev Kumar to re-visit the Tribunal by filing a second Original Application in which he questioned the order dated 15.1.2002 and not only sought setting aside of the said order but a direction that the respondents should upgrade the post held by him to that of a Lecturer.

5. The relevant facts are that pursuant to an advertisement issued by the College of Arts, respondent No.3, an institution under the direct control of the Directorate of Training and Technical Education i.e. respondent No.2 which is, in turn, a department of the Government of NCT Delhi i.e. respondent No.1, petitioner was appointed as a Demonstrator-cum-Technician i.e. the post which was advertised. On being so appointed he started raising the issue that since he was a Graduate in Arts and had two years professional teaching experience, which he claimed to have acquired while

discharging his duties under respondent No.3, his post was liable to be upgraded to that of a Lecturer. He relied upon the Recruitment Rule applicable to the post of Lecturer in the College of Arts, which reads as under:-

“Essential: Master’s Degree in appropriate branch of Fine Arts from a Recognized University or equivalent.
Desirable: Professional Teaching experience

OR

- i) Bachelor’s Degree in appropriate branch of Fine Arts from a recognized university or equivalent.
- ii) Two year’s professional teaching experience.”

6. Needless to state, he relied upon the eligibility condition provided in the alternative after the word ‘OR’ in the Recruitment Rule. He countered the reasoning in the order dated 15.1.2002 that Madan Committee’s recommendations had been implemented by the year 1988 and the post in question was advertised in 1990, by urging that the recommendations of Madan Committee were not static and that the recommendations were dynamic, in that, the same applied to posts created in the future. He urged that though appointed as a Demonstrator-cum-Technician in the Printing Department of respondent No.3 he was imparting education in Offset Printing Technology and for which he highlighted that nobody was appointed as a Lecturer in Printing Technology, and from which assertion he drew an inference that the theory of Offset Printing was being imparted by him in the workshop where he would demonstrate the working of the Offset Printing Press.

7. The Original Application was opposed by the respondents on the ground that in the College of Arts, various subjects were

being taught to the students and that petitioner's job was limited to proper upkeep of machinery and equipment and guide the students during practical training. It was urged that Offset Printing was a facet of Applied Arts and for which the theory was taught in the subject of Fine Arts by Lecturers and that there was no need for a separate Lecturer to be appointed in the subject of Printing Technology and thus the claim of the petitioner was without a basis. It was urged that the fact that there was no requirement of a Lecturer in Printing Technology was evidenced by the fact that no post was sanctioned. It was highlighted that if the post required to be filled up was that of a Lecturer, in the higher pay-scale, it would have been so advertised and for which eligible candidates would have applied for selection. It was reiterated that the recommendations of Madan Committee were implemented by the year 1988 and the post in question was advertised in the year 1990. For unexplainable reasons, it was urged that the petitioner did not have the requisite qualifications.

8. It appears that at the first instance when the matter was argued before the Tribunal the respondents only urged the last point urged pertaining to the petitioner not having the requisite qualifications, or if urged, other points were not considered by the Tribunal and this resulted in the Tribunal allowing OA No.1969/2002 vide order dated 23.5.2003. Noting that the Recruitment Rule to the post of Lecturer in respondent No.3 required a Masters Degree in the appropriate branch of Fine Arts or in the alternative a Bachelors Degree in the appropriate branch of Fine Arts with 2 years Professional/Teaching Experience, noting that the petitioner possessed the essential qualifications provided for in the alternative, the claim of the petitioner was accepted. Order dated 15.1.2002 was quashed and directions were issued to

consider appointing petitioner to the post of Lecturer (Printing).

9. The respondents immediately filed an application seeking review of the order dated 23.5.2003. The petitioner filed a petition for contempt registered as CP No.444/2003 urging that the direction issued by the Tribunal vide order dated 23.5.2003 was not complied with.

10. Vide two separate orders dated 8.7.2004 the application seeking review which was registered as RA No.348/2003 as also CP No.444/2003 were disposed of recalling the order dated 23.5.2003 and directing that OA No.1969/2002 shall be re-heard.

11. At the second stage, holding that the post in question was notified in the year 1990 by which time recommendations of Madan Committee had been implemented; there being no teaching post of a Lecturer (Printing) and that the post of Lecturer in Fine Arts could be filled up only through the UPSC, the Tribunal dismissed OA No.1969/2002. It may be noted that the Tribunal additionally held that even otherwise, the petitioner was not even eligible to be appointed to the post of a Lecturer and for which we may simply note that this finding runs contrary to the Recruitment Rule, should the post of Lecturer (Printing) had existed.

12. Before us, the legal battle fought inter-se the petitioner and the respondents centered on two points.

13. It was firstly urged by the petitioner that recommendations of the Madan Committee were applicable to future posts which may be created and that the recommendation was that the lowest teaching post in an Engineering Institute could not be less than that of a Lecturer and since the petitioner was teaching, both demonstrative/practical as well as theory, pertaining to Offset

Printing, the post to which he was appointed was liable to be upgraded to that of a Lecturer. The second argument was a facet of the first, being that, there was no Lecturer (Printing) under respondent No.3 and it was but obvious that the petitioner was teaching the theory pertaining to Offset Printing Technology and thus he was actually discharging the duties of a Lecturer.

14. To make good the first plea, learned counsel for the petitioner drew our attention to the facts noted in the office order dated 21.10.1978 wherein recommendations of Madan Committee were notified to all technical institutes in Delhi and highlighted that the recommendations clearly bring out the futuristic working/implementation of the recommendations. Counsel highlighted that since Madan Committee was constituted to make recommendations pertaining to privately managed technical institutions, the office order noted the recommendations of the Committee and directed that insofar government institutions were concerned, the respective State Governments should, in consultation with the respective State Service Commission, implement the recommendations of the Committee. Counsel highlighted that respondent No.3 was an institution set up by the Government of NCT Delhi and thus it was the duty of the respondents to upgrade the post to which the petitioner was appointed and after upgrading the same, pay salary to the petitioner in the scale applicable to that of a Lecturer (Printing). Learned counsel was at pains to highlight an office order dated 11.11.1987, as per which the Deputy Secretary (Technical Education) directed the Principals of 4 Colleges, including the Principal of respondent No.3, to ensure that in compliance with the recommendations of the Madan Committee, lowest level teaching post in *both theory and practical classes shall be that of a Lecturer*. Thus, counsel

urged that the office order dated 11.11.1987 was proof enough that the respondents were treating Madan Committee's recommendation as applicable even in the future. Pertaining to the office order dated 11.11.1987 second submission urged was that the office order dated 11.11.1987 clearly required lowest level of post to be that of a Lecturer, even pertaining to teaching in Practical Classes.

15. Learned counsel for the respondents reiterated the submissions urged in the pleadings of the respondents and as noted by us in para 7 above.

16. It is true that recommendations of Madan Committee were futuristic in their operation for the obvious reason recommendations of a Committee in presenti have to be implemented, upon acceptance of the recommendations of the Committee, in the future. Obviously, recommendations of the Madan Committee were to do away with the existing evil of having teaching posts in Technical Institutes below that of a Lecturer and as a consequence with lesser pay resulting in poor quality of teaching in Technical Institutes. The ethos of the recommendations of the Committee was obvious. Lowest level teaching post should be that of a Lecturer with applicable pay-scale so that quality education could be imparted. To this extent, the submission of learned counsel for the petitioner is well merited. The office order dated 11.11.1987 also supports the petitioner in this regard.

17. But, the question which arises at the heart of the matter is: Whether the post to which the petitioner was appointed was a teaching post or not? For if it was a teaching post, notwithstanding the respondents advertising the posts in the year 1990, they could not have acted contrary to the recommendations of the Madan Committee, which we note was a Committee constituted under the All India Council for

Technical Education Act, a statutory enactment, authorizing the All India Council for Technical Education to mandatorily prescribe norms for appointment to various teaching posts in Technical Education. The recommendations of the Committee which were accepted by the Council had thus a statutory flavour and none could transgress the same. Further, respondents could not violate the office order dated 11.11.1987. The respondents could not have created a teaching post under respondent No.3 which was below that of a Lecturer and thus we find merit in the second contention urged by learned counsel for the petitioner that it hardly mattered whether the post was created in the year 1990.

18. But the question still remains: Whether the petitioner was imparting teaching to the students undergoing Graduation Course in Fine Arts under respondent No.3?

19. Learned counsel for the petitioner conceded that the petitioner was not teaching in the class room but was at pains to urge that while demonstrating the working of an Offset Printing Press, the theory of Offset Printing and practical aspect of teaching the subject in the laboratory was undertaken by the petitioner and drawing heavy sustenance from the office order dated 11.11.1987 which stipulated that the lowest level of teacher in both theory and practical classes has to be that of a Lecturer, counsel urged that there was no escape from the conclusion that the petitioner was to be upgraded as a Lecturer for the additional reason there was no post of Lecturer (Printing) under respondent No.3 and from which fact counsel would require us to infer that it was only the petitioner who would be telling the theory pertaining to Offset Printing Technology to the students.

20. The submission urged is no doubt attractive, but unfortunately for the petitioner, we find no pleadings to

highlight as to what part of theory pertaining to Offset Printing Technology was being imparted or is being imparted by the petitioner while taking practical classes.

21. Well, it is quite possible that the subject of Fine Arts may include Offset Printing and thus any Lecturer in the Discipline of Fine Arts could be teaching the theory pertaining to Offset Printing and at the workshop the petitioner would be simply demonstrating the working of an Offset Printing Press.

22. The subject is technical and requires proper pleadings of this Court to understand the exact nature of the duties performed by the petitioner. The onus was on the petitioner to have not only made proper pleadings but make good the same with reference to the material. As regards the respondents we may note that they claimed that the petitioner simply demonstrate the working of the Offset Printing Press and does not teach the theory behind the same.

23. We may note that the petitioner has made a feeble attempt to show as if he is teaching the theory of Offset Printing by drawing our attention to the teaching program drawn up in the year 1990 and thereafter pertaining to the College of Arts and in respect thereof highlighted that 40 marks were assigned to the subject of Offset Printing. He also highlighted, with reference to a letter dated 1.11.1994 written by the Principal of respondent No.3 in which duties of the petitioner were listed as: (i) Incharge of the Offset Department; (ii) Look after all machines and parts; (iii) Instruct the Applied Arts Students according to the time-table to complete the offset printing job assigned to them; and (iv) Evaluation of work submitted by the students along with marking of attendance etc.

24. We are afraid, not only is the material provided to us inadequate, but appears to lean against the petitioner. Of the

four duties of the petitioner, the first two could purely be that of a Practical Demonstrator. The third i.e. *Instruct the Applied Arts Students according to the time-table to complete the offset printing job assigned to them* suggests that the job of the petitioner is to instruct the students with respect to completion of Offset Printing Job assigned to them. Let us illustrate with reference to a simple example. A teacher of Chemistry, in a classroom would teach the students that 'Sodium' reacts with 'Water', and the reactive process releases hydrogen gas and 'Sodium Hydroxide' is formed. The teacher explains that this is due to the reason the atom 'Sodium' has valency '1' and the molecule 'Hydroxide' has valency '1'. The theory teacher explains that the atom 'oxygen' has valency '2' and the atom 'hydrogen' has valency '1'. Thus, 2 atoms of Hydrogen pair with 1 atom of Oxygen to form the molecule H_2O . The teacher explains the theory of a bond being formed between the Hydrogen atom and the Oxygen atom explaining that the Oxygen atom would share 2 bonds, 1 each with the Hydrogen atom and obviously, each Hydrogen atom would share only 1 bond with the Oxygen atom. The teacher further explains that due to Oxygen atom being a heavier nucleus it would have more protons in its nucleus vis-à-vis the Hydrogen atom and the electrons being negatively charged particles; and since it is proved that opposite charges attract and similar charges repel, the bond formed by the sharing of 1 electron each between the Oxygen atom and the Hydrogen atom would be attracted towards the nucleus of the Oxygen atom i.e. the bond would be an unstable bond. The teacher would further explain that when an atom of Sodium comes into contact with a molecule of water it is able to easily break the bond (only 1) shared by 1 Hydrogen atom with the Oxygen atom and is able to break the water molecule into 2 parts i.e. 1 Hydrogen atom

and the remainder being the Hydroxide molecule (HO) and the Hydroxide molecule having valency '1' would share the bond with the Sodium atom to form Sodium Hydroxide (NaOH). Since the reaction between 1 Sodium atom and 1 molecule of water would yield 1 molecule of Sodium Hydroxide and 1 atom of Hydrogen, the Hydrogen atom would need pairing, thus, the reactive process would be 2 atoms of Sodium reacting with 2 molecules of water to form 2 molecules of Sodium Hydroxide and 2 atoms of Hydrogen which would pair to form gas 'H₂'. The reaction would be: $2 \text{ Na} + 2 \text{ H}_2\text{O} = 2 \text{ NaOH} + \text{H}_2$. This is pure theory. The students then go to the Chemistry Laboratory where the Laboratory Technician would help them physically observe the chemical reaction. He takes a flask and fills it by a measured quantity of water. He weighs a piece of Sodium and drops it into the flask and immediately inserts at the mouth of the flask a stop-cock having a rubber pipe drilled through, at the centre of the stop-cock, which pipe has on its other end a deflated balloon. The children observe bubbling inside the flask and simultaneously see the balloon being inflated and rising upwards. The Laboratory Technician ties the mouth of the balloon when it is sufficiently inflated and uses a string. The children can see the gas balloon rise upward. They observe the physical phenomenon and understand that Hydrogen gas has filled the balloon for the reason, as infants their parents, at their demand, had purchased from the balloon vendors gas filled balloons which rise towards the sky. Thus, one part of the theory is understood by them as a result of a physical observation. They observed Hydrogen gas being released as a result of Sodium reacting with water. To make them understand that the remainder inside the flask is Sodium Hydroxide, the Laboratory Technician drops in a drop of Phenolphthalein

which turns pink. He then puts in a drop of Phenolphthalein in a beaker containing water and the children observe that the water has not turned pink. Knowing that water is neutral i.e. neither acidic nor alkaline, the children understand that as a result of Sodium reacting with water, after Hydrogen gas has bubbled out and the liquid inside the flask is no longer water but is a liquid which is alkaline.

25. The Laboratory Technician has taught neither a theory nor the application of a theory. He has only demonstrated a phenomenon. The children have understood the theory which the teacher taught. There is no teaching imparted by the Laboratory Technician, either as in Applied or in Theory.

26. We can do no better to illustrate with reference to an example, and bring home the point that demonstrating at a laboratory need not be having any facet of teaching: Theory or Applied.

27. Thus, we are left with no option but to dismiss the writ petition, but we would be failing if we do not observe that since there is an Expert Body constituted to deal with the issue at hand i.e. the All India Council for Technical Education, it would be open for the petitioner to approach the said body with his grievance and it would be open for the petitioner to place all material before the Council who would, after hearing the respondents decide the exact nature of the duties of the petitioner. Needless to state, the test of predominance of the duties would have to be applied and if some insignificant and trivial component of the duties of the petitioner would fall within the domain of Applied or Theory teaching, that may not justify a finding that the job of the petitioner is a teaching job. Needless to state, where there is overlapping, the duty is to determine as to what is the predominant and what is the lesser component. It is the predominant which determines the

character and not the dominant.

28. The writ petition is dismissed but with a clarification as per para 27 above.

29. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

NOVEMBER 24, 2010
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