

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

% *Judgment Reserved on : February 27, 2013*
Judgment Pronounced on : March 11, 2013

+ **W.P.(C) 5044/2012**

DINESH DUTT SHARMA Petitioner
Represented by: Mr.Ravi Kant Jain, Advocate with
petitioner in person.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Represented by: None.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. On October 13, 1964 the petitioner was appointed as 'Workshop Instructor' in the Directorate of Training and Technical Education, a body established by the Govt. of NCT of Delhi and was deputed to a Polytechnic established by the Govt. of NCT of Delhi to discharge duties of a 'Workshop Instructor'. The petitioner, as the name of the post would indicate, had to be at the workshop/laboratory of the Polytechnic, where practical training was imparted to the students. The petitioner admits said fact that at the workshop/laboratory of the Polytechnic he would participate in the practical workshops undertaken by the students but would assert that pertaining to the practicals he would impart theoretical knowledge of the relevant subject.

2. Polytechnics were awarding diplomas, as against degrees awarded by Engineering Colleges. The level of study in the Polytechnics

was a few notches below that in Engineering Colleges, but with the passage of time the gap between level of teaching at Polytechnics and Engineering Colleges started narrowing and by the year 1972 became fairly narrow enough for the Government to constitute a Committee under the chairmanship of Professor Madan to study the structured teaching in Polytechnics, and if required, to make suggestions for restructuring the Polytechnics so that a better level of trained students could enter the industry after obtaining diplomas from the Polytechnics in the country.

3. The said Committee, under the chairmanship of Professor Madan, came to be popularly known as the Madan Committee. After making a study of the course curriculum and the subjects taught at various Polytechnics; keeping into account the growing needs of the industry and the qualitative competence of the students passing out from the Polytechnics, the Committee found that teaching standards need to be improved in the Polytechnics. Since teaching was being imparted by persons in salary scales below that of Lecturers in Engineering Colleges and this was adversely affecting the quality of the product i.e. the students, who lacked a sound theoretical knowledge in its practical application, the Committee recommended as per a report submitted by it on October 21, 1978, that the lowest level of teaching post in Polytechnics should be that of a Lecturer and thus recommended that all teaching staff be upgraded in the pay scale of a Lecturer. Since minimum educational qualification to be appointed as a Lecturer was a degree in Engineering and it was noted that many persons teaching in pay scales lower than those of a Lecturer had lesser qualifications it was recommended that said persons be granted suitable time to improve their qualifications. The Committee simultaneously noted an interface in the practical education in the laboratories/workshops of the

Polytechnics and the theory applicable to a machine, and that the two were bridged by a cadre of employees in the workshops/laboratories. The Committee noted the corresponding position in Engineering Colleges, and as regards the staff in the workshop of Polytechnics, as per para II (d) of the report, recommended as under:-

“As in the case of engineering colleges, workshop instructors in polytechnics should be under the overall charge of a workshop superintendent who should be of the level of a senior Lecturer. There should be provision for 4 foreman instructors of the level of Lecturer for handling practical classes. These foreman instructors would be expected to handle lecture classes also on workshop technology and therefore it is necessary to take this fact into consideration while determining the total strength of Lecturers in an institution. The minimum qualification of this foreman instructor should be the same as recommended in the case of engineering colleges.”

4. We would simply highlight that the recommendation of the Committee was to bring at par ‘Foreman Instructor’ with a Lecturer ‘to handle lecture classes on workshop technology’.

5. The recommendations of the Madan Committee were accepted by the Government and it was decided to implement the same vide a letter dated September 25, 1987, relevant part whereof reads as under:-

“The existing staff which will be declared surplus by virtue of the implementation of the Madan Committee’s recommendations may be absorbed in the revised structure provided they fulfil the necessary prescribed qualification in the required post. However, the existing staff members who do not have the requisite qualifications for appointment in a particular grade should be given an opportunity to upgrade/improve their qualifications within a period of 8 years.....”

6. As a result thereof about 87 posts of Junior Lecturers, Senior Drawing Instructors, Assistant Workshop Superintendents, Demonstrators, Survey Instructors, Drawing Instructors, Studio Assistants and Foreman Printer were abolished/kept in abeyance and in lieu thereof an equal number of posts of Lecturers and Officers were created.

7. Further implementing the recommendations of the Madan Committee, 63 of the 87 aforementioned posts were reclassified as that of '*Lecturer*' and 6 posts as '*Foreman Instructor*'. The scale of pay of both posts was the same i.e. ₹2200 – 4000.

8. At that stage the petitioner sent a representation stating that since, working as a Workshop Instructor, he was also teaching students his post should also be re-designated as that of a Lecturer and he should be placed in the pay scale of a Lecturer i.e. ₹2200 – 4000. He pointed out therein that he possessed a degree in Mechanical Engineering. The request was declined.

9. On March 10, 1993 the petitioner was promoted to the post of '*Foreman Instructor*' and was placed in the pay scale ₹2200 – 4000, which as noted hereinabove was also the pay scale in which Lecturers were placed.

10. In the teaching cadre, the post of Lecturer in the scale of ₹2200 – 4000 require Lecturers to be placed in the senior scale ₹3000 – 5000 upon completing 8 years service, but subject to suitability being determined. And further on rendering another 8 years service to be placed in the selection grade of ₹3700 -5000 but subject to suitability being determined.

11. The petitioner made representations that having joined as a Workshop Instructor on October 13, 1964 and having taught theory in workshops, having completed 16 years he should be placed in the senior scale; a representation which was premised on the assumption that as a

Workshop Instructor the petitioner was required to be treated as a Lecturer when Madan Committee's recommendations were implemented on September 25, 1987. The requests were turned down by a non-speaking order. Petitioner filed O.A.No.544/1998 which was disposed of by the Tribunal with a direction to the Directorate of Technical Education to pass a speaking order resulting in a speaking order dated October 09, 2002 being passed rejecting the claim and as a result second round of litigation commencing when petitioner filed O.A.No.1909/2003 challenging the reasoned decision.

12. O.A.No.1909/2003 was disposed of by the Tribunal vide order dated July 11, 2006. The most unhappily worded order which contains no reasons, but read between the lines, was influenced by the fact that the petitioner had been promoted as a Foreman Instructor on March 10, 1993, a post which was in the same pay scale as that of a Lecturer directed that the petitioner be designated as a Lecturer as from the date when petitioner superannuated from service, a date which we do not know till date for the reason counsel for the petitioner could not tell us said date and unfortunately nobody was present from the side of the respondents when we heard arguments in the writ petition on February 27, 2013. But concededly the petitioner has superannuated from service, journey whereof he commenced way back on October 13, 1964.

13. Aggrieved by the decision dated July 11, 2006 the petitioner came marching to this Court under W.P.(C) No.3920/2007 and laid bare the non reasoned decision of the Tribunal which had failed to consider his contentions resulting in the writ petition being disposed of vide order dated December 02, 2009 requiring petitioner to seek a review before the Tribunal necessitating petitioner to file R.A.No.17/2010 which has been disposed of

by the Tribunal issuing a direction by modifying its decision dated July 11, 2006, as per order dated February 15, 2011 that petitioner would be treated as a Lecturer from the date he earned promotion to the post of '*Foreman Instructor*' i.e. March 10, 1993.

14. The instant writ petition is the second visit made by the petitioner to this Court urging that the Tribunal has overlooked the fact that as a Workshop Instructor petitioner was teaching and hence when recommendations of the Madan Committee were implemented on July 13, 1988 he was required to be treated as a Lecturer since the lowest level teaching post was that of a Lecturer. The petitioner further claimed a right to be placed in the senior scale of a Lecturer ₹3000 – 5000 reckoned 8 years after July 13, 1988.

15. From a perusal of the writ petition filed as also the pleadings in the original application it is apparent that the case of the petitioner is that he ought to have been upgraded as a Lecturer and placed in the pay scale ₹2200- 4000 with effect from July 13, 1988 when re-designation of various posts took place of 87 posts of Junior Lecturers, Senior Drawing Instructors, Assistant Workshop Superintendents, Demonstrators, Survey Instructors, Drawing Instructors, Studio Assistants and Foreman Printers were abolished and 63 posts of Lecturers and 6 posts of Foreman Instructors were sanctioned, both of which were in the same pay scale ₹ 2200-4000.

16. The facts would reveal that the Madan Committee had recommended that the lowest teaching post in Polytechnics should be that of a Lecturer and with respect to the workshops/laboratories at the Polytechnics, the Workshop Instructor should be under the overall charge of a '*Workshop Superintendent*', which post should be at the level of a '*Senior Lecturer*'. It recommended creating 4 posts of '*Foreman Instructors*' in

each Polytechnic who should be expected to handle '*Lecture Classes also on workshop technology*'. Facts noted by us further would reveal that while accepting the recommendations of the Madan Committee, with respect to Polytechnics established by the Directorate of Training and Technical Education in Delhi, 87 posts in different categories were abolished and 67 posts of Lecturers and 6 posts of Foreman Instructor were created.

17. Thus, it is clear that pertaining to the Polytechnics, a separate teaching cadre of Lecturers in the scale ₹2200 - 4000, to be placed in the senior scale of ₹3000 – 5000 on completing 8 years service and further selection grade in scale of ₹3700 – 5000 was created. And as regards the workshops in the Polytechnics, since Foreman Instructors were expected to handle lecture classes also on workshop technology, said posts were created in the same scale of pay as that of a Lecturer i.e. ₹2200 – 4000. The next above post was that of a '*Workshop Superintendent*'; to be placed at the level of a Senior Lecturer in the scale of ₹3000 – 5000.

18. Thus, it is not a case where the post of '*Workshop Instructor*' was envisaged to be placed in the pay scale of a Lecturer. The Workshop Instructors were not engaged in teaching as conventionally understood.

19. The petitioner and his counsel kept on harping, and for which our attention was drawn to a chart showing duties of a Workshop Instructor/Foreman Instructor. The first problem with the chart is that it does not separately show the duties of a Workshop Instructor and that of a Foreman Instructor. The intermingled chart would be useless to decipher the duties of a Workshop Instructor. Further, the integrated duty chart would show that both are involved in practicals in the Workshop as also project classes in the Workshop and further, the Foreman Instructors have to take theory classes in the Workshop as also in regular class rooms. The

scanty data shown to us is neither here nor there. On the subject of teaching a theory on a subject of science and on the subject of teaching by way of a practical demonstration in a Laboratory, in a decision dated November 24, 2010 deciding WP(C) 4534/2005 Gurdev Kumar v. Government of NCT of Delhi & Anr. where a 'Demonstrator-cum-Technician' was claiming a right to be treated as a Lecturer when Madan Committee's recommendations were applied, the vexed issue of a practical teaching and a theory teaching was, by way of example, expounded by a Division Bench of this Court, in paragraph 24 to 26 of the opinion as under:-

“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 H₂O. 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.”*

20. Similar is the position in the instant case. Thus, it has to be held that there is no evidence to support the claim made by the petitioner that working as a Workshop Instructor, the predominant job performed by him was teaching theory. The claim therefore that with effect from July 13, 1988 he be treated as a Lecturer fails.

21. To summarize, the position would be that teaching cadre, commencing from the post of a Lecturer followed by a Senior Lecturer followed further by a Lecturer Selection Grade was created in the Polytechnics in the year 1988. As regards the workshops, the lowest level post was that of a Workshop Instructor, above which was the post of a Foreman Instructor, which post was in the same scale of pay as that of a Lecturer. The next above post was that of a Workshop Superintendent which was in the same scale of pay as that of a Senior Lecturer. The Foreman Instructors were to take care of lecture classes as also workshop technology and not the Workshop Instructors.

22. Thus, the Tribunal has wrongly declared that the petitioner should be treated as Lecturer with effect from March 10, 1993. The said part of the decision in favour of the petitioner has not been challenged by the respondents probably for the reason the petitioner has since superannuated and the said declaration has no financial impact on account of the reason that with effect from said date the petitioner was promoted as a Foreman Instructor and was receiving salary in the same scale of pay as that of a Lecturer.

23. It is rather unfortunate that neither the petitioner nor his counsel understood the manner in which Madan Committee's recommendations were implemented. Rather than projecting a case that upon being promoted as a Foreman Instructor, the petitioner had a right to be considered for promotion as a Workshop Superintendent and placed in the pay scale of a Senior Lecturer, both kept on harping that on being required to be upgraded as a Lecturer, further benefits in the cadre of Lecturer should be granted to the petitioner. We highlight that whether placed in the senior scale of a Lecturer or promoted as a Workshop Superintendent, the petitioner would have received salary in the same scale. In other words, the claim to receive a senior scale was being predicated on a wrong reasoning.

24. In the absence of any pleadings as to what is the criteria to promote Foreman Instructor to the post of Workshop Superintendent, we are unable to proceed any further with respect to the correct line of reasoning which needed to be projected by the petitioner.

25. Thus while dismissing the writ petition we would observe that since the issue would have a recurring effect on the pension which the petitioner is receiving, the cause of action being a continuous cause of action, the petitioner would be permitted to file a proper Original

Application and we hope that his counsel takes a cue from the present decision. In said situation, the Tribunal would decide the matter keeping in view the pleadings and the law.

26. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 11, 2013
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