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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.6163/2014

07th April, 2015

MS KASTURI CHOUDHURY

..... Petitioner

Through: Mr.Chandrachur Bhattacharyya,
Advocate.

versus

JANKI DEVI MEMORIAL COLLEGE & ANR.

..... Respondents

Through: Mr.R.P.Sharma with Mr.Vaibhav
Mehra, Advocates for R-1.
Mr.Santosh Kumar, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? (Yes)

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner who was appointed for a contractual term by the respondent no.1/College as a Lecturer/Assistant Professor vide the appointment letter dated 07.9.2011; and which appointment was extended twice till 21.5.2012; seeks the relief that she be paid summer vacation salary for the summer vacation period from May to July, 2012.

2. The issue which is called for interpretation is Ordinance XII Rule 3 and more particularly sub-Rule 4 of Rule 3 of the respondent no.2/University of Delhi, and which reads as under:-

“

ORDINANCE XII

(3) (a). The temporary appointment of a teacher shall not be made to terminate before the end of the terms in which it is made or continued; and

(b) If a teacher has been in service in a college or department of the University on or before the first day of its re-opening in the second terms and has continued to be in service without any break till the end of the third terms in any College or Department of the University he shall be entitled to an ex-gratia payment equivalent to the amount of emoluments he would have received had his appointment continued till the end of the long vacation, if he is not holding any salaried post elsewhere during the period. Such ex-gratia payment shall be made by the College or the University, as the case may be, in which the teacher was in service immediately preceding the end of the third term.

(4) A teacher who has been in service up to the last day of the preceding session/term shall be entitled to vacation salary provided he has been reappointed and is in position on the reopening day after the vacation. In such cases the vacations will not constitute a break in service.”

(underlining added)

3. As per the aforesaid sub-Rule 4 of Rule 3 of Ordinance XII, vacations will not constitute a break in service when a temporary teacher is in position on the re-opening day after the vacations, and in which case such a teacher will be entitled to vacation salary.

4. This sub-Rule 4 of Rule 3 of the Ordinance XII in the aforesaid was clarified by the respondent no.2/University of Delhi in terms of its Executive Council Resolution No.29 dated 07.4.1995, and this Resolution reads as under:-

Resolution No.29

29/. The Council considered the question of payment of vacation salary to an ad-hoc teacher who has worked till the end of preceding

session and is appointed again on re-opening date after the vacation.

Resolved that ad ad-hoc teacher be paid vacation salary provided he is in service till the end of preceding session and is appointed again on the re-opening date after the vacation.” (emphasis added)

5. The interpretation of sub-Rule 4 of Rule 3 of Ordinance XII along with the Resolution No.29 dated 07.4.1995 as sought to be interpreted on behalf of the petitioner is that the expression ‘appointment’ which is used is not the date of joining only, but that the appointment letter which is issued should be before completion of summer vacations i.e it is not that the date of appointment should be the first date of joining after re-opening of the college after vacations. Counsel for the respondents argues to the contrary and argues that the expression ‘appointment’ has to be interpreted with respect to the date of taking charge, inasmuch as the object of the expression ‘appointment’ is that there is no break of service in the period of employment of a teacher, and if the date of joining is not the first date after the summer vacations, there is a break in service, and hence the re-appointed teacher is not entitled to salary for the summer vacations. Counsel for the respondents argues that this is the interpretation which is the correct interpretation inasmuch as sub-Rule 4 of Rule 3 of Ordinance XII specifically uses the expression that the employee must be in the position on the re-opening day and that Resolution No.29 dated 07.4.1995 also talks of appointment existing as on the re-opening date.

6. On behalf of the petitioner, it is also argued that this Court in equity must come to the aid of the petitioner because after all it is a question of only two months' salary, and to which argument on behalf of the respondents it is replied that the question is not of one temporary teacher who is the petitioner in this case, but the interpretation of the rule will affect all the other colleges of the respondent no.2/University of Delhi, and therefore the financial implication is not only for two months as is sought to be argued on behalf of the petitioner but for all the present teachers and those appointed in the future.

7. No doubt, equity may demand that a teacher who continues after the summer vacations must get salary for the summer vacations, however, when we read the relevant sub-Rule 4 of Rule 3 of Ordinance XII along with the Resolution No.29 dated 07.4.1995, the expression 'appointment' will necessarily have to be read as a date of joining and not an appointment letter given which is prior to the first date of re-opening after the summer vacations. A harmonious reading of sub-Rule 4 of Rule 3 of Ordinance XII and the Resolution No.29 dated 07.4.1995 shows that the object is that a teacher who has had no break in service must be entitled to the summer vacations salary and there is no break only if teacher is appointed w.e.f the re-opening date. If there is a break in service, then there is no continuation in employment. I therefore accept the arguments urged on behalf of the respondents as given in

para 5 above. Since the substance of the relevant sub-rule and the Resolution is 'continuation without a break', and in this case admittedly the date of re-opening after summer vacations was 23.7.2012 and the petitioner was asked to join in terms of the appointment letter dated 20.7.2012 only on 25.7.2012, there is a deliberate intention to create a break in service so far as the petitioner is concerned. This Court cannot go into the morality of an issue of giving a break in service and a break in service is given obviously by an employer not to create additional financial implication, and once in law, a break in service by the employer is not an illegality i.e the break is not that it cannot be given in law, then surely a break in service is legal and it will operate with its consequences.

8. Another aspect I may note in this case is that the petitioner before the summer vacations was employed with the respondent no.1/ college namely Janki Devi Memorial College and after the summer vacations, she had joined another college of the respondent no.2/University of Delhi namely Hansraj College i.e the petitioner joined not with the college with which she was working before the summer vacations but with another college namely Hansraj College, and therefore when the petitioner was given the appointment letter in 2012 itself she should have insisted the Hansraj College to give her the date of joining as 23.7.2012, but the petitioner in fact accepted and acted upon the

letter of appointment dated 20.7.2012 which gave the date of joining of the petitioner with Hansraj College as 25.7.2012, and effectively creating a break in service of the petitioner.

9. Petitioner having acted in terms of the appointment letter dated 20.7.2012 for joining w.e.f 25.7.2012 could not have much later in the year 2014 given a legal notice for claiming summer vacations salary of the year 2012, and thereafter filing this writ petition in the year 2014. On behalf of the petitioner, it is also argued that the petitioner had given the first representation on 19.9.2012 to the respondent no.1/College, and therefore the legal notice in 2014 was only a follow up, and which aspect is factually correct, however, the real and main issue is of the petitioner acting upon the appointment letter dated 20.7.2012 and taking appointment and the date of joining as 25.7.2012, and therefore, the date of appointment is not the date of the letter giving appointment but the date of appointment will be the date given to an employee for joining the service.

10. Learned counsel for the petitioner sought to place reliance upon the judgment of the Supreme Court in the case of *Afcons Infrastructure Ltd. and Anr. Vs. Cherian Varkey Construction Co. (P) Ltd. and Ors. (2010) 8 SCR 1053* to argue that in case of any confusion in interpretation of a provision or absurdity or repugnancy, courts can add a word or omit or substitute words in

the statute to cure the defects in the statute, however, I find that in the present case, I do not find any confusion or absurdity or repugnancy in the Ordinance or the Resolution for this Court to give an interpretation as is sought to be argued on behalf of the petitioner. In fact, a purposive interpretation and ratio of the judgment of *Afcons Infrastructure*'s case (*supra*) relied upon by the petitioner goes against the petitioner because the object of the relevant sub-rule and the Resolution No.29 dated 07.4.1995 of the respondent no.2/University is to give summer vacations salary when there is no break in service, and whenever there is a break in service, the summer vacations salary would not be payable to an employee. Therefore, in fact the principle of harmonious construction or any issue of giving a purposive construction to the relevant sub-rule of Ordinance XII would in fact require that a teacher who has got a break in service, and which break in service is not illegal, that such a teacher is not entitled to the summer vacations salary.

11. In view of the above, I do not find any merit in this petition, and the same is therefore dismissed.

APRIL 07, 2015
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VALMIKI J. MEHTA, J.