

\$~51

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

%

Date of decision: 7th September, 2018

+ W.P.(C) 4904/2017

MILAN RANA

..... Petitioner

Through : Ms. Rashmi Chopra, Adv.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through : Mr. Devesh Singh, ASC
(Civil)-GNCTD with
Ms. Urvashi Tripathi and
Ms. Surniti Ghai, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

1. On 23rd June, 1998, the petitioner was appointed, against a vacant post of Nursery Teacher in the respondent no. 4-School (hereinafter referred to as “the School”) which, at that time, was known as the Central Academy Senior Secondary School. The order of appointment stated that the appointment was against a vacant post of Nursery Teacher on ad-hoc basis till a regular appointment was made, and was on a consolidated monthly salary of ₹1,500/-.

2. Vide orders dated 26th June, 1999 and 29th April, 2001, the petitioner was again appointed as Nursery Teacher, with effect from 1st July, 1999 and 1st July, 2001. In each case, the appointment was termed “ad-hoc”.

3. On 3rd July, 1996, the School was taken over by the Directorate of Education (hereinafter referred to as the “DOE”) and has, thereafter, remained directly under the control and management of the DOE.

4. Vide her representations dated 17th April, 2000 and 13th June, 2000, the petitioner sought regularisation.

5. The petitioner was not regularized. Instead, on 30th April, 2001, the petitioner’s services were laid off. However, thereafter, vide letter dated 1st July, 2001, the petitioner was again appointed, on ad-hoc and temporary basis, till 30th April, 2002.

6. There is a positive averment, in the writ petition, that, after the School was taken over by the DOE on 1st April, 1997, all teachers were being appointed on temporary/ad-hoc basis, for a period of 10 months at a time, and there has been no regular appointment of teachers. By doing so, the petitioner would contend, the School is ensuring deprivation, to such teachers, of the benefits available, had they been regularly appointed. The petitioner’s contention is that, as she had completed more than 240 days in each academic year, she was entitled to regularisation.

7. The petitioner has also pointed out, in the writ petition, that she was actually considered for regular appointment by a “DPC”, which met on 21st June, 2001; however, no result, of the said consideration, was ever declared.

8. In these circumstances, the petitioner moved this court by means of WP(C) 1909/2002, seeking regularisation. In the said writ petition, the following interim order was passed, on 11th March, 2005 :

“W.P.(C)1909/2002

There seems to be no justification for treating the Petitioner differently to the Petitioners in W.P.(C) 1053/2001. She is already receiving a consolidated salary where it is the contention that she should have been placed in the appropriate pay-scale.

This is the question which is to be adjudicated upon. Prima facie, she should be paid for the summer vacations. Counsel for the Respondent states that needful be done.

Rule.

CM 3280/2002 in W.P.(C) 1909/2002

Interim orders dated 21.03.2002 are confirmed.
The application stands disposed of.”

9. It may be noted, here, that the writ petitioner in WP(C) 1053/2001 was one Harbhajan Kaur, appointed in the Central Academy School itself, as a Physical Education Teacher, like the petitioner, after the School was taken over by the DOE.

10. WP(C) 1053/2001, filed by Harbhajan Kaur, came to be allowed by this court *vide* a detailed judgment dated 5th April, 2010. One of the contentions advanced, by the respondents, to contest the claim of Harbhajan Kaur for regularisation, was that she was not qualified for regular appointment. This contention was, dealt with, by the learned Single Judge, by observing thus:

“While on the one hand it is contended that the petitioner is not qualified, on the other hand it is pleaded that the petitioner can apply for regular appointment as and when

made. It is found paradoxical by this Court that the authorized officer before making the appointment to be post of PET even if on a temporary/ad-hoc basis would appoint an unqualified person. The authorized officer is deemed to have satisfied himself of the qualification of the petitioner as a PET before appointing her. It might have been understandable if the same was not done the first time when the petitioner was appointed but if the petitioner was unqualified there is nothing to justify her successive appointment year after year.”

11. The operative portion of the judgment in *Harbhajan Kaur (supra)*, comprising paras 18 and 19 thereof, read thus:

“18. The petitioner is thus held entitled to the relief of regularization. The next question is as from when. From the record it is found that though the petitioner was appointed in 1997 but made her representation for regularization only on 17th April, 2000 and filed the present petition in or about February, 2001. The service of the petitioner may have been terminated in the summer vacations of 2001 but for the interim protection granted by this court. In the circumstances, it is found appropriate to grant the status of regularization to the petitioner w.e.f. the beginning of the academic session for the year 2001 i.e. from 15th July, 2001. It may be noticed that even as a regular appointee in 1997 the petitioner would have been placed on probation for a maximum period of two years.

19. A writ is therefore issued to the respondents to regularize the appointment of the petitioner as PET in Central Academy Senior Secondary School, Sector 13, R.K. Puram, New Delhi w.e.f. 15th July, 2001 and to pay to her within six weeks hereof the arrears of wages / emoluments to which she would be so entitled as a PET and to, for all other aspects/benefits, also treat her as in the regular employment of the school w.e.f. 15th July, 2001. Considering the fact that the Supreme Court has in the past also deprecated the practice of such ad-hoc appointment of teachers and notwithstanding the same the respondents continued to indulge in the same practice and also contested the present petition, the respondents are also burdened with costs of Rs.10,000/- of this petition, payable to the petitioner.”

12. While, as noted above, the writ petition filed by Harbhajan Kaur was allowed, W.P. (C) 1909/2002 (*supra*), filed by the petitioner, for regularisation of her services, was dismissed, by a learned Single Judge of this court, vide judgment dated 24th March, 2015, on the ground that the petitioner's appointment was expressly contractual in nature, under Rule 105(3) of the Delhi School Education Rules, 1973.

13. This judgment, dated 24th March, 2015, of the learned Single Judge, in WP(C) 1909/2002, was, set aside, by the Division Bench of this court, vide judgment dated 5th May, 2015, in LPA 274/2015 (***Milan Rana v. Director of Education***). Due stock was taken, by the Division Bench, of a decision, of the Government of National Capital Territory of Delhi (GNCTD), not to terminate contractual employees, till the Government decided on a policy regarding the status of such employees. In these circumstances, the Division Bench opined that, instead of dismissing the petition of the petitioner, the learned Single Judge ought to have held that the writ petition did not merit adjudication, in view of the said decision of the GNCTD, granting her liberty to revisit the court, in case she was threatened with termination.

14. Despite the above judgment of the Division Bench in LPA 274/1995, the respondent terminated the services of the petitioner vide order dated 8th May, 2015, on the basis of the judgment, dated 24th March, 2015 (*supra*), of the learned Single Judge in W.P. (C) 1909/2002.

15. This provoked the petitioner to move this court in contempt proceedings, by way of Contempt Case 5901/2015. The contention of the respondents, in answer thereto, was that they had moved the Division Bench for review of its judgment dated 5th May, 2015 (*supra*). This court, however expressed the view that sufficient time had already been available with the respondent, to get the review petition listed. In these circumstances, the Contempt Petition was disposed of, *vide* order dated 26th August, 2015, with a direction, to the respondent, to withdraw the termination notice and reinstate the petitioner within three weeks, subject to orders to be passed by the Division Bench in the review petition.

16. The petitioner contends that, to her knowledge, the review petition was never listed.

17. The respondent, instead, challenged the order, dated 5th May, 2015, of the Division Bench in LPA 274/2015, by way of SLP 28572/2015, which was dismissed by the Supreme Court on 1st October, 2015 in the following terms :

“Heard.

Delay condoned.

Considering the fact that the respondents have been working for the last 17 years, we are not inclined to interfere with the impugned judgment and other. Accordingly, the special leave petition is dismissed in the peculiar circumstances of the case.”

18. The judgment, dated 5th April, 2010, of the learned Single Judge in WP(C) 1053/2001, in the case of Harbhajan Kaur was upheld, by the Division Bench of this court, *vide* a judgment dated 2nd February,

2016 in LPA 356/2010. The Division Bench upheld the direction, of the learned Single Judge, to treat Harbhajan Kaur as a regular employee with effect from 15th July, 2001. She was also held to be entitled to parity of pay.

19. SLP(C) 11030/2016, which was filed by the Director of Education, challenging the said judgment dated 2nd February, 2016 in LPA 356/2010, was dismissed, by the Supreme Court, by order dated 29th April, 2016, which read thus :

“We are not inclined to entertain the special leave petition, which is dismissed.

Needless to say, this order is passed because of the peculiar facts and circumstances of the case and shall not be treated as a precedent.”

20. It is not in dispute that, pursuant to the above decisions, the services of Harbhajan Kaur stand regularized, and that she has been paid her salary and other benefits.

21. Ms. Rashmi Chopra, learned counsel for the petitioner, having drawn my attention to the above facts, also contends that, in fact, barring her client, all other teachers who had been similarly appointed in the Central Academy School have been given the status of “Special Appointee” and that it is her client alone, who is still being treated as a guest teacher, without even the status of a contractual employee.

22. It is in these circumstances that the petitioner has, by the present writ petition, sought issuance of a mandamus, to the respondents, to

treat her at par with Harbhajan Kaur and provided her the benefits which have enured to Harbhajan Kaur, pursuant to orders passed by this Court and the Supreme Court.

23. The only ground on which the respondent, in its counter-affidavit, justifies not extending, to the petitioner, the benefits which stand extended to Harbhajan Kaur, is the caveat entered by the Supreme Court, in its order dated 29th April, 2016 in SLP (C) 11030/2016, to the effect that the said order was passed “because of the peculiar facts and circumstances of the case and shall not be treated as a precedent”.

24. Apart from this, Mr. Devesh Singh, learned ASC appearing for the respondent, also submits that the petitioner was, in fact, not qualified for regularisation.

25. Having heard learned counsel for both sides at length, I am of the considered opinion that neither of the grounds, adduced by learned counsel for the respondent, to contest the claim of the petitioner, can really sustain either on facts or in law. No doubt, the Supreme Court, while dismissing the SLP of the Director of Education in the case of ***Harbhajan Kaur (supra)*** observed that *its order would not be treated as a precedent*. That, however, cannot be a reason to deprive the petitioner of parity, with Harbhajan Kaur, or to being extended the same treatment, as Harbhajan Kaur, and as was extended by this court while deciding the writ petition and the LPA filed in that case. There is already an observation of this Court, in the interim order passed in

WP(C) 1909/2002 on 11th March, 2005, that there was no reason to treat the petitioner differently from Harbhajan Kaur.

26. In that view of the matter, I do not see how the petitioner can be discriminated, vis-a-vis Harbhajan Kaur, insofar as the reliefs sought by her are concerned. I cannot read the order of the Supreme Court as justifying such a differential or discriminatory treatment. One may recollect, in this context, the following words of the Supreme Court itself, in *State of Karnataka v. C. Lalitha*, (2006) 2 SCC 747:

“Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”

27. The petitioner, in my view, is entitled, in fact and in law, to be extended the same benefits as were granted to Harbhajan Kaur, first by the learned Single Judge and, thereafter, by the Division Bench in LPA.

28. The other submission, of Mr. Devesh Singh, regarding the petitioner not possessing the requisite qualification for regularization, can also not sustain, as a similar contention had been advanced in the case of Harbhajan Kaur, which stands effectively rejected by the learned Single Judge in his judgment dated 5th April, 2010, the relevant portion of which already stands extracted hereinabove.

29. For these reasons, I am of the view that this writ petition deserves to be allowed, to the extent that the petitioner would be

entitled to all the benefits which have accrued to Harbhajan Kaur, and be treated at par with her. The respondent is directed to disburse, to the petitioner, the said benefits, within a period of four weeks from receipt of a certified copy of this judgment.

30. The writ petition, therefore, stands allowed to the above extent. There shall be no order as to costs.

C.HARI SHANKAR, J

SEPTEMBER 07, 2018/kr

