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

% **Date of Decision: 30th September, 2019**

+ W.P.(C) 3579/2003

MANJIT KAUR

..... Petitioner

Through: Mr.Vinay Sabharwal, Advocate

versus

GURU SINGH SABHA KHALSA

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. The petitioner has challenged the award of the Labour Court whereby the Labour Court rejected her claim on the ground that the petitioner is not a *workman* within the meaning of Section 2(s) of the Industrial Disputes Act.
2. The petitioner worked with the respondent as an Assistant Teacher from 01st March, 1972 to 01st August, 1980. The respondent was an unrecognized school at the time of petitioner's appointment. The respondent school subsequently applied for recognition whereupon the Education Department, MCD raised an objection that the petitioner does not have requisite qualification for the job of the Assistant teacher and was over-age. The respondent approached Education Department, MCD for relaxation of her qualification/age which was rejected. The respondent terminated the service of the petitioner whereupon the petitioner raised an industrial dispute which was referred to the Labour Court.

3. The respondent contested the statement of claim on the ground that the respondent is a recognized charitable School governed by Delhi Education Code and Delhi School Education Act, 1973 and the claim is barred by the provisions of Delhi Education Code. The respondent claimed that the school was being run with funds advanced to it by Gurudwara Managing Committee and was not run on commercial basis and was not covered by the definition of '*Industry*'. On merits, it was submitted that the respondent School was not recognized at the time of the petitioner's appointment. The respondent School subsequently applied for recognition whereupon the Education Department, MCD before granting the recognition raised an objection that the petitioner does not have requisite qualification for a job of an Assistant Teacher and was over-age. The respondent informed the petitioner about the objection of the Education Department, MCD whereupon the respondent approached Education Department, MCD for relaxation of her qualification and over-age which was not accepted. The petitioner approached the Education Department, MCD but the Education Department, MCD refused to grant relaxation in age and requisite qualification. The minimum qualification of an Assistant Teacher was higher secondary with two years basic training from a recognized institution for appointment of a basic teacher and maximum age was 30 years whereas the petitioner was more than 30 years of age and did not possess the minimum qualifications of higher secondary with two years basic training from a recognized institution. The respondent informed the petitioner vide letter dated 23rd September, 1978 to submit her proof of age and qualifications to Education Department, MCD. However, the petitioner did not comply with the said letter as she did not fulfill the basic requirements. The petitioner

admitted in her reply dated 20th October, 1978 and representation dated 09th April, 1979 to the Education Department, MCD that she did not fulfill the mandatory requirements regarding her education and age. The petitioner did not furnish any proof of satisfaction of the mandatory requirements in response to the letter dated 23rd September, 1978 and therefore, her services were not continued.

4. The Labour Court held that the petitioner was not a “workman” within the meaning of Section 2(s) of the Industrial Disputes Act and therefore, her termination cannot be looked into under the Industrial Disputes Act. The relevant findings of the Labour Court are reproduced hereunder:

“10. I have considered the rival contentions (sic) raised by the Ld. AR for the parties and perused the record. The polemical point involved in the present case is as to whether the claimant was a workman or not. To appreciate the arguments of Ld. AR for the parties, it would be appropriate to first discuss the provisions of section 2(s) of the I.D. Act which reads as follow:

“Sec. 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 purpose of any proceedings under this act in relations 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 that Air force Act 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) (sic), 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 prison; 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 since hundred rupees per mensem or exercises, wither by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.*”

11. *The Hon’ble Supreme Court while commenting on the definition of workman as contained in Sec.2(s) of the I.D. Act held in case titled “Arkal Govind Raj Rao v. Ciba Geigy of India Ltd. 1986 (52) FLR is as under:*

“When an employee has multifarious (sic) duties and a question is raised whether he is a workman or not, the court must find out what are the primary and basic duties of the person concerned and if he incidentally asked to do some other work may not necessarily be in tune with the basic duties, these additional duties can not change character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person.

12. *The definition of workman clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be engaged in supervisory capacity. Distribution of work among persons working in the same group by a leader of the group to ensure that all the members of the group performed duty efficiently to complete the task, would not change clerical character of the work.*

13. *Difference in salary is hardly decisive nor the designation of clerk by itself decisive. Focus has to be on the nature of duties performed.*

14. *The test is what is the primary or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory may have to be understood in their proper connotation and their mere use would not detract from the truth.*

15. *The aforesaid decision of the Hon’ble Supreme Court makes it abundantly clear that it is the nature of the duties which would be*

decisive as to the status of an employee for determining her status as a workman.

16. Now the question arises as to whether the teacher in the school is a workman or not. The definition of workman as laid down under Section 2(s) of the Industrial Dispute Act clearly takes out the teacher from the purview of definition of workman because a workman does not perform manual, skilled or semi-skilled or technical job. Imparting education is not a profession but a mission. The Hon'ble Supreme Court has rightly held in case titled "Miss A. Sundermaal Vs. Government of Goa, Daman and Diu & Others U.J. (SC) 1988(2) 329, that school was an industry but teacher not a workman. Accordingly the petitioner in the present case is certainly not a workman within the meaning of section 2(s) of the Industrial Dispute Act, though the management is an industry. Keeping in view of discussions stated above, all the three issues are decided in favour of the management and against the workman.

ISSUE NO. 4

Since the petitioner was not a workman u/s 2(s) of the Industrial Dispute Act, so the provision contained in the Industrial Dispute Act does not come to the rescue of workman. Accordingly, the termination cannot be looked into under the provision of I.D. Act. This issue is also decided against the workman. Thus the termination can not be regarded as illegal and unjustified.

17. Keeping in view of discussion stated above, the workman is not entitled for any relief. The reference is answered accordingly."

(Emphasis Supplied)

5. Learned counsel for the petitioner urged at the time of the hearing that the petitioner was a "workman" within the definition of Section 2(s) of the Industrial Disputes Act as the duties of the petitioner were clerical in nature namely attending Red Cross work, issue receipts of the fees of the students, get the uniform of the children, purchase books of the students from the market and take classes of an absent teacher. It was further submitted that the petitioner was given teaching work only when a regular teacher was absent. It was further submitted that the School was an 'Industry' as defined

under Section 2(j) of the Industrial Disputes Act. The termination of the petitioner amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. It is further submitted that the termination was violative of Section 25F of the Industrial Disputes Act. The reliance was placed on *Santosh Gupta v. State Bank of Patiala*, (1980) 3 SCC 340, *Mohan Lal v. Bharat Electronics*, (1981) 3 SCC 225, *Delhi Cloth & General Mills v. Shambhu Nath Mukherji*, (1977) 4 SCC 415.

Findings

6. The petitioner worked with the respondent school as an Assistant Teacher from 01st March, 1972 to 01st August, 1980. The Education Department, MCD while considering the respondent's application for recognition of the school raised an objection that the petitioner did not have requisite qualification for an Assistant Teacher and was over-age whereupon the petitioner approached the Education Department, MCD for relaxation of her educational qualifications, which was rejected.

7. The respondent raised an objection to the maintainability of the claim in the written statement on the ground that a teacher is not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act whereupon the petitioner for the first time raised an objection in the rejoinder that she was doing clerical work. The petitioner deposed in evidence that she was mainly doing clerical work in the school.

8. When the Education Department, MCD raised objection to the educational qualifications of the petitioner as a teacher, the petitioner never raised this plea that she was not a teacher and her qualifications be considered for the post of a clerk. Even in the statement of claim, the petitioner never raised the plea that she was doing only clerical work. It was

only after the objection was raised by the respondent in the written statement, the petitioner set up a new case that she was doing clerical work. If the petitioner was doing clerical work, she would have stated so in her reply to the School and reply to the Education Department, MCD to seek appointment as a clerk. In her reply dated 20th October, 1978 and representation dated 09th April, 1979, the petitioner sought relaxation for the post of Assistant Teacher and not as a clerk. The petitioner's contention that she was doing clerical work is false and is hereby rejected.

9. There is no infirmity in the well reasoned finding of the Labour Court that the petitioner was not a "*workman*" within the meaning of Section 2(s) of the Industrial Disputes Act and therefore, she was not entitled to any relief under the Industrial Disputes Act. The petitioner had remedy before the Delhi School Tribunal under the Delhi School Education Act, 1973.

10. There is no merit in the writ petition which is hereby dismissed.

SEPTEMBER 30, 2019

ds

J.R. MIDHA, J.