(2007) 11 DEL CK 0061

Delhi High Court

Case No: Writ Petition (C) No. : 11495 of 2005

Society for Self-Employment and Training Centre (Thru its General Manager)	APPELLANT
Vs	
Maya Rani	RESPONDENT

Date of Decision: Nov. 22, 2007

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2(s)

Citation: (2007) 10 ILR Delhi 210 Supp

Hon'ble Judges: J.M. Malik, J

Bench: Single Bench

Advocate: V.L. Madan and Ms. K.K. Madan, for the Appellant; Sanjoy Ghose, for the Respondent

Final Decision: Allowed

Judgement

J.M. Malik, J.

The parties have locked horns over the question whether Senior Instructor Fashion Designing employed in M/s Society for Self Employment and Training Centre, established by Government of NCT of Delhi is a ''workman'' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947? Petitioner''s case is this. Petitioner is a registered society. Its sole objective is to educate children from the weaker section of society in different vocational courses which could help them in getting suitable employment. One of such course taught by the petitioner-society is "Fashion Designing Programme". Smt. Maya Rani, the respondent in this writ petition, was appointed as Senior Instructor in the petitioner-society on probation for a period of two years on 26th June, 1991. Thereafter, her period of probation was extended by one year. Her service was terminated on 30th January, 1994 during the extended period of probation.

2. Vide reference dated 28th September, 1995 the following matter was referred to the Labour Court:

Whether the services of Smt. Maya Rani have been terminated illegally and/or unjustifiably by the Management and if so, to what relief is she entitled and what directions are necessary in this respect?

3. Vide order dated 10th September, 2004, the Labour Court passed an award directing the reinstatement of the respondent with full back wages and continuity of service. Under these circumstances, the petitioner-society filed the present writ petition for passing appropriate orders and directions in the nature of writ of certiorari or any other writ with the request to quesh the award dated 10th September, 2004.

4. I have heard the counsel for the parties. Learned counsel for the respondent has defended the award passed by the learned Labour Court. The learned Labour Court has placed reliance on a case reported in Mrs. Pramodini Patkar Vs. Indian Cancer Society and Another, , wherein the following observations have been made:-

Now, the evidence adduced in the Labour Court by both the petitioner and the first respondent clearly shows that although the petitioner was described as a teacher, her work was not essentially that of a teacher in an academic filed and she was not exercising intellectual skill of a teacher as we understand the term when one works in an educational institution imparting instructions to the students to build up their scholastic careers. The reference could not have been rejected by the learned Labour Judge holding that since the petitioner was a teacher she could not be said to be a workman. Thus, the evidence of the petitioner shows that at the relevant time she was working as an instructor in the handicrafts section of the Rehabilitation Centre of the first respondent. She was required to get the work done from the patients of the hospital as well as their relatives. She was preparing new patterns designs and the like for the stitching work and she herself used to do the tailoring job. She was required to purchase the cloth from the market and was required to attend exhibitions, attend markets and also attend to visitors. Her duty was to give various types of patterns to patients and explain to them how they should work on the said patterns. After the patients finished the work, the pieces were valued in terms of naye paise in the evening and the pieces prepared by the patients were collected and kept in the store room. Amongst such trainees, there were also the dependent children of the patients because the cancer patients had to be rehabilitated. She was also teaching the illiterate patients how to read and write. Thus, although she did say that she was employed as a teacher, in the true sense of the terms as we understand in the academic world, she was not a teacher imparting educational training for scholastic career. Even the evidence of Shalini Anant Kulkarni who was examined on behalf of the first respondent shows that the petitioner could not be termed as a teacher in the technical sense of the academic world. Shalini Anant Kulkarni deposed that the petitioner was required to give

training in crafts and handicrafts to the patients and their relatives. She was preparing the patterns of the articles to be manufactured and then teach the patients and their relatives after holding demonstrations as to how the work should be done. She was given a helper in order to facilitate her work. The evidence of this witness further shows that if a patient was emotionally disturbed, it was the duty of the petitioner to help out such patient in reducing the emotional disturbance. In my opinion, therefore, the learned Labour Judge was not right in rejecting the reference holding that the petitioner was a teacher and hence not a workman.

5. Counsel for the respondent submitted that the respondent was doing the manual work and not the intellectual work. He argued that her work cannot be termed as one of academics.

6. The last submission made by the counsel for the respondent was that the duty of this Court is to see whether the order passed by the Labour Court is perverse. In case two views are possible from the above-said post, the Court should lean on the side of the respondent and dismiss the petition.

7. Instead of touching the heart of the problem, the learned counsel for the respondent just skirted it. Section 2(s) of the Industrial Disputes Act defines workman as follows:

"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 purposes of any proceeding under this Act in relation to any 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 the Air Force Act, 1950 (45 of 1990), or the Army Act, 1950 (46 of 1950), 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 six hundred rupees per men sem or exercises, either 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.

8. It is now well settled that, although, the school is an industry, yet, the teacher employed in a school is not a workman. It is also well settled that on the termination of service of the teacher, dispute cannot be referred under the Industrial Disputes Act. In this context, learned counsel for the petitioner has drawn, my attention

towards authorities reported in Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, , Bokaro Steel Plant of Steel Authority of India Ltd. Vs. Presiding Officer, Labour Court and Another, , Ved Prakash Pathak Nirala Vs. State of Bihar and Others, and Vallabh Das Sharma Vs. Director, Rural Development and Panchayat Raj Department, .

9. However, the crux of the matter is whether an Instructor (Fashion Designing) can come within the definition of ''teacher''. The respondent, Maya Rani, was examined as WW-1 before the Labour Court. She made the following deposition. She was appointed to the post of Senior Instructor in the pay scale of Rs. 1640-2900 vide appointment letter dated 13.05.1991. She used to teach and instruct the students in Fashion Designing.

10. The management examined Shri Narain Dutt, Senior Instructor (Electrical), as MW-1, who made the following statement. Respondent, Maya Devi, was Senior Instructor and her nature of job was only to impart training and to teach the students. No manual work was used to be performed by her. Their society is not undertaking any manual work of any sort. Maya Rani was a teacher and not a workman.

11. Learned counsel for the petitioner has cites one full bench authority reported in Nongthombam Mangoljao Singh and Others Vs. State of Manipur and Others, . In this case, the craft instructors working in the Basic Training Institute of the Government of Manipur claimed to be workmen who could retire at the age of 60 years under Rule 3(b) of the Manipur Service Rules, 1976. The question whether they could be treated as workmen within the meaning of Section 2(s) of the Industrial Disputes Act arose for consideration before the above-said Full Bench. The Full Bench held that the claim of the craft instructors could not be sustained. It was held that the craft instructors could not be deemed to be workmen within the meaning of Rule 3(b) of Manipur Service Rules, 1976. It was further held that they were bound to retire on completion of 58 years of age and not 60 years. All the writ petitions were, therefore, dismissed.

12. I am also able to locate some authorities which go to favour the petitioner. In a latest authority reported in Lady Irwin College Society and Another Vs. Sushila Devi and Others, , it was observed:-

A teacher cannot teach unless he performs the art which he is teaching. In the present case since the teachers where teaching tailoring and knitting, they were naturally be doing tailoring and knitting by way of demonstration and that will not change the nature of their duty from teaching to tailoring. Further, there is no allegation anywhere in the claim petitions before the Labour Court that although they were called teachers they were actually technical workers performing the duties of tailoring and knitting. I, therefore, find no force in the argument of the learned counsel for the respondent that despite being teachers, the two employees

were actually workmen falling within the definition of Section 2(s) of the Industrial Disputes Act. Since these two employees/respondents were not workmen, they could not have invoked the jurisdiction of the Labour Court. They were not entitled to any of the benefits of the provisions of the Industrial Disputes Act. The reference of the dispute could not have been made to the Labour Court. Nor could the Labour Court have made an Award.

13. In Haryana Unrecognised Schools Association Vs. State of Haryana, , reliance was placed on another Supreme Court authority reported in Miss A. Sundarambal vs. Government of Goa, Daman and Diu and Others (supra), which was also relied upon by the counsel for the petitioner, wherein it was held,

This Court while examining the question whether the teachers employed in a school is workmen under Industrial Disputes Act had observed in Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, :

We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as ''workmen'' within the meaning of section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be construed as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and make them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching.

14. In Uma Chopra Vs. R.N. Jindal and Another, , it was held,

12.....The nature of duties of teacher teaching normal students and a teacher teaching deaf and dumb students are essentially the same. Both impart education to the students. The only difference is in the manner of imparting education. In one way even teachers teaching normal students to some kind of manual work when for instance they write on the black-board; take attendance or take part in other extra curricular activities. But it cannot be said in their case that because of these works their nature of duties are manual and they are workmen. Likewise in the case of the petitioner, the main work is intellectual as distinct from manual and she is not a workman. She also imparts education to students as any other teacher. There is no physical exertion in the method of teaching by signs and lip reading etc. The predominant nature of petitioner''s work involves mental or intellectual exertion and not manual exertion.

13. The net result of the above discussion is that the petitioner cannot be termed as a workman within the meaning of Section 2(s) of the Act and the Labour Court rightly held her not to be a workman and correctly answered the reference in favour of the management. Accordingly, I would discharge the Rule and dismiss the writ

petition leaving the parties to bear their own costs.

15. In WP(C) No. 4429/2005 titled as Maheshwar Prasad vs. Nehru Yuva Kendra Sangathan decided on 31st October, 2006, it was held that a computer instructor comes in the category of teacher.

16. The abovesaid position of law evinces the hollowness of arguments advanced by the counsel for the respondent. The Labour Court should not have poached into jurisdiction where it did not have. In the result, I hereby set aside the award. This, however, will not preclude the respondent from seeking her remedy as may be appropriate, in accordance with law. The writ petition is accordingly allowed.