

Dayanand Sharma and Others Vs Govt. of NCT of Delhi and Others

Court: Delhi High Court

Date of Decision: April 17, 2013

Citation: (2013) 4 AD 711

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Vishwendra Verma, for the Appellant; Arjun Mitra, Advocate for R-3 to R-5, for the Respondent

Judgement

Valmiki J Mehta, J.

In this writ petition there were 3 petitioners. Counsel for petitioners says that petitioner no. 3 is no longer interested in

pursuing the writ petition since he has already resigned from the school. The writ petition therefore has to be decided so far as petitioner nos. 1 and

2 are concerned. So far as petitioner no. 1 is concerned, the writ petition sets out the following claims:-

(i) Claim of the petitioner no. 1 is to be paid the salary of TGT because though the petitioner was appointed as a Primary Teacher, he was asked

to teach middle level classes and above and therefore, is entitled to the same pay as of the TGT.

(ii) The second claim of the petitioner no. 1 is towards arrears as stated in para-8 of the writ petition.

(iii) The next claim is towards "arrears of interim reliefs". Interim reliefs are claimed from 1.4.1996 to 30.11.1996.

(iv) The next claim is for the bonus for years 1992-1993 to 1995-1996.

(v) Earned leave is claimed as per Rule 111 of the Delhi School Education Act & Rules, 1973.

(vi) The next claim is towards Leave Travel Concession (L.T.C).

2. So far as petitioner no. 2 is concerned, the following claims have been raised:-

(i) Claim to be paid as TGT because petitioner no. 2 was asked to teach higher classes though petitioner no. 2 was only appointed as an Assistant

Teacher for Primary Classes.

(ii) Next is the claim for promotion of the petitioner no. 2 to a TGT and the related contention that the petitioner no. 2 has wrongly not been

selected by the Selection Committee.

(iii) Next is the claim for teaching allowance for the period from 19.04.1994 to 30.11.1996.

(iv) The next claim is towards increment which became due w.e.f. 1.9.1995 but has been granted from 1.7.1996.

(vii) Final claim is for salary for a period of 17 days for the month of May, 1995.

3. Before I refer to the defence of the respondent-school, and which school is represented through respondent nos. 3 to 5, I may note that the

petitioners have filed no documents whatsoever with the writ petition to substantiate any of the claims raised. The only documents filed by the

petitioners are three in number, being two representations to the Director of Education dated 22.4.1996 and 12.10.1996 and thirdly a notice dated

6.12.1996. I am referring this aspect because it is not enough merely to plead/state that a claim should be given, and, it is necessary in law to state

as to what is the basis of the claim in the writ petition including giving the basis how such claim lies and to be supported by documents to show how

such claim is sustainable. The writ petition is not only wholly bereft of requisite pleadings required for the claims made and as already stated no

document has also been filed.

4. The response of the school is that petitioner nos. 1 and 2 were appointed as Primary Teachers and they were paid their salaries as Primary

Teachers alongwith all the increments which were granted to other similarly placed teachers from time to time. The respondent-school has also

stated that petitioner no. 1 was appointed as a teacher Moral Education subject viz. "Dharam Shiksha" and had to take just two periods in a week

in the subject and therefore, teaching by the petitioner no. 1 cannot be compared with the other teachers in the school. It is the further stand of the

respondent-school in the counter-affidavit that the claim of the petitioner is unsustainable because in none of the chain of institutions/schools which

are run by the D.A.V. Society any of the fanciful claims as made by the petitioners are granted to similarly situated persons. So far as the arrears of

DA are concerned, it is stated that all the necessary dues have been paid and which is stated in para 9 of the counter-affidavit. With respect to

leave also the details of the leaves taken has been stated in para 10 of the counter-affidavit.

5. So far as the petitioner no. 2 is concerned, besides stating the facts as stated for the petitioner no. 1 that all the increments of salary have been

paid to the petitioner no. 1, in para 15 of the counter-affidavit it is stated that petitioner no. 2 is granted the benefit of leaves and other benefits as

per his entitlement. On the issue of appointment of the petitioner to the post of TGT, it is stated that there was no biasness or favoritism in the

selection which was made of the TGT, and to which post petitioner was not selected.

6. The counter-affidavit specifically mentions that since the petitioners have been appointed against particular posts, they are entitled to the pay-

scales as payable in the said posts, and said pay-scales in the posts are already being paid to the petitioners.

7. I have already stated above, that the petition is wholly bereft of details. Except making claims with respect to various monthly emoluments, no

basis has been given as to how those claims are sustainable, how wrongly those claims have not been granted, what is the provision under which

the various claims pleaded have to be granted, and finally, the fact that who are the others who have been granted whereas the petitioners have not

been granted.

8. In order to understand the vagueness of the allegations, and the writ being totally devoid of any particulars, I am reproducing the claims of the

petitioner no. 1 below as made in the writ petition (except the claim for salary of TGT):-

(1) ARREARS OF D.A.: The Dearness Allowance is granted by the Government with effect from 1st of January and Just July every years. The

Government declares he grant of D.A. after two or three months of the said stipulated dates. The Respondent No. 3 to 5 give the enhance D.A. to

the petitioner prospectively and no arrears have been paid from the date of effect, though the petitioner is entitled to get the same. The periods for

which arrears of D.A. have not been paid to the petitioners are as under:-

Period From To Rate of D.A.

(i) 1-7-95 31.3.96

(ii) 1-1-96 30.6.96

(iii) 1-7-96 30-11-96

11% of the Basic Pay

12% of the Basic Pay

11% of the Basic Pay

(2) ARREARS OF INTERIM RELIEFS:

The appropriate authority paid to the employees of the schools run by him instalments of Interim Reliefs granted by the Government, the

Respondent No. 1, from time to time, but the Respondent No. 1, from time to time, but the Respondent No. 3 to 5 paid Interim Reliefs

prospectively, and not from the date of actual grant. That is to say the said respondents have not paid arrears of Interim Relief from 1-4-96 to 30-

11-96.

(3) BONUS: The Respondents No. 3 to 5 did not pay Bonus for the years:

(a) 1992-93

(b) 1993-94

(c) 1994-95

(d) 1995-96

Whereas the non-teaching staff of the school have been paid the same.

(4) EARNED LEAVE: Rule 111 of the Delhi School Education Rules, 1973 lays down that employees of a recognised private school, whether

aided or not, shall be entitled to such leave as are admissible to employees of a corresponding status in Government schools. It is respectfully

submitted that the petitioner No. 1, is not allowed Earned Leave at all.

(5) LEAVE TRAVEL CONCESSION (L.T.C.)

The petitioner No. 1 is not allowed to avail of the L.T.C., though the teachers of the Governments school are entitled to avail of the same.

9. A reading of the aforesaid paras show that except typing out a petition and making claims no cause of action as is required in law is made out

for grant of the reliefs. Further, no documents at all have also been filed to substantiate that how these claims lie and as to how wrongly these

claims have not been paid. Finally I must state that, and as already stated above, to such a vague claim, it was not possible for the respondent-

school to say anything else except that the claims have not been paid, and which has been done by the respondent-school. I therefore, cannot grant

any of the claims prayed by the petitioner no. 1 as stated above.

10. So far as the claim of the petitioner no. 1 is concerned for the pay-scale of a TGT as the petitioner no. 1 was stated to have been taking not

only classes of Primary School but also of Middle Level, in my opinion, this claim is totally misconceived for two reasons. Firstly, the respondent-

school in the counter-affidavit has stated that petitioner no. 1 who was teaching ""Dharam Shiksha"" was only taking two classes per week and

therefore he cannot be equated to other teachers who are taking many more classes in the subjects being taught by the other teachers. Secondly, in

any case, if the petitioner no. 1 is appointed to a particular post and is being made payment of the scale of that post, petitioner no. 1 cannot

complain by seeking higher payment of scale of higher post, and the only entitlement of the petitioner no. 1 was that he could have refused to teach

higher classes. In fact, the petitioner no. 1 did so, and this is so stated in the counter-affidavit of the respondent-school in paragraph-5 and

whereafter petitioner No. 1 did not teach Middle Level classes. In any case, if illegal duties beyond the scope of work of the petitioner no. 1 were

being taken from the petitioner no. 1 by the respondent-school, the petitioner could have either filed proceedings to restrain the school from taking

the additional duties or should have refused to perform the duties, however, that is not a ground to make a legal claim for salary of a TGT, more

so, because the petitioners job does not involve taking of as many number of classes as was being done by the teachers of the other subjects.

11. So far as the petitioner no. 2's case for claim of TGT is concerned, the same would stand dismissed in terms of the conclusions given with

respect to petitioner no. 1 in para just above.

12. So far as the claim of petitioner no. 2 for the claim to promotion for the post of TGT is concerned, I do not find that any requisite cause of

action has been laid down in the petition because admittedly petitioner appeared before the Selection Committee and was not selected. Once the

petitioner is not selected, the petitioner had to show as to how any rules have been violated, inasmuch as, judicial review is not permissible for

selection of candidates by Selection Committee inasmuch as the Selection Committee is in the best position to judge who is the better candidate.

This Court cannot sit in the armchair of the Selection Committee and the Selection Committee body is the body which is fully empowered to

decide and take decision as to who is to be selected and who is not to be selected.

13. Learned counsel for the petitioners has drawn the attention of the Court to internal pages 14 and 15 of the rejoinder-affidavit showing that the

petitioners were taking many classes, however, besides the fact that this time table is a self serving time table without any proof, even for the sake

of argument, if I take the alleged time-table as correct yet this will not entitle the petitioner nos. 1 and 2 to claim salaries of a TGT for the reason

that as stated above the petitioners could have at best refused to teach the higher classes. In view of the above, there is no merit in the petition,

which is accordingly dismissed, leaving the parties to bear their own costs. All pending applications stand disposed of accordingly.