
(1996) 05 CAL CK 0001

In the Calcutta High Court

Case No : Appeal from Original Order No. 352 of 1990

Abdur Rahim Mir

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:

Citation : (1996) 05 CAL CK 0001

Hon'ble Judges : Satyabrata Sinha, J; Satya Narayan Chakraborty, J

Bench : Division Bench

Advocate : Kazi Mohammed Ali, for the Appellant; subhas Chandra Bose, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This Appeal is directed against a judgment and order dated 17th April, 1988 passed by Mahitosh Majumdar, J. in Civil Order No. 1692 (W) of 1987, whereby and where under the said learned Judge dismissed the writ application filed by the writ-petitioner-appellant. The fact of the matter lies in a very narrow compass.

2. The writ-petitioner-appellant claims himself to be an assistant teacher of Borhal Kamala Devi Pratishan (Co-Education) High School (hereinafter referred to as the "said School"). He passed the Fazal Examination, whereafter he was admitted for assistant teacher for Arabic language, by the Administrator of the said School on 2.1.78 on a monthly salary of Rs. 40/- which was later on increased to a sum of Rs. 50/-per month of March 1979. According to the petitioner-appellant owing to his untiring efforts number of Muslim students was increased in the school and in the year 1983 the total number of Muslim students came around one hundred four and thirty-two students of Class VII to X took up Arabic as their, third language. The writ-petitioner-appellant contends that the West Bengal Board of Secondary Education to which the said School is affiliated however, refused to sanction the post of Arabic teacher and thus his services were terminated from 1st February, 1980. The writ-petitioner-appellant filed a

suit in the court of Second Munsif, Serampore, Hooghly, which was registered as Title Suit No. 14 of 1981, praying, inter alia, therein that he be reinstated in the service. However, he withdrew the said suit as he was reinstated as part-time Arabic teacher by the said School authority on and from 10.1.83. The writ-petitioner-appellant has contended that at that time he was assured by the school authority that his appointment would be confirmed, if he raised the number of Muslim students considerably. According to the writ-petitioner-appellant the number of Muslim students increased from fifty to one hundred four and in classes VII to X, thirty-two students took Arabic as their third language. The writ-petitioner-appellant has contended further that he was not paid any salary as teacher of the said school despite repeated demands. He thereafter filed a representation before the Respondent No. 3, whereupon an enquiry was held. The Respondent No. 3 submitted a report on 11.6.84 to the Respondent No. 2 allegedly stating therein that a good number of Muslim students are willing to take Arabic as their Third language and as such the said authority recommended for approval of his services as assistant teacher. However, "no order thereupon was passed by the Respondent No. 2. He filed a writ application before this Court which was marked as Civil Order No. 7120(W) of 1986 and by a judgment dated 19.5.86 P. K. Majumdar, J. disposed of the said writ application directing the Respondent No. 3 to consider the petitioner's case for approval. The writ-petitioner-appellant thereafter filed a representation, inter alia, stating that there is no other Arabic teacher in the said School and he had been teaching Arabic language for a long time. The writ-petitioner-appellant filed another writ application which came up before U.C. Banerjee, J. and his Lordship by a judgment dated 30th July, 1986 disposed of the said writ application directing the respondents to consider the petitioner's representation in terms of the Government notification.

3. By an order dated 28.8.86 the District Inspector of Schools refused to accord approval of the appointment of the writ-petitioner. The petitioner filed a writ application questioning the said order. The matter came up before the learned Trial Judge who in view of the fact that the writ-petitioner in the writ application had not mentioned, about the order passed by Justice Banerjee, dismissed the writ application on the ground that the petitioner is guilty of suppression of facts.

4. Mr. Kazi Mohmed Ali, the Learned Counsel appearing on behalf of the appellant submitted that the writ-petitioner-appellant had no intention to suppress the aforementioned order passed by U. C. Banerjee, J. inasmuch as the order impugned in the writ application dated 28.8.86 itself would show that the said order had been passed in terms of the order dated 30th July, 1986 passed by Justice Banerjee. The Learned Counsel contended that the appellant's services ought to have been regularised in view of the circular letter dated 2nd May 1981, the relevant portion whereof reads thus:-

Only the cases of those unapproved part-time teaching and non-teaching staff, who had been in position on the 31st December, 1979 i.e. prior to the date of

introduction of the fixed rate of development fee to be realised by the Schools, are to be taken into account Any such employee who was in position on the 31st December, 1979 but whose services have meanwhile been terminated owing to" the inability of any school authority to make payment of his/her remuneration, should be reinstated in service.

According to the Learned Counsel, keeping in view the fact that the services of the writ-petitioner-appellant had been terminated, the policy decision of the state as continued in the said circular letter is attracted in the instant case and in that view of the -matter, "it was obligatory on the part of the school authority to reinstate him in service and consequently the writ-petitioner- appellant became entitled to become an approved teacher of the said school.

5. By an order dated 18.6.86, the District Inspector of Schools, inter alia, held that the petitioner co-aid not produce any letter of appointment at the time of hearing. He only produced a resolution of the Administrator adopted on 11.8.78 showing the period of his working and that an amount of Rs. 40/- be paid to him per month out of the Development Fund. The District Inspector of Schools in the said letter dated 18.6.86, Inter alia, held that the Head Master had no jurisdiction to appoint any teacher in the said school without resolution of the Managing Committee/Administrator and in any event, before such appointment, prior sanction was to be obtained from the appropriate authorities of the education department. He pointed out that the post of a part-time Arabic teacher was not sanctioned one. He further noticed that the Director of the Secondary Education, West Bengal has informed the school authority that there had been no provision under the rules for teaching of any language other than Bengali and English in Classes V and VI and the effective number of students in Class IX and X in Arabic not being satisfactory, the school cannot be sanctioned any additional post of assistant teacher exclusively for the teaching of Arabic. It was noticed that the services of the appellant were terminated upon receipt of the aforementioned order of the Director, but the said school again reinstated him with effect from 10th January, 1983 allegedly upon consideration of a mass petition in favour of the writ-petitioner. The said order dated 18.6.86 was passed pursuant to the direction passed by P. H Majumdar, J, In his order dated 28.8.86, which was passed in terms of the order dated 30th July, 1986 passed by U. C. Banerjee, J. the District Inspector of schools (S.E.) Hooghly held :-

The text of the Notification No. 25-Edn (S) dated 10.1.1981 inter alia, relates to the enhancement of the development fees to be realised from the students proportionately to the extent which will be required to cover the expenditure towards payment of remuneration of the existing unapproved staff like Physical Education Teachers, Craft Teachers. Music Teachers, Sweepers. Night Guards etc. who were so long being paid their remuneration out of the development fund of the school, being appointed beyond the sanctioned strength; only the cases of those part-time teaching and non-teaching staff as referred to above who had been in position on 8.7.74 are to be taken into account, any such staff whose

service has meanwhile been terminated due to inability of any school to make payment of his remuneration should be reinstated in service. The staff concerned should be paid remuneration at the rate of Rs. 75/ per month or at the rate of which were being paid whichever is less.

The contents of the Notification No. 481-End(S) dated 2.5.1981 remains the same as in Government Notification No, 25-End(S) dated 10.1.1981 excepting the extension of the service period of the teachers to the extent that the cases of unapproved staff who were appointed after the 9th duly, 1974 and were in position on the 31st December, 1979 should also be brought within the purview of the department Order No. 25-End(S) dated 10.1.1981,

6. As according to the said authority, the aforementioned circular letter dated 10th January. 1981 has no application in the case of the appellant, he rejected the prayer of the appellant for being approved in the services.

7. Mr. Ali, the Learned Counsel appearing on behalf of the Appellant has drawn out attention to a letter issued by the Director of School Education, West Bengal to the District Inspector of Schools, Murshidabad in December, 1983 as contained in Annexure "D" to the writ application, for the purpose of showing that five teachers who are teaching Arabic were approved for the School. That letter would show that such a direction has been made as a special case in relaxation of the existing orders provided they are absorbed against approved post of teachers admissible to the school as per existing staff pattern and provided further that there is no such qualification of classified teacher in the School/ College/Madras concerned. No such case has been made out by the petitioner. In fact, as noticed here before, that a post of Arabic Teacher had never been approved by the Director of School Education.

8. So far as the Circular letter dated 10th January, 1981 as contained in Annexure "A" to the writ application upon which strong reliance has been placed the learned Content for the Appellant concerned we are of the view that the District Inspected of School Secondary Education, Hooghly was correct in passing the impugned order dated 30th July 1986 to the effect that the said circular letter had no applicant to the facts and circumstances of the case. The said circular letter was issued in relation to the part-time Physical Education Teachers, Craft Teachers, Music Teachers, Sweepers, Night Guards etc. Their salaries were to be paid from the Development Fund. However, before us reliance has also been placed by the Learned Counsel in the circular letter dated 2nd May, 1981 the operative portion whereof reads thus :-

Only the cases of those unapproved part-time teaching and non-teaching staff, who had been in position on the 31st December, 1979 i.e. order to the date of introduction of the fixed rate of development fee to be realised by the Schools, are to be taken into account. Any such employee who was in position on the 31st December, 1979 but whose services have meanwhile been terminated owing to the inability of any School authority to make payment of his/her remuneration,

should be reinstated in service.

9. Again the said letter was issued in relation to Craft Teachers, Music teachers. Sweepers. Night-Guards etc. beyond the sanctioned strength. Said letter was evidently issued in respect of such persons whose services have been terminated because their salaries could not be paid from the Development fund. It is in that context, the Deputy Secretary of the State of West Bengal directed that no such employee how as in position on the 31st December. 1979 and whose services mainly been terminated owing to the inability of the School to make payment of his remuneration, should be reinstated in service. The services of the writ petitioner were not terminated owing to the inability on the part of the School to pay the salaries in terms of the directions issued by the Director of School Education. Admittedly the Director of School Education refused to approve the post.

10. It is now well-known that in absence of any sanctioned post no appointment could be made. Moreover, it is not disputed that since 1981 the Director of School Education in exercise of the powers conferred upon him under the provisions of Management Rules of 1969 framed recruitment rules as regards appointment of teaching and non-teaching staff. Such Recruitment Rules are statutory in nature. Before any appointment could be made, it is obligatory on, the part of the School authorities to make appointment in terms of such Recruitments Rules. The said Recruitment Rules also provide for grant of prior sanction by the District Inspector of Schools before the School authorities permitted to notify the vacancies to the concerned Employment Exchange. Even after selection is made, the panel prepared by the Selection Committee is required to be approved in terms of the said Recruitment Rules by the District Inspector of Schools (Secondary Education). After his approval and only upon grant of such approval, the School authorities are entitled to make appointment even, such appointment granted by the School authorities are required to be approved by the District Inspector of School, Secondary Education. It is not in dispute that in the case of the petitioner that the provisions of the said Recruitment Rules have not been followed at all. The petitioner was appointed by the Managing Committee dehors the Rules. His services were, therefore, not protected by any statutory rules. A writ of or in the nature of Mandamus can be issued only if the petitioner demonstrates existence of a legal right in himself and a corresponding legal duty for the public authorities. As the petitioner was appointed dehors the Rules, he did not derive any legal right to be absorbed in the School services. The circular letters issued by the authorities of the State of West Bengal must be held to be confined to the cases which fell within its purview. Even no circular letter could have been issued by the State in derogation of the statutory requirements of the said Recruitment Rules.

11. As in the instant case, the services of the petitioner were terminated owing to non-sanction of the post of an Arabic teacher by the Director of School Education, in our opinion, reinstatement in service by the School authorities

would not entitle him to maintain a writ application for issuance of a writ of or in the nature of Mandamus. The learned Trial Judge, therefore, in our opinion, was right in holding that no writ could be issued in favour of the petitioner. For the reasons aforementioned, we are of the opinion that there is no merit in the appeal which is, accordingly, dismissed. In the facts of the case, there will be no order as to costs.

S. N. Chakraborty, J.

I agree.