
(2015) 04 CAL CK 0036
In the Calcutta High Court
Case No : WP 21091 (W) of 2006

Abdur Rashid Khan and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) 04 CAL CK 0036

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Indranath Mitra and Arindam Deb Roy, Learned Advocates, for the Appellant; S.N. Bhattacharyya and Asit Baran Mukherjee, Learned Advocates, Advocates for the Respondent

Final Decision : Allowed

Judgement

Samapti Chatterjee, J.—The instant writ petition was filed by the petitioners challenging the impugned Memo being No. 808 dated 18th August, 2006 issued by the Executive Officer, Karimpur-II Panchayat Samity whereby the petitioners were informed by the Secretary of Madhyamik Siksha Kendra (hereinafter referred to as "MSK") thus instead of according approval to the petitioners' service directed to advertise the said vacancies afresh following the "MSK" guidelines.

2. The petitioners' case in brief is as follows:-

That the petitioner No. 1 is a post graduate in Humanities in the year 1984 from the University of Calcutta having History, Political Science and Bengali as elective subjects and English as additional subjects. The petitioner No. 2 passed B.Sc. (2 years) in the year 1989. Both of the petitioners enrolled their names with the local employment exchange. It is contended that the Government of West Bengal in collaboration with the Union of India undertook various projects, namely, "School Learning Improvement Programme", "Integrated Learning Improvement Programme" and also "Sarva Siksha Axiyan" with the intention to educate/

develop literacy among the children in urban and semi-urban areas and to promote effective literacy programme among the poor people of the village Gorbhanga under the jurisdiction of Natidanga-II Gram Panchayat and a new Madhyamik Siksha Kendra ("MSK") namely Gorbhanga was set up initially for the students of Class-V and VI. Thereafter on the demand of students the said "MSK" was upgraded to class VII. Since it was upgraded, therefore, to meet need of teachers in Social Science Group and in Science Group for the Session 2006-2007 the Managing Committee in its meeting being No. 8 dated 2nd March 2006 adopted a resolution to the effect that two posts of Samprasarak and Samprasarika in the Social Science Group and Science Group would be appointed in the said school following the guidelines.

In the said meeting the Managing Committee unanimously adopted the decision to appoint one Samprasarak and one Samprasarika in addition to the existing two Samprasarks in the said "MSK" with the intention to run the said "MSK" smoothly. The resolution of the said meeting dated 2nd March, 2006 was sent to the Sabhapati and Executive Officer of Karimpur-II, Panchayat Samity vide letter dated 17th April, 2006 by the Secretary, Gorbhanga and "MSK" for their information and necessary action.

It is further submitted that to fill up vacant posts of Samprasarak the Secretary of the said "MSK" on 10th March, 2006 notified/displayed an advertisement in the notice board of the said "MSK" as also in the notice board of Natidanga-II Gram Panchayat inviting applications from the intending eligible candidates preferably residing under the jurisdiction of Natidanga-II Gram Panchayat. In the said advertisement it was also mentioned that the appointment to the post of Samprasarak would be on contractual basis for period of one year. It was further mentioned in the advertisement that the minimum qualification for the post of Samprasarak of the Life Science Group would be B.Sc. (Bio) and for the post of Samprasarak of Social Science Group minimum requisite qualification would be graduate with History as one of the elective subject. The said advertisement also disclosed that the applicants for those two vacant posts must be the permanent resident of Natidanga-II Gram Panchayat and he/she would be approximate age of 40 years and last date of submission of application was fixed as 31st March, 2006. Since the petitioners were having requisite qualifications and also fulfilled other requirements as per advertisement they submitted applications in plain paper before the Secretary of the said "MSK" on 20th march, 2006.

As no other candidate applied for the said posts the Managing Committee on 24th August, 2006 adopted a resolution to the effect that since only two applications applied for the said post, therefore, their applications were accepted and the petitioners were asked to execute the agreement with the Secretary of the said school for appointment as Samprasarak and Samprasarika on contractual basis with effect from 1st May, 2006, which would continue till 30th April, 2007.

It is further submitted that pursuant to the said resolution dated 24th April, 2006

the petitioners on 27th April, 2006 separately executed an agreement for appointment to the post of Samprasarak and Samprasarika in the said school for a period of one year. The Managing Committee of the said "MSK" vide its letter dated 3rd May, 2006 intimated the Executive Officer, Karimpur-II Panchayat Samity regarding the appointment of the two petitioners in the said "MSK" as Samprasarak and Samprasarika. It was also revealed that after newly formed Managing Committee took charges of the said "MSK" meeting was held on 23rd July, 2006 where all the members unanimously accepted decision that the appointment of the petitioners to the post of Samprasarak and Samprasarika respectively was given by the erstwhile managing Committee after strictly following the guidelines.

It is further contended that while both the petitioners were satisfactorily discharging their duties as Samprasarak and Samprasarika of the said "MSK", then all on a sudden by the impugned Memo No. 808 dated 18th August, 2006 the Secretary of the said "MSK" instead of according approval to the appointment of the petitioners" informed the said "MSK" to advertise for the said vacancies afresh following the "MSK" guidelines.

Challenging the impugned order being Memo No. 808 dated 18th August, 2006 the petitioners filed the instant writ petition before this Hon"ble Court. The Hon"ble Court after hearing the learned Advocates appearing for the respective parties vide order dated 11th April, 2007 restrained the respondents from disturbing the engagement of the petitioners during the contractual period. It was also observed by the Hon"ble Court that pendency of the writ petition would not debar the concerned authority from considering the prayer for re-engagement of the petitioners for the subsequent period. The extract of the said order dated 11th April, 2007 is quoted below:-

"The concerned respondents are restrained from disturbing the engagement of the petitioners during the contractual period.

The pendency of this writ petition will not debar the concerned authority from considering the prayer for re-engagement of the petitioners for the subsequent period."

Pursuant to the interim order the petitioners engagement were time to time renewed by the said "MSK" till date.

3. Despite direction given by the Hon"ble Court vide its order dated 11th April, 2007 till date no affidavit-in-opposition was filed by the state authorities.

4. Mr. Debabrata Saha Roy, learned Advocate appearing for the petitioners contended that the impugned order is bad in law as it was not issued by the competent authority.

5. Mr. Saha Roy further contended that the Clause 31 of the Panchayat Act does not empower the Thai Samity to take any decision.

6. It is also submitted by Mr. Saha Roy that the so called embargo on recruitment after declaration of date of election is applicable only to the institution/organisation covered under West Bengal Secondary Education Act, 1973 and other government departments but in the present case the appointment of the petitioners in the post of Samprasarak and Samprasarika are contractual in nature for one year which was time to time extended till date by the said "MSK".

7. It is also vehemently argued by Mr. Saha Roy that the reasons mentioned in the impugned memo being No. 808 dated 18th August, 2006 have no manner of application in respect of the petitioners' appointment as both the appointments were contractual in nature.

8. Mr. Saha Roy also argued that after following the existing procedures the petitioners were given appointment in contractual basis on the post of Samprasarak and Samprasarika in respect of the Gorbhanga MSK. Therefore, it can not be claimed that without following the rule the petitioners were given appointment by the said "MSK". In support of his contention Mr. Saha Roy relied on Clause 8 and 9 of the Mode of Selection of Samprasarak and Samprasarika of the "MSK" which are quoted below:-

"MODE OF SELECTION OF SHIKSHA SAMPRASARIKA/SAMPRASARAK OF MADHYAMIK SHIKSHA KARMAUCHI

Clause 8:- Selection of Samprasarikas/Samprasarakas will have to be made in the manner provided in the guidelines without any deviation.

Clause 9:- The Managing Committee may solicit the assistance of the Executive Officer and the Karmadhyaksha of the Shiksha, Sanskriti, Tathya-O-Krira Sthayee Samiti of the concerned Panchayat Samiti in the matter."

9. Mr. Saha Roy strongly argued that by this revised guideline the Managing Committee may only solicit the assistance of the Executive Officer and the Karmadhyaksha of the Shiksha, Sanskriti, Tathya-O-Krira Sthayee Samiti of the concerned Panchayat Samiti in the matter and nothing else.

10. Mr. Saha Roy also pointed out that no deviation was at all made by the authority in the matter of selection. Therefore, selection of the petitioners cannot and should not be vitiated on these baseless grounds.

11. Mr. Saha Roy further relied on Government Memo dated 20th April, 2010 which is quoted below:-

"(i) Contract period of existing Samprasarak/Samprasarika and Sahayika/Sahayak will not be terminated on March, 2010 and they will work upto April 2010 according to existing contract i.e. upto two months of the current academic session 2010-2011, if their age is within the upper limit as on 30.04.2010."

and Clause 1, 6, and 7 of the Government Memo dated 23rd April, 2010 which are quoted below:-

1. "Sahayikas/Sahayaks of Shishu Shiksha Kendras, Samprasaraks/Samprasarikas and Mukhya Samprasaraks/Samprasarikas of Madhyamik Shiksha Kendras and Academic Supervisors will remain engaged upto the age prevailing in their case provided the service is satisfactory.

6. The engagement of existing Sahayikas/Sahayaks of Shishu Shiksha Kendras, Samprasaraks/Samprasarikas and Mukhya Samprasaraks/Samprasarikas of Madhyamik Shiksha Kendras and Academic Supervisors will be made as mentioned at para 1 but subject to verification by the appropriate authority of their current engagement as per existing guidelines. In their cases there will be no need of written test and interview as mentioned at para 5 of the instant order. The engagement of the personnel at the District Level will also be done by the Department and in similar manner.

7. Engagement will be made by Sub-divisional officer in case of Sahayikas/Sahayaks of Shishu Shiksha Kendras and by Additional District Magistrate (to be nominated by the District Magistrate) in case of Samprasaraks/Samprasarikas/Mukhya Samprasaraks/Mukhya Samprasarikas of Madhyamik Shiksha Kendras and Academic Supervisors."

12. Mr. Saha Roy also relied on Clauses 22, 31 and 38 of the Madhyamik Shiksha Karmasuchi which are quoted below:-

ENGAGE OF SHIKSHA SAMPRASARAKS/SAMPRASARIKAS:

22. The Shiksha Samprasarak/Samprasarikas would be engaged by the MC on contract basis. Since the eligibility of a MSK for receiving Government grants would be reviewed annually, the period of such contract of engagement of Mukhya and other Shiksha Samprasaraks/Samprasarikas by the MC should not exceed one year. Hence, the Mukhya and other Shiksha Samprasaraks/Samprasarikas would be engaged on contract basis for the period of one year at a time. If the MSK is considered by the Zilla/Mahakuma Parishad [DGHC in Darjeeling Hill area] eligible for receiving Government assistance next year and if the MC is satisfied about the quality of services rendered by the Mukhya and Shiksha Samprasaraks/Samprasarikas, then the contract may be extended for the next year by the MC and so on. Since the MC will enter into contract with the Mukhya and other Shiksha Samprasaraks/Samprasarikas, it may fix other terms of contract. However, in order to maintain uniformity, it is desirable that they use the model contract form enclosed herewith. The contract would be signed between the MC and the concerned Mukhya and other Shiksha Samprasaraks/Samprasarikas. The original contract document would be retained by the MC and a copy thereof shall be given to the concerned Mukhya Shiksha Samprasaraks/Samprasarikas.

RESPONDIBILITIES OF THE PANCHAYAT SAMITI:

31. Apart from discharging other responsibilities mentioned elsewhere in this order, the Panchayat Samiti shall ensure that the MSKs maintain proper records

of expenditures. The amount spent by the MSKs is subject to audit by the auditors engaged by the Panchayat Samiti. The Artho, Sanstha, Unnayan-O-Parikalpana Sthayee Samiti of the Panchayat Samiti would arrange for audit of the expenditure on this account and the same should be completed within next two months of the next financial year. Services of the Panchayat Audit and Accounts Officers may be utilised for the purpose. In hill areas of Darjeeling, DGHC shall suitably arrange audit in the manner suggested above.

ROLE OF DISTRICT MAGISTRATE AND THE PANCHAYATS IN MANAGEMENT AND SUPERVISION:

38. Apart from the supervision mechanism prescribed above, it will be necessary to have strong administrative supervision of the programme. The Sub-divisional Officers may be specially entrusted by the District Magistrate to personally monitor the progress of the programme. The Executive Officer, Panchayat Samiti and Block Nodal Officer, MSK should also be entrusted with the responsibility for supervision."

13. Mr. Saha Roy also contended that since their appointments till today the petitioners have been satisfactorily and without any break discharging their duties as Samprasarak and Samprasarika and their engagements/appointments in those two posts have been time to time renewed by the said "MSK". Not only that the petitioners are also assigned so may important duties and responsibilities by the said "MSK" as permanent employees.

14. Before parting with his argument Mr. Saha Roy submitted that the writ petition should be allowed by directing the respondent authority to accord approval to the appointment of the petitioners in the posts of Samprasarak and Samprasarika after setting aside the impugned memo dated 18th August, 2006 issued by the Executive Officer, Karimpur-II Panchayat Samiti whereby the Secretary of the said "MSK" was directed to advertise the said vacancy afresh following the "MSK" guidelines.

15. Per contra, Mr. S.N. Bhattacharya, learned Advocate appearing for the respondent submitted that advertisement was not in conformity with the guidelines.

16. Mr. Bhattacharya drew my attention to Sub-Clause I, II and III of the Clause 21 of the said Madhyamik Siksha Karmasuchi which are quoted below:-

QUALIFICATION OF SIKSHA SAMPRASARAK/SAMPRASARIKA:

21. "The MC shall engage a person as Siksha Samprasarak/Samprasarika provided he/she fulfils the following conditions:

(i) He/She is at least 40 years old.

(ii) He/She is a resident of the same Gram Panchayat where the MSK is located. If qualified persons are not available in the same Gram Panchayat for engagement as Siksha Samprasaraks/Samprasarikas then any person residing in

the adjoining Gram Panchayats/Municipalities having required qualification may also be engaged.

(iii) The persons who are graduates from a recognised University having studied at the graduation level the subject for which they are being considered would be eligible for engagement as Siksha Samprasarak/Samprasarikas. Post graduates/honours graduates should get preference."

17. Mr. Bhattcharyya further contended that at the time of issuance of advertisement Sub-Clause I, II, and III of the Clause 21 of the Madhyamik Siksha Karmasuchi was not complied with. Therefore, such advertisement is bad in law and the engagements/appointment of the petitioners on the basis of such advertisement is also bad in law, and, cannot be sustained.

18. Mr. Bhattacharyya also pointed out Clause 25 of the said Madhyamik Siksha Karmasuchi which is quoted below:

FLOW OF FUND, ACCOUNTS and UTILISATION CERTIFICATES:

25. Necessary fund for this purpose would be placed with the Zilla/Mahakuma Parishad/DGHC by the State Government. The Zilla/Mahakuma Parishad would pass on the fund to the MCs of the MSKs either through the Panchayat Samiti would pass on the fund to the MSKs located within its jurisdiction. In the hill areas of Darjeeling, the fund will flow directly from DGHC to the Managing Committees. The concerned Gram Panchayats (and Panchayat Samiti if fund is passed on directly by the Zilla Parishad) should also be kept informed of such transfer of fund."

In support of his contention Mr. Bhattacharyya relied on a decision of this Hon'ble Court reported in Sandip Kumar Sarkar and Another Vs. State of West Bengal and Others, 111 CWN 996 .

19. Ms. Papiya Chatterjee, learned Advocate appearing for the respondent No. 9, the private respondent submits that no wide publication for the appointment of the said post was made by the Managing Committee of the concerned "MSK" therefore, her client in spite of having the requisite qualification failed to apply for the said post. Therefore, the appointment of the petitioners in respect of the post of Samprasarak and Samprasarika should be cancelled with the direction upon the concerned "MSK" for fresh advertisement for the said posts.

20. Considering the submissions made by the respective parties and after meticulously perusing the records and the relevant sections/rules of the said Madhyamik Siksha Karmasuchi I find that due to demand of students the said "MSK" was upgraded up to Class VII. Therefore, the said "MSK" was very much in need of teacher in social science group and science group for the session 2006-2007. As a result of which the Managing Committee of the said "MSK" adopted a resolution that two posts of Samprasarak and Samprasarika would be appointed in the said school following the guidelines. Accordingly, the Secretary of the said "MSK" on 10th March, 2010 displayed an advertisement in respect of

those two posts in the notice board of the said "MSK" as also in the notice board of Natidanga-II Gram Panchayat inviting applications from the intending eligible candidates preferably under the jurisdiction of Natidanga-II Gram Panchayat.

21. It is also revealed from the records that since the petitioners were possessing minimum requisite qualification for those posts and were also residing in the said Natidanga-II Gram Panchayat therefore, they applied for those two posts and ultimately on 27th April, 2006 the petitioners separately executed an agreement for appointment in the post of Samprasarak and Samprasarika in the said school for a period of one year on contractual basis. It is also revealed from the advertisement (at Page-29 of the writ petition) that the candidate for the said post must be the resident of the Natidanga-II Gram Panchayat and the age of the candidate must be above 40 and appointments are contractual for a period of one year. The candidates must be a graduate in Life Science Group, B.Sc. (with Bio) and the Social Science Group (with History).

22. I also find some substance in the argument of Mr. Saha Roy that embargo on recruitment during the period of selection is only applicable to the statutory authorities and since "MSK" is not a government institution and it is a contractual appointment therefore, embargo on this type of appointment is not applicable.

23. I also cannot overlook the point raised by Mr. Saha Roy that if at all any latches caused by the concerned "MSK" at the time of advertisement which was detected after lapse of 4 months from the date of jointing the petitioners to the concerned posts the petitioners should not be responsible for those latches.

24. Last but not the least I cannot ignore the submission advanced by Mr. Saha Roy that the Executive Officer has no legal right to issue the impugned order. Therefore, the impugned order cannot be sustained in the eye of law.

25. Now I have to deal with the authority cited by the learned Advocate appearing for the respondent. In the said decision it is found that both the candidates were below age fixed by the government for engagement as Samprasarak and Samprasarika and one of the candidate was not a permanent resident of the said area. Since it was pointed out by the petitioners therefore, the appointment of those two persons were cancelled by this Hon'ble Court but the facts of the case in hand is different from the decision referred by Mr. Bhattacharyya.

26. Though it is apparent that the advertisement was published not in accordance with the guidelines as the guidelines contended that in the advertisement there should be mentioned to the effect that higher qualification holders will be given preference but I find that in the present advertisement that was not mentioned which creates some cloud of doubts in my mind. Though I cannot ignore the facts that the petitioners have fulfilled the criteria as mentioned in the advertisement and after considering their candidature the petitioners were allowed to execute agreement for engagement/appointment in

contractual basis of one year in the year 2006 which was from time to time renewed till date pursuant to the interim order passed by this Hon''ble Court and the petitioners discharged their duties smoothly and satisfactorily without any break till date. Thus considering the fact that the impugned order was issued by Executive Officer who is not the competent person to issue the impugned order therefore, in my view the impugned order cannot be sustained and the same should be quashed.

27. Accordingly, the impugned order being No. 808 dated 18th August, 2006 is set aside and quashed. This order will not preclude the state respondents to issue fresh order through the competent authority in accordance with law.

28. This writ petition stands allowed without any order as to costs.

29. Urgent xerox certified copy of this order, if applied for, be supplied to the parties after fulfilling all the formalities.