

(1982) 02 CAL CK 0026
In the Calcutta High Court

Ajit Sanyal and Anr

APPELLANT

Vs

Basiruddin Mondal and Another

RESPONDENT

Date of Decision : 10-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 18

Citation : 86 CWN 708

Hon'ble Judges : M.M. Dutt, J;M.K. Mukherjee, J

Bench : Division Bench

Advocate : A.P. Chatterjee and Rabibal Maitra, for the Appellant;D. Pal and H.N. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

1. In these three appeals, the facts and most of the points involved are the same as in two other appeals being F. M. A. T. No. 1380 and F. M. A. T. No. 1499 of 1981, both of which were disposed of by this Court by the Judgment dated January 11, 1982. These appeals have been preferred by the District School Board of Nadia against the judgment of B. C. Roy, J. making absolute the Rules Nisi issued on the applications of the respondents-writ petitioners under Article 226 of the constitution.

2. The respondents-writ petitioners are primary teachers. In 1972-73, a panel was prepared by the Director of Public Instructions, West Bengal. The respondents-writ petitioners were included in the said panel along with others pursuant to their applications for appointment to the posts of primary teachers under the District School Board, Nadia. They were appointed in deputation vacancies arising out of deputation of teachers of Primary Schools for undergoing training in the Junior Basic Training Institute. But they were not appointed in the permanent vacancies in the posts of primary teachers. It is not disputed that the respondents-writ petitioners had been working in deputation vacancies from time

to time since 1973 or 1974. The Director of Public Instructions, West Bengal, by his memo. No. 6932(67) dated December 19, 1974 issued the following circular :-

Government of West Bengal.

Education Directorate : Primary Branch.

Memo no. 6923 (67)

From: D. P. I. West Bengal.

To : District Inspector of Schools (pry. Edn.)

Sub:- Instruction regarding Appointment of teachers serving in Deputation Vacancies.

The undersigned has to inform him that approved empanelled candidates appointed in deputation vacancies by the Dist. School Board may be absorbed in permanent posts during their service or within one year of expiry of the deputation term even if the validity of the panel where their names occur expires or a fresh panel is prepared in the meantime.

S. N. Das.

For D.P.I. West Bengal.

3. The said circular dated December 19, 1974 was, from time to time. Suspended and such suspensions were also relaxed, but ultimately, by an order dated November 3, 1978, the Government of West Bengal issued an order which has been impugned in the Writ petitions. The said order is set out below :-

Government of West Bengal.

Education Department.

Primary Branch.

No. 1771-Edn(P)

9A-2/76

Dated, Calcutta, the 3rd Nov. '78

From: Shri M. N. Sinha Roy

Deputy Secretary to the Govt. of West Bengal.

To : The Director of Primary Education, West Bengal.

Sub : Permanent absorption of Primary school teachers who worked in deputation vacancies.

This undersigned is directed to refer to this Deptt. Memo. No. 1496 Edn (P) dated 30.8.78 on the above subject and to state that the matter has been reviewed by Govt and it has been decided that pending Government's full examination of the

entire policy regarding ultimate absorption of deputation vacancy teachers on the mode and practice of such absorption, the final absorption of candidates who worked as primary teachers for one or more terms in deputation vacancies should be kept suspended until further orders.

It is also requested that information wanted in para 2 of this department Memo No. 1653 Edn.(P) dated 7.10.78 may be furnished in order to examine the issue.

Meanwhile this Deptt. G.O.No. 1496-Edn (P) dated 30.8.78 referred to above should be treated as cancelled.

Sd/- M. N. Sinha Roy,

Deputy Secretary.

4. Before the impugned order dated November 3, 1978 was passed by the Government, another advertisement was published for preparation of a fresh panel of primary teachers. The impugned order of suspension of the circular dated December 9, 1974 of the Director of Public Instruction was permanent in nature, inasmuch as the Government had already taken steps for preparation of a fresh panel. It is not disputed that if the circular of the Director of Public Instructions had not been so suspended, the respondents-writ petitioners would have been absorbed in permanent vacancies on the strength of the said circular. In the circumstances, the respondents-writ petitioners moved this court challenging the validity of the impugned order dated November 3, 1978.

5. The learned Judge, after considering the facts and circumstances of the case and the submissions made on behalf of the parties made the Rule Nisi, out of which these appeals arise absolute. It was directed by the learned Judge that the appellants should consider and absorb the respondents-writ petitioners in the permanent vacancies in the Primary Schools under the District School Board, such appointments should be made in the posts, which had been directed to be kept vacant by the interim order passed by the learned Judge, within a period of four weeks from the date of the judgment of the learned Judge. It was further directed that the appointments should be given in schools nearer to the residence of the respondents-writ petitioners as far as possible. Hence, these appeals by the District School Board of Nadia.

6. It has been stated already that the facts and most of the points involved in these appeals are the same as in F. M.A.T. No. 1380 of 1981 and F. M. A. T. No. 1499 of 1981. The subject matter of those appeals also was the validity of the impugned order dated November 3, 1978. On behalf of the District School Board of Hooghly Mr. Arun Prakash Chatterjee, learned Senior Standing Counsel had advanced several contentions in one of those appeals. The said contentions were, however, overruled by the Court in the said Judgment dated January 11, 1982. The learned Senior Standing Counsel who also appears on behalf of the appellants in these appeals adopts and reaffirms the contentions advanced by him in one of those appeals. But as those contentions have been already dealt

with in the said judgment, he has not made any argument on the same. In other words, the learned Senior Standing Counsel does not give up the said contentions, but he reiterates the same. It is not necessary for us to refer to the said contentions, for they are already covered by the said judgment.

7. Besides the said contentions, the learned Senior Standing Counsel has, in these appeals, raised three other points. The first of such points relates to the question as to the maintainability of the writ petition out of which F. M. A. T. No. 1544 of 1981 arises. It appears that before the learned Trial Judge and affidavit of facts was filed on behalf of the District School Board, Nadia and the President of the Adhoc Committee of the Board. The affidavit was affirmed by Sri Ajit Sanyal, the President of the Adhoc Committee. In that affidavit, it has been alleged that out of the 23 writ petitioners 15 applied for being included in the panel for appointment to the posts of primary teachers pursuant to the notification or advertisement dated November 27, 1978. Out of the said fifteen writ petitioner, seven have been already appointed and two others have been included in the panel. It is contended on behalf of the appellants that, as the said seven writ petitioners who have been already appointed to the posts of primary teachers under the District School Board, Nadia are disentitled to relief, the entire writ petition should fail and should be dismissed on the ground. In support of the said contention, the learned Senior Standing Counsel has placed strong reliance on a judgment of Sinha J. (as His Lordship then was) in Ganesh Nayak and Others Vs. Land Acquisition Collector and Others, , in that case, by a writ petition twentyfive persons jointly challenged the Award made by the Land Acquisition Collector u/s 11 of the Land Acquisition Act, 1894. Some of them had made applications for a reference u/s 18 of the said Act and some had preferred objections to the acquisition. They were not jointly interested in any land or structure. They had independent causes of action. It was held by Sinha J. that they could not combine themselves and make one single application under Article 226 of the Constitution. Further, the learned Judge observed that if, however, it was permissible for the said persons to join in one application, the application was not maintainable at least with regard to four applicants who had made applications u/s 18 of the Land Acquisition Act, inasmuch as they had chosen to avail themselves of an alternative remedy granted to them under the law. It was held that as the case of the said four applicants failed, the joint application must necessarily fail. On that technical ground the writ petition was dismissed.

8. It may be pointed out that in holding that a joint writ petition was not maintainable, Sinha, J. did not consider the provision of order 1 Rule 1 of the Code of Civil Procedure, which was admittedly applicable to writ proceedings. If the right to relief of more than one person arises out of an act or transaction or series of acts or transactions involving common questions of law and fact such persons may join in one application. The CPC does not contain any provision providing for the dismissal of a suit or proceeding on the ground that it has failed in respect of one of the joint plaintiffs or petitioners. If the filing of a suit or proceeding jointly by two or more persons is in accordance with the provision of

Order 1 Rule 8, it is difficult to lay down a proposition of law that if one of the joint plaintiffs or petitioners is or become disentitled to relief, the whole suit or proceeding must fail. We may, at this stage, refer to a decision of Salil Kumar Datta J. in *N.N. Singh and Others Vs. General Manager, Chittaranjan Locomotive Works and Others*, .

9. In that case, the learned Judge on a review of all the decisions on the point including the decision in *Ganesh Nayak's* case (Supra) held that if the claim for relief made by the petitioners be joint and it is not possible to make any severance of the claims of each petitioner, in such case if one petitioner is disentitled to the claim. The entire petition would fail. But where the claim of the petitioners for relief is joint and arises out of the same act or transaction or involves common questions of fact or law and the relief claimed by one petitioner is severable from the other petitioners' claim, in such a case even if the petition fails in respect of some petitioners, the entire petition will not fail. In our opinion, Salil Kumar Datta J. seems to have laid down the law correctly on the basis of the principles of order 1 Rule 1 of the Code of Civil Procedure.

10. It is, contended on behalf of the appellants that in view of the amendment of section 141 of the Code of Civil Procedure, the procedure provided in the Code for suits is no longer applicable to the writ proceedings. This contention is without any substance. Even though the procedure regarding suit is not applicable to writ proceedings, there is no bar to the Court adopting such procedure, if thought necessary in the discretion of the Court. The grant of relief under Article 226 of the Constitution is discretionary and in exercise of such discretion the Court will act in accordance with the principles of justice, equity and good conscience. The Court, in our opinion, should not be guided by technicalities, but by the spirit of doing justice. To hold that the entire writ petition should be dismissed as one of the joint petitioners is disentitled to relief would be against the principles of justice, equity and good conscience. At this stage, it will be profitable to refer to the following observation of Sir Ashutosh Mookherjee in *Bechu Singh v. Becharam Sahu* 10. CLJ 91. :

The Court has, where the circumstances require it, an inherent power to do that justice for the administration of which it alone exists.....Where the Legislature has provided no procedure to be followed in cases which must and do arise, the Courts must be taken to have inherent power to decide the question of procedure, and, if necessary, to invent a procedure for themselves.

It is not to be supposed that a Court in the administration of justice will refuse an application, which on the merits it ought to grant, simply because the applicant asks the Court to exercise its admitted powers under a wrong section. Judicial procedure has been framed for the furtherance of justice and not to defeat it and the court cannot refuse to act in aid of justice on merely technical grounds,

11. It in a particular case, it appears to the Court that justice demands that the writ petition should be dismissed, it will do so. But the Court should not dismiss

the writ petition on the ground that one of the joint writ petitioners is disentitled to relief if the Court considers that the remaining writ petitioners should be granted the relief prayed for. If the contention of the learned Senior Standing Counsel is accepted, the State Government or any other authority may be granting relief to one of the several joint writ petitioners to get the entire writ petition dismissed. In the instant case also, the District School Board concerned has appointed some of the respondents writ petitioner in F.M.A.T. No. 1544 of 1981 during the pendency of the Rule Nisi. In our opinion, it does not lie in the mouth of the District School Board, that as they have appointed some of the respondents writ petitioners, the entire writ petition should fail. There is therefore, no substance in the contention.

12. The next point that has been urged on behalf of the appellants is that, as the names of respondents writ petitioners were included in the additional panel prepared in 1973, they are not entitled to be appointed primary teachers. It is contended that there was no scope for preparation of any additional panel and accordingly, the Director of Public Instruction had no authority to prepare an additional panel. Further, the respondents-Writ petitioners were not selected by the Advisory-cum-selection Committee before their names were included in the additional panel. In the circumstances, it is contended that the respondents-writ petitioners cannot have any claim to be absorbed in permanent vacancies by virtue of the said circular dated December 19, 1974 of the Director of Public Instruction.

13. The learned Senior Standing Counsel has produced before us the records of the District School Board, Nadia. It appears from the records that list of 2032 candidate were prepared for inclusion in the panel. The said list is dated July 27, 1973. Another list was also prepared containing the names of 199 candidates including the respondents-writ petitioners. This list is dated July 29, 1973 addressed to the District Inspector of Schools (Primary Education), District School Board, Nadia, forwarded the panel of 2231 (2032+199) candidates of 18 circles for appointment of primary teachers as prepared by the Advisory-cum-selection Committee of the District School Board, Nadia. It is apparent from the letter of the Director of Public Instructions that one panel was prepared and not a panel and an additional panel. It is urged on behalf of the appellants that as the names of 199 candidates were included in a separate list two days after the preparation of the first list, it would be treated as an additional panel. We are unable to accept this contention. Merely because the names of candidates were included in two lists cannot, in our opinion, be considered to constitute two panels-one original and the other additional.

14. In this connection, we may refer to Rules, 3A and 3B as it stood in 1973. Rules 3A and 3B are as follows :-

3A. No name shall be forwarded by the Director of Public Instruction, West Bengal, for appointment under a Board unless it has been included in the panel of qualified teachers prepared for the district after adequate publicity and in the

manner provided in rule 3B.

3B. (1) The Director of Public Instruction, West Bengal may with the approval of the State Government, set up a selection Committee in each district to assist him in selecting suitable persons from amongst the candidates for inclusion in the panel of qualified teachers for the district.

(2) The selection Committee may hold such tests including interviews as they may deem proper. It is open to selection Committee to call only those amongst the candidates, they may consider suitable. The interview and other test shall be held at a convenient place or places in the district or, with the prior approval of the State Government outside the district.

(3) The selection Committee shall send their list of names of qualified persons recommended by them to the Director of Public Instruction, West Bengal, who may modify or alter the list. Only the names as finally approved by the Director of Public Instruction, West Bengal, shall be included in the panel for the district.

(4) The panel may show separately the names of qualified (1) women teachers (2) Scheduled Tribe teachers. (3) Scheduled Caste teachers and (4) other teachers.

(5) The Director of Public Instruction West Bengal, may remove at any time the name of any person from the panel for failure of the person to accept or join in time an appointment offered to him by the Board or on other good and adequate reasons.

15. Much reliance has been placed on behalf of the appellants on the provision of Rule 3A which refers to the "panel" in singular. It is submitted that the Director of Public Instruction containing the names of candidates selected by the Advisory Committee. In our opinion, there is no substance in this contention. The names of the candidates may be included in more than one lists, and there is no bar to treat all the lists as constituting one panel. Indeed, the Director of Public Instruction in his said letter dated August 14, 1973 refers to one panel consisting of the names of 2231 candidates which are admittedly included in two lists - one dated July 27, 1973 and the other July 29, 1973.

16. It is next contended that the candidates including the respondents-writ petitioners whose names have been included in the list dated July 29, 1973 were not selected by the Advisory committee and as such, they are not entitled to be appointed to the posts of primary teachers. This contention is also devoid of any merit. Even assuming that these candidates did not appear before the Advisory Committee for their selection, the District School Board having appointed them from time to time in deputation vacancies is precluded from raising the plea of ineligibility of those candidates for appointment to the posts of primary teachers. The advisory committee is only to assist the Director of public Instructions in selecting suitable persons for inclusion in the panel of qualified teachers for the District. The panel will be prepared by the Director of Public Instructions. In the

absence of any proof or even any allegation of malafide or bias on the part of the Director of Public Instruction, we are of the view that the District School Board cannot challenge the validity of the panel prepared by the Director of Public Instructions. Apart from that, there is nothing on record to show that the Advisory Committee had not selected the 199 candidates including the respondents writ petitioners for inclusion in the panel. The learned senior Standing Counsel has drawn our attention from the records of the District School Board, Nadia, to the proceeding of the meeting of the Advisory Committee held on July 12, 1973. He has particularly referred to paragraph 7 of the proceedings.

17. It is true that in paragraph 7, a resolution was recorded to the effect that the total number of the empanelled candidates of different circles should not exceed the number as noted against the names of each circle. The total number as mentioned against the names of each circle comes to 2032. It is, accordingly, submitted that the Advisory Committee did not select the 199 candidates whose names were included in the list dated 29th July, 1973. We are unable to accept this contention. There is nothing in paragraph 7 of the proceedings which shows that the Advisory Committee did not select the said 199 candidates. The resolution might have been passed for further guidance of the District School Board. Moreover, the Advisory Committee or the Selection Committee has no authority to limit the total number of candidates to be empanelled. We, therefore, overrule the contention of the appellants in this regard.

18. The last point that has been urged on behalf of the appellants is that the candidates approved for appointment in one circle should not be appointed to the posts or primary teachers in any other circle. We do not think that we are called upon to decide this point. All that we say is that the appointments should be made in accordance with the provision of Rule 3(2) of the Rules, which has also been directed by the learned judge. No other point has been urged on behalf of the appellants.

19. For the same reasons as in the said appeals being F.M.A.T. No. 1380 of 1980 and F.M.A.T. No. 1499 of 1981 and also for the reasons as aforesaid, we dismiss these appeals. There will, however, be no order as to costs.

Monoj Kumar Mukherjee, J.

20. I agree.