
(2008) 07 CAL CK 0045
In the Calcutta High Court
Case No : F.M.A. No. 2472 of 2005

Anil Kumar Mayra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Citation : (2008) 3 CALLT 430 : (2008) 3 CHN 786

Hon'ble Judges : Tapan Mukherjee, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Malay Kumar Basu, Suprakash Banerjee and Nikhil Ranjan Ghosh, for the Appellant;S.K. Banerjee and Soma Roy Chowdhury and Dwarikanath Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred at the instance of the writ petitioner assailing the judgment and order passed by the learned single Judge whereby and where under the said learned single Judge dismissed the writ petition without granting any relief to the appellant herein.

2. The learned single while refusing to interfere in the matter specifically observed that although the writ petitioner has approached this Court at a belated stage even then the Director of School Education, West Bengal was directed by this Court to consider his representation and the said Director of School Education in compliance with the said direction disposed of the said representation of the writ petitioner by a speaking order. The learned single Judge, however, did not decide the validity, legality or correctness of the aforesaid order passed by the Director of School Education, West Bengal.

3. It appears from the records of this case that the appellant/writ petitioner herein was appointed by the school authority as an Assistant Teacher w.e.f.4th April, 1997 when the school was not recognised and by the subsequent Memo dated 2nd February, 2000, West Bengal Board of Secondary Education granted

recognition to the said school as a 4-class junior high school (upto Class VIII) w.e.f. 2nd February, 2000. It also appears from the records that the Director of School Education, West Bengal by Memo No. 1201-LS dated 19th June, 2000 instructed the District Inspector of Schools (SE), Howrah to accord necessary approval to the appointment of six organising teaching and two non-teaching staff w.e.f. 2nd February, 2000 and to report compliance thereof immediately. The aforesaid letter of the Director of School Education, West Bengal is set out hereunder:

Government of West Bengal

School Education Directorate

Bikash Bhavan

Salt Lake City

Calcutta-91

Memo No. 1201-LS

Dated : the 19th June, 2000

From : The Director of School Education, W.B.

To : The District Inspector of Schools (S.E.) Howrah

239, Panchanantala Road, Howrah -1.

Sub. : C.R. No. 2681 (W) of 1998

Chandra Nath Hazra and Ors.

versus

Nikhilesh Das and Ors.

Re. : Kumarchak Jr. High School

P.O. Kumarchak, Dist. Howrah.

Pursuant to the solemn order dated 8.7.97 in C.O. No. (W) of 1994 read with the further order dated 27.1.2000 in C.R. No. 2681 (W) of 1998 of the Hon'ble High Court, Calcutta, the West Bengal Board of Secondary Education has already granted recognition to the aforesaid school w.e.f. 2.2.2000 subject to the result of the appeal being M.A.T. No. 4029/97.

Consequently, in compliance with the solemn order dated 27.1.2000, he is hereby instructed to accord necessary approval to the appointment of 6 organising Teaching and 2 Non-teaching staff w.e.f. the said date being 2.2.2000 and report compliance immediately.

Sd/-

Director of School Education (W.B.)

4. The District Inspector of Schools (SE), Howrah, however, by Memo dated 23rd June, 2000 accorded approval to the appointment of five teaching and two non-teaching organising staff of the school although the school authorities submitted papers for approval of appointment of six organising teaching staff including the appellant/writ petitioner herein.

5. Since the District Inspector of Schools (SE), Howrah did not approve the appointment of the appellant/writ petitioner as an organising teaching staff of the school even after receiving specific instructions from the superior authority, namely, the then Director of School Education, West Bengal, a writ petition was filed at the instance of the appellant herein before this Court which was finally disposed of by a learned single Judge of this Court on 7th October, 2002 whereby and where under the Director of School Education, West Bengal was directed to consider the representation of the appellant herein and dispose of the same in accordance with law by a reasoned order. In compliance with the aforesaid order passed by this Hon''ble Court, Director of School Education, West Bengal disposed of the representation of the appellant herein and passed a reasoned order which was communicated to the said appellant by Memo dated 20th May, 2003. By the aforesaid reasoned order, Director of School Education, West Bengal held that the appellant herein is not entitled to any relief. The concluding part of the aforesaid order passed by the Director of School Education, West Bengal is set out hereunder:

In the circumstances I regret that the petitioner is not entitled to any relief as he has prayed for because of the following reasons:

1) the post of headmaster in the Junior High School has to be filled up by a duly qualified candidate through the School Service Commission of the concerned region for which the present vacant post of teacher in the school has to be utilised. Thus no further vacancy in the post of assistant teacher is available in the school.

2) the petitioner was not a party to the writ petition court case and therefore not a party to the Hon''ble Court''s order passed therein in compliance of which the service in respect of five assistant teachers in the school was approved.

3) the School Service Commission Act and the Rules/Procedures framed thereunder came into operation from November, 1997 and any vacant post of assistant teacher in any recognised Aided School is required to be filled up on the recommendation of the School Service Commission of the concerned region only and by no other means; the only available vacant post is the post of Headmaster and that is to be filled up on the recommendation of the School Service Commission.

6. Challenging the aforesaid order of the Director of School Education, West Bengal, appellant herein filed another writ petition before this Court which was

finally disposed of by the judgment and order under appeal passed by the learned single Judge on 20th June, 2005.

7. Mr. Malay Basu, learned senior counsel representing the appellant herein submits that the learned single Judge did not examine the validity and/or correctness of the order passed by the Director of School Education, West Bengal as communicated to the appellant herein by Memo dated 20th May, 2003 and refused to interfere in the matter without assigning proper and valid reasons. Mr. Basu further submits that the grounds mentioned by the Director of School Education, West Bengal in the aforesaid Memo dated 20th May, 2003 while refusing to grant any relief to the appellant herein are not at all tenable in the eye of law.

8. The learned senior counsel of the appellant submits that the Director of School Education, West Bengal by the Memo dated 19th June, 2000 specifically directed the District Inspector of Schools (SE), Howrah to accord necessary approval to the appointment of six organising teaching staff of the school concerned but the said District Inspector of Schools approved the appointment of only five teaching staff excluding the appellant herein.

It has been specifically urged on behalf of the appellant herein that the District Inspector of Schools (SE), Howrah had no authority to disobey and/or flout the specific direction issued on 19th June, 2000 by the then Director of School Education, West Bengal in the matter of according necessary approval to the appointment of six organising teaching and two non-teaching staff of the school concerned including the appellant herein.

9. Mr. Basu, learned senior Counsel of the appellant herein submits that the Director of School Education, West Bengal when considered the I representation of the appellant/writ petitioner herein pursuant to the specific order passed earlier by this Court did not appreciate the aforesaid unfortunate conduct of the District Inspector of Schools (SE), Howrah who refused to comply with the specific instruction issued by his superior authority, namely, the then Director of School Education, West Bengal.

10. Mr. Basu refers to the reasons furnished by the Director of School Education, West Bengal in the impugned order as communicated by the Memo dated 20th May, 2003 and submits that the said reasons cannot be considered to be the valid reasons for refusing to grant approval of appointment to the appellant herein. Mr. Basu submits that one of the reasons mentioned by the Director of School Education, West Bengal while refusing to grant relief to the appellant/writ petitioner is that the only vacant post available in the said school is the post of Headmaster and the same should be filled up on the recommendation of the School Service Commission but the said reason, according to Mr. Basu, cannot be regarded as a valid reason since the post of Headmaster has already been filled up by one of the five approved Assistant Teachers and one post of Assistant Teacher is still lying vacant in the said school which can be filled up by according

approval to the appointment of the appellant/writ petitioner herein.

11. Mr. Basu further submits that the relief claimed by the appellant/writ petitioner herein with regard to the approval of his appointment as organising teacher of the school concerned like five other similarly placed organising teaching staff can not be denied on the ground that the said appellant was not a party to the earlier writ petition filed at the instance of the aforesaid other organising teaching and non-teaching staff of the said school.

12. Mr. Basu refers to the order passed earlier in the writ petition bearing C.C. No. 3620 (W) of 1994 filed at the instance of the five other teaching and two non-teaching staff of the school concerned and subsequent order passed in the contempt proceeding filed in connection with the said writ petition bearing C.R. No. 2681 (W) of 1998 and submits that the aforesaid orders do not prevent regularisation of service of the appellant herein as the organising teacher of the school concerned like five other similarly placed organising teaching staff of the same school.

13. The learned Counsel representing the State-respondents herein, however, could not advance any argument in support of the reasons furnished by the Director of School Education, West Bengal for rejecting the claim of the appellant/writ petitioner herein.

14. On examination of the rival contentions of the parties and going through the available records we find that the appellant/writ petitioner herein is undisputedly an organising teacher like five other approved teachers of the school since the said appellant/writ petitioner was appointed by the school authority as an Assistant Teacher of the concerned school long before the grant of formal recognition by the West Bengal Board of Secondary Education. Furthermore, the then Director of School Education, West Bengal also by the written communication dated 19th June, 2000 specifically instructed the District Inspector of Schools (SE), Howrah to accord necessary approval to the appointment of six organising teaching staff of the said school including the appellant/writ petitioner herein although the District Inspector of Schools (SE), Howrah approved the appointment of five teaching staff excluding the appellant/writ petitioner also on the ground that the said appellant/writ petitioner was not a party to the writ petition which was filed earlier at the instance of the other five organising teaching staff and two non-teaching staff of the school concerned.

15. The District Inspector of Schools or the Director of School Education being the competent authority cannot compel an aggrieved party like the appellant herein to initiate a legal proceeding for the purpose of redressal of the grievances when under the law the said authorities can grant necessary relief. An aggrieved party cannot be denied adequate relief in accordance with law only on the ground that no legal proceeding was initiated and appropriate order was not obtained from the Hon'ble Court. It is the duty of the competent authority to grant adequate relief to the aggrieved party in accordance with law without compelling

him to initiate legal proceedings. Therefore, in the instant case we are of the opinion that the Director of School Education, West Bengal should not refuse to grant necessary relief to the appellant herein only on the ground that the said appellant was not a party to the earlier writ petition.

16. The orders passed by this Court on the earlier writ petition bearing C.O. No. 3620 (W) of 1994 and also in the subsequent contempt petition bearing C.R. No. 2681 (W) of 1998 do not prevent the approval of appointment of the appellant herein along with five other similarly placed organising teaching staff of the school concerned under any circumstances.

17. It appears that the post of Headmaster in the concerned school has already been filled up by one of the 5 (five) approved Assistant Teachers and there is no vacancy in the said post of Headmaster which is to be filled up by the School Service Commission and one post of Assistant Teacher is still lying vacant in the said school which can be filled up by according approval to the appointment of the appellant. So the grounds taken by the Director of School Education, West Bengal and mentioned in the Memo dated 20th May, 2003 that the post of Headmaster in the Junior High School has to be filled up by a duly qualified candidate through the School Service Commission of the concerned region and there is no further vacancy in the post of Assistant Teacher in the said school are not based on correct appreciation of the facts involved in the matter. Thus, the reasons mentioned in the order of the Director of School Education conveyed by the Memo dated 20th May, 2003 refusing to grant any relief to the appellant herein are not at all valid grounds.

18. The former Director of School Education, West Bengal had rightly understood the text of the order passed earlier by this Hon"ble Court and also appreciated the right of the appellant/writ petitioner as an organising teaching staff of the school concerned. The District Inspector of Schools (SE), Howrah, being a subordinate officer, had no authority to disobey the specific instruction issued by the then Director of School Education, West Bengal under Memo No. 1201-LS dated 19th June, 2000.

19. The District Inspector of Schools (SE), Howrah most unfortunately V (refused to comply with the specific instructions issued by the then Director of School Education, West Bengal under Memo No. 1201-LS dated 19th June, 2000 and denied the rightful and legitimate claim of the appellant/writ petitioner herein. The Director of School Education, West Bengal while subsequently considering the representation of the appellant herein in terms of the order passed by this Court in the writ petition bearing W.P. No. 15378 (W) of 2002 on 7th October, 2002 failed to decide the grievances of the appellant/writ petitioner herein in an appropriate manner and in accordance with law.

20. For the aforementioned reasons, the order passed by the Director of School Education, West Bengal and communicated by the Memo dated 20th May, 2003 cannot be sustained in the eye of law and the same is, therefore, quashed.

21. The learned single Judge also unfortunately did not decide the legality and/or validity of the aforesaid order passed by the Director of School Education, West Bengal and refused to interfere in the matter which we cannot approve. Therefore, the said judgment and order under appeal passed by the learned single Judge cannot be sustained and the same is set aside.

22. Undisputedly, the post of Assistant Teacher in the said school is still lying vacant wherein the appellant/writ petitioner can be accommodated. The District Inspector of Schools (SE), Howrah is, therefore, directed to accord necessary approval to the appointment of the appellant/writ petitioner in compliance with the earlier direction passed by the Director of School Education, West Bengal under Memo bearing No. 1201 -LS dated 19th June, 2000 without any further delay but positively within a period of two weeks from date.

23. Needless to mention that the aforesaid approval of appointment of the appellant/writ petitioner herein should be given with effect from the date of recognition of the school concerned like five other similarly placed teachers of the said school, The respondents are also directed to grant all consequential admissible service benefits to the said appellant in accordance with law without any further delay but positively within a period of four weeks from the date of approval of the appointment of the appellant in terms of this order.

24. With the aforesaid observations and directions, this appeal stands allowed.

There will be, however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Tapan Mukherjee J.

I agree.

D.S.

Later:

After pronouncement of the judgment, Mrs. Soma Roy Chowdhury, learned Counsel of the State-respondents prays for stay of the operation of the said judgment and order. We find no reason to grant such stay.

25. Accordingly, the prayer for stay is refused.