

(2016) 08 CAL CK 0063

In the Calcutta High Court

Case No : Writ Petition No. 24784 (W) of 2015.

Anindya Guha - Petitioner @HASH State of West Bengal and Others

Date of Decision : 19-08-2016

Acts Referred:

Constitution of India, 1950 — Article 30(1)

Citation : (2016) 4 CalHCN 155 : (2016) 4 CalLT 299

Hon'ble Judges : Shivakant Prasad, J.

Bench : Single Bench

Advocate : Mr. Sandip Kr. De, Advocate, for the Petitioner; Mr. Ayan Banerjee and Mr. Debasree Dhamali, Advocate, for the Respondent No. 4; Mr. Supriya Chattopadhyay and Mr. Lal Mohan Basu, Advocate, for the State

Final Decision : Disposed Off

Judgement

Shivakant Prasad, J. - The petitioner is a Bachelor of Science having a Bachelor's Degree in Education.

2. The petitioner was selected for the said post of Assistant Teacher in Bio-Science in the school and by a letter dated 05.3.2012 the respondent no. 4 appointed the petitioner in the said post.

3. The petitioner immediately joined the school in the said post on 16.3.2012 and since then he has been performing his duties as a Teacher in the said post to the satisfaction of the authorities of the school and the pupil of the school.

4. The petitioner repeatedly requested the respondent no. 4 to take steps regarding the approval of his appointment in the aforesaid post so that he gets the salary and all other service benefits from the date of his joining as a Teacher. The petitioner was not getting salary and approval. By his letters dated 30.1.2015 and 16.2.2015, the petitioner expressed his anxiety and plight to the Secretary of the School.

5. The Secretary of the School, by a detailed letter dated 24.3.2015, narrated the entire fact situation regarding the appointments made by the school including the petitioner.

6. By a letter dated 14.12.2010, the Headmaster of the school submitted relevant papers and documents for filling up 12 (twelve) vacancies of teaching and non-teaching staff of the school in terms of the resolution of the Managing Committee of the school and prayed for permission from the Respondent no. 3 and ultimately by a letter dated 19.9.2011 but prior permission to fill up the aforesaid vacancies was not granted by the Respondent no. 3 in favour of the school.

7. Since the request in the form of the letter dated 19.9.2011 yielded no result, by another letter dated 17.10.2011, the authorities of the school withdrew all their requests and applications for prior permission for filling up the vacant posts in the school as the school is an integrated Higher Secondary School having classes from I to XII and in terms of Section 26 of the Right of Children to Free and Compulsory Education Act, 2009, the School Authority is under a statutory obligation to ensure that the vacancies for the teaching staff of the institution more than 10% of the total sanctioned strength are not kept vacant for indefinite period.

8. Thereafter, the school started selection process by publishing advertisements in the Newspapers being "Aajkal" dated 08.11.2011 and 09.11.2011 inviting applications from the candidates for interview and the selection committee prepared the panel of selected candidates including the petitioner for each of the posts and the same was approved by the Managing Committee of the school but the approval of appointments made in the posts were not made by the Respondent no. 3 for months together and facing such a situation, the authorities of the school by a detailed letter dated 09.5.2012 requested the Respondent no. 3 to approve the appointments made by the school in the vacant posts of both Teaching and Non-Teaching Staff.

9. Meanwhile, Sri Prasanta Das, one unsuccessful candidate in the selection process for the post in Geography, moved a writ petition before this Hon"ble Court challenging the appointment of Sri Abhishek Ghosh in the said post on the ground of violation of the Notification No. 641-Edn(S) dated 23.5.1974 framing Special Rules for Minority Education Institutions ("The Special Rules" for short) and Notification regarding the Recruitment Rules of the Minority Educational Institutions being G.O. 1314(50)-SE(S)4A - 35/2002 dated 17.9.2002 ("the Recruitment Rules" for short) being W.P. 549 of 2012 and by order dated 17.7.2012 the Hon"ble Court directed the concerned District Inspector of Schools to consider the legality of the appointment of Sri Abhishek Ghosh in the post in question.

10. In compliance of the aforesaid order of Hon"ble Court, by a detailed order bearing Memo No. 54 Law dated 20th March, 2013, the Respondent no. 3 referred to the decision of the Hon"ble Supreme Court in this regard and relied on the two decisions of National Commission for Minority Educational Institutions ("NCMEI" for short) where in spite of the allegation of violation of the Recruitment Rules of 2002, NCMEI the right of those school was upheld to

appoint teaching and non-teaching staff and the same were ultimately approved by the Government and recorded reasons viz., (1) in the instant case 2002 Recruitment Rules of 2002 will govern the instant case and the 2012 Rules would not be applicable; (2) the two orders passed by the NCMEI where with regard to the appointment in sanctioned posts; (3) the instant case involves policy of the Government regarding Minority Educational Institutions and (4) the Recruitment Rules of 2002 have been violated. The Respondent no. 3 transmitted the entire matter to the Commissioner of School Education for perusal and taking appropriate action.

11. The school authorities heavily relying on two similar situations where the concerned Department of the Government did not grant prior permission to two Christian Minority Education Institutions in spite of their request for the same, the proceedings were initiated by those two educational institutions before the NCMEI and the NCMEI by orders dated 28.10.2010 held that selection and appointment of teachers made by the respective schools were in order, as the schools had their right of appointing teaching and non-teaching staff with the only condition that the candidates selected should have in their credit the minimum qualification prescribed by the authority and refusal to accord approval and by refusing to approve, the approving authorities had gone beyond the judicial frontier of their authority and appeared to have made overt attempt to interfere with the administration of minority of educational institution and directed the Government to accord approval of the appointments and also held that the reservation rules were not applicable to those schools. Subsequently, the Assistant Secretary of the Government issued directions to the Director of School Education to comply with the orders passed by the Chairman of the NCMEI.

12. However, Sri Abhishek Ghosh filed a writ petition in the Hon''ble High Court challenging the said order dated 20.3.2013 passed by the respondent no. 3 and the said writ petition being W.P. 21501 (W) of 2013 was disposed of by the Hon''ble High Court by order dated 26.7.2013 by directing the respondent no. 3 to take a decision by passing a reasoned. Sri Abhishek Ghosh filed another writ petition being W.P. 35586(W) of 2013 challenging the inaction of the respondent no. 3 in the matter and by order dated 23.12.2013, the Hon''ble High Court directed the respondent no. 3 to approve the appointment of Sri Abhishek Ghosh in the post of Assistant Teacher in Geography w.e.f. 12.3.2012 and pay all the salary and service benefits from that date within a period of six weeks from the date of communication of the order and in compliance thereof the respondent no. 3 has approved the appointment of Sri Abhishek Ghosh in the said post. The school has also sent the requisition for his salary and all service benefits to the office of the District Inspector of Schools (SE), Kolkata in terms of the order passed by the Hon''ble High Court at Calcutta.

13. It is contended that on receipt of the said letter from the Secretary of the School, the petitioner made a representation to the respondent no. 3 on 31.3.2015. In the said representation, the petitioner specifically stated that the

petitioner has the requisite qualification in respect of the appointed post where he has been appointed and in such situation, the issues relating to prior permission between the school, a Minority Educational Institution under Article 30 of the Constitution of India and the Government cannot stand in the way of approval of appointment in view of the law declared by the Hon''ble Supreme Court of India in case of TMA Pai Foundation v. State of Karnataka (2002) 8 SCC 481, as decided in the case of Sri Abhishek Ghosh. Government has also granted approval of appointments given by the Minority Educational Institutions under Article 30 of the Constitution of India without prior permission of the Government in terms of the orders passed by the National Commission for Minority Educational Institutions (NCMEI). The petitioner was appointed on the same day as of Sri Abhishek Ghosh, the selection process right from the beginning was the same in both cases and they are similarly situated and circumstanced in all respect.

14. In the circumstances, the petitioner requested the respondent no. 3 to consider his case and grant approval to his appointment in the post of Assistant Teacher in Bio-Science from the date of his appointment, i.e. 16.3.2012, salary and all service benefits from the date of appointment without any further delay.

15. It is further contended that the respondent maintained a stoic silence which constrained the petitioner to approach this Hon''ble Court by filing a writ petition being W.P. 9674(W) of 2015. By order dated 05.5.2015, the Hon''ble Mr. Justice Dipankar Datta of this Hon''ble Court was pleased to dispose of the said writ petition by directing the respondent no. 3 to consider the representation of the petitioner by eight weeks from the date of communication of the order after granting opportunity of hearing to the petitioner.

16. In pursuance of the said order of the Hon''ble Court, the respondent no. 3 by a common order dated 27.8.2015, refused to grant approval of appointment of the petitioner as an Assistant Teacher on the ground that the said school did not take prior permission in terms of G.O. 1314(50)-SE(S)4A-35/2002 dated 17.9.2002 before the selection process.

17. This is the order which is under challenge by the petitioner on the context that the similar ground of rejection was set aside by this Hon''ble Court in case of another co-teacher viz., Abhishek Ghosh, who was appointed with the petitioner and similarly circumstanced whose appointment has been approved by the respondent no. 3 with all service benefits.

18. It is further contended that the rights of the school as a Minority Educational Institution within the meaning of Article 30 of the Constitution of India are Constitutional Rights which have been recognised by framing the Special Rules and ultimately by framing the 2012 Rules with a view to eradicate the problems faced by such Institutions in making appointments of their own by framing parameters but abolishing the system of taking prior permission.

19. In the context above, this Court is of the considered view that issue relating

to prior permission in view of principle law laid by the Hon"ble Supreme Court in case of TMA Pai Foundation v. State of Karnataka (2002) 8 SCC 481 wherein it has been held-

20. Minority Educational Institution within the meaning of Article 30 of the Constitution of India have Constitutional Rights recognised by framing the Special Rules and ultimately by framing the 2012 Rules with a vision to eradicate the problems faced by such Institutions in making appointments of their own by framing parameters but abolishing the system of taking prior permission.

21. This fact can also not be lost sight of that the petitioner was appointed on the same day along with one Abhishek Ghosh whose appointment has been approved by the respondent no. 3 and the petitioner is similarly circumstanced.

22. The District Inspector of Schools (SE), Kolkata by his order dated 17.8.2015 decided the representation of as many as nine teaching staff including the petitioner and one non-teaching staff in different writ petitions to the effect that their appointment cannot be approved in terms of G.O. 1314(50)-SE(S) and 1092/ES/S/2014 because the appointments were made without taking any prior permission from District Inspector of School (SE), Kolkata and without submission of the panel to DI/S (SE), Kolkata. According to respondent no. 4 School is a Minority Educational Institution established under Article 30(1) of the Constitution of India and is governed by the Special Rules. The School is being run and managed by the Methodist Church in India, Bengal Regional Conference. The said School is having Primary, Secondary and Higher Secondary Sections (Bengali, English, History, Geography, Political Science, Economics and Modern Computer Application are the subjects taught in Higher Secondary Section). It is further pointed out that the School Authority sought for prior permission on 14.12.2010 and 17.9.2011 from the District Inspector of Schools (SE), Kolkata but the same was not accorded to the said School. Being constrained, the said School withdrew all their requests for prior permission by letter dated 17.10.2011 and conducted a selection process following the principles laid down by the Constitution Bench of eleven Judges of the Hon"ble Supreme Court of India in the case of TMA Pai Foundation (supra) and made the appointments in the vacant sanctioned posts of teaching and nonteaching staff by complying with all formalities of the 2002 Recruitment Rules in the selection process. By letter dated 09.5.2012, the authorities of the said School submitted the panel of selected candidates for approval of the District Inspector of School (SE), Kolkata. The said School is having 26 sanctioned posts of teaching staff including Higher Secondary Section and 5 nonteaching staff (2 clerks and 3 Group-D staff). Due to passage of time, the four posts of non-teaching staff (2 clerk and 2 Group-D staff) and fifteen posts of teaching staff fell vacant. At present, 12 approved teaching staff are working in the School including Sri Abhishek Ghosh.

23. The Hon"ble Supreme Court in case of Pramati Educational & Cultural Trust v. Union of India reported in (2014) 8 SCC 1 held that the Right to Education Act, 2009 is not applicable to the Minority Educational Institution established under

Article 30(1) of the Constitution of India. Accordingly, the respondent no. 4 School also advocated to allow the writ petition by setting aside the order impugned dated 27.8.2015 passed by the District Inspector of Schools (SE), Kolkata and by directing him to approve the appointment of the petitioner from the date of his joining from 16.3.2012.

24. I have respectfully considered the decision in case of Secy. Malankara Syrian Catholic College v. T. Jose And Others reported in (2007) 1 SCC 386 wherein it has been held-

"All laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions."

25. In case of Pramati Educational & Cultural Trust v. Union of India (supra) the Hon"ble Apex Court has observed in paragraph 54 thus-

"Under Article 30(1) of the Constitution, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Religious and linguistic minorities, therefore, have a special constitutional right to establish and administer educational schools of their choice and this Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non-minority communities, particularly in minority schools, so as to affect the minority character of the institutions. "

26. Thus, in the context of the above discussion and dwelling on the principles laid by the Hon"ble Supreme Court in the above cited decisions, this Court is of the view that the respondent no. 3 passed the impugned order dated 27.8.2015 vide Annexure-P6 violating the principles of law laid in Articles 14, 19, 21 and 30 of Constitution of India because the District Inspector of Schools (SE), Kolkata cannot deny approval of appointment of nine teaching and one nonteaching staff including the present petitioner for the reason that the selection process maintained by the respondent no. 4 School was without prior permission of its authority and without submission of panel of appointment to the District Inspector of Schools.

27. Therefore, I direct the respondent no, 3 District Inspector of Schools (SE), Kolkata to approve the appointment of the petitioner w.e.f. from 16.3.2012 in the post of Assistant Teacher in Bio-Science in the respondent no. 4 School within four weeks from the date of communication of this order and to make payment of salary, allowances and all other service benefits to the petitioner w.e.f. 16.3.2012.

28. Thus, this writ petition is disposed of, however, without any order as to costs.

29. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.