
(2015) 02 CAL CK 0020
In the Calcutta High Court
Case No : Writ Petition No. 327 (W) of 2015

Banalata Ojha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2016) 1 WBLR 723

Hon'ble Judges : D. Datta, J.

Bench : Single Bench

Advocate : Shuvro Prokash Lahiri, for the Appellant; Sadananda Ganguli, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—The petitioner in this writ petition dated December 23, 2014 has impugned an order of the Principal Secretary, Department of School Education, Government of West Bengal, respondent No. 2, circulated vide memo dated April 28, 2003. While praying for setting aside the same, the petitioner has prayed for further direction on the respondents to offer her appointment on the post of Work Education and Physical Education Teacher in Bishalaxmipur Puna Saha Mostania High Madrasah (hereafter the said madrasah) with effect from April 16, 1984 and to approve her appointment as per instruction issued by the Directorate of Madrasah Education, respondent 9, vide memo dated November 11, 2011 and memo dated April 27, 2012.

The impugned order of the Principal Secretary records as follows:

"This hearing follows the order of the Hon'ble Supreme Court of India Dt. 7.1.2002 in SLP (Civil) No. 9057 - 9058 of 2001 (Coram N. Santosh Hegde and Doraiswamy Raju, JJ.). The petitioners present were Shri Kalyan Maiti, Shri Joydev Ghosh, Smt. Ila Jana, (appearing in their personal capacity) and Smt. Banalata Ojha (represented by Shri Anjan Bhattacharyya, Advocate)."

2. The SLP filed before the Supreme Court relates to judgment and order Dt.

25.4.2001 of the Hon"ble Calcutta High Court in FMAT No. 337/94 and C.R. No. 398/94 (Coram A.K. Mathur C.J. and G.C. Gupta J.). In this High Court order reliance had been placed on the findings of the then Education Secretary which was quoted verbatim in the Court order.

3. Since this finding had been accepted by the High Court and there was no contrary decision at the Supreme Court, I shall be guided by the finding of my predecessor in office.

4. On the basis of the above finding the following conclusions can be drawn:

"i) There are 15 (fifteen) teaching posts in the Madrasah.

ii) Smt. Ila Jana does not qualify for appointment as a language teacher.

iii) There is no vacancy in the Social Science Group against which Shri Joydev Ghosh can be accommodated.

iv) There is no vacancy in the Work Education and Physical Education Group against which Smt. Banalata Ojha can be accommodated."

5. Therefore, the cases of Shri Joydev Ghosh, Smt. Ila Jana and Smt. Banalata Ojha need no further examination at this stage.

6. There are 2(two) vacancies at present against the 15 (fifteen) posts of teachers, one in Science Group and one in Language Group. Shri Kalyan Maiti represented that he is a qualified Pure Science teacher and can be accommodated against the vacancy in the Pure Science Group. No representative of the Madrasah Board is present to comment on this position. Therefore, I remand the matter relating to Shri Kalyan Maiti for disposal by the Madrasah board. If there is a vacancy in the Pure Science Group and Shri Maiti is otherwise qualified and eligible, the Board may consider his case and pass appropriate orders."

2. According to Mr. Lahiri, learned advocate for the petitioner, the Principal Secretary grossly erred in arriving at a finding that there was no vacancy in respect whereof the petitioner could be accommodated. There was indeed a vacancy and since the order of the Principal Secretary suffers from patent non-application of mind, he contended that this Bench ought to interfere and grant relief to the petitioner. The point that there was indeed a vacancy where the petitioner could be accommodated was sought to be buttressed by submitting that one Md. Raquibuddin was wrongly shown as a Physical Education teacher although he was a teacher in the Social Science group in the said madrasah. Referring to memo dated November 11, 2011 and April 27, 2012, addressed to the District Inspector of Schools (SE), South 24 Parganas, respondent 4 (hereafter the DIoS) by the Director of Madrasah Education, West Bengal (hereafter the Director), whereby request was made to enquire into the application dated July 3, 2011 submitted by the petitioner to the Chief Minister for approval of the petitioner's appointment as an organizer teacher and to

submit report immediately for taking further action, Mr. Lahiri submitted that direction ought to be made on the DIoS to complete the enquiry as required by the Director and to take follow up steps for setting things right.

3. I did not consider it necessary to call upon the respondents to respond to the contentions advanced by Mr. Lahiri, since it is clear that the petitioner has raised a stale issue by presenting this writ petition.

4. The issue regarding approval of appointment of teaching and non-teaching staff of the said madrasah has been canvassed before this Court since the nineties of the last century. Two matters arising out of writ appeals had even travelled to the Supreme Court. In its decision dated September 18, 1998 reported in *State of West Bengal and Others Vs. Nuruddin Mallik and Others*, , the Supreme Court directed as follows:

"30. On a perusal of the impugned order, we do not find that any consideration was given in the impugned orders on the issue in question. This apart, the High Court disposed of the main appeal on the date not fixed for the same, while disposing of the application. It seems that in the background of the anxiety of the management, in view of the various proceedings undertaken including contempt proceedings for implementing the learned Single Judge's order, the Court, instead of adverting to the question in issue, concentrated more to see the said 31 persons be approved within the specified time. As we have held above, without the statutory authority applying its mind for their approval and the impugned order not adjudicating the issue in question how could the impugned orders be sustained. The remote suggestion by the learned counsel for the respondents of mala fide also cannot stand as we do not find, firstly, any such allegation on record nor has any such person by name been impleaded as a party.

31. Finally, we accept the suggestion of the learned Senior Counsel for the respondents that in case the matter is to be decided by the authorities instead of leaving this matter for parties to go to the High Court again after such adjudication, if so advised, this matter be kept pending in this Court so that the matter may be finally decided here instead of the matter taking a long circular route again.

32. Accordingly, we direct the authorities concerned to decide the aforesaid question raised by making any inspections, as they deem fit and proper, after giving due opportunity to the management, decide the matter within four months and place its decision before this Court within three weeks thereafter, after giving a copy of the same to the management."

5. In compliance with the order passed by the Supreme Court, the Secretary, School Education Department, Government of West Bengal, looked into the entire issue and placed a report dated January 15, 1999. Upon consideration of such report, the Supreme Court by its order dated August 25, 1999 disposed of the civil appeals by the following order:

"In the circumstances and for the reasons stated in the order dated 18.9.1998 and also in this order, we set aside the orders under appeal for a limited purpose and restore the same to the file of the High Court for disposal. The High Court will look into the report filed by the concerned authorities and objections thereto filed by the respondents and the interveners. After hearing the parties the High Court will pass appropriate orders on the appeal. We make it clear that the scope of the remand is confined only to the objections filed by the respondents and the interveners.

We request the High Court to dispose of the appeals after remand preferably within a period of six months from the date of receipt of this order, if necessary by constituting a special Bench. The parties are at liberty to approach the High Court for early hearing and for filing additional documents, if necessary. Pending disposal of the matters by the High Court the status-quo as on date will be maintained. The appeals are accordingly disposed of with no orders as to costs."

6. The writ appeals on revival were placed for consideration before a Division Bench, which disposed of the same by judgment and order dated April 25, 2001. Portion of the order of the Division Bench, relevant for a decision on this writ petition, reads as follows:

"** ** *

The Secretary, Education Department, Government of West Bengal has examined the suitability and legality of the appointment of various teaching staff and has observed as under:

** ** * ** *

g) In Work Education and Physical Education Group, only one post was admissible. That was filled up by Md. Raquibuddin showing him to be Physical Education teacher in the list dated 06.08.92 and he was duly approved by the appropriate authority. No fresh approval is needed in his case. The other Smt. Bana Lata Ojha may not be accommodated as there does not have any gap in this group.

** ** * ** *

The Secretary, Government of West Bengal considered the candidature of each of the candidates and after examining their qualification and eligibility he has given his finding for each of the teaching staff. We do not propose to make any comment on the individual teachers as all those teachers are not before us.

Therefore, any observation made by us can affect their inter se. However, we leave it open to the teachers to make their grievances against the observations made by the Secretary, Education Department and if they are aggrieved, they can challenge the same in their individual capacity in accordance with law. No serious attempt was made by any of the counsel to impeach the finding of the Secretary with regard to the individual appointment of the teachers, except that

a reference was made with regard to appointment of Sri Ghiasuddin Mallick. But Ghiasuddin Mallick was not a party before this Court. So, we do not propose to make any observation on that count.

As a result of the above discussion, we are of the opinion that the sanction granted by the state government of six teaching and one non teaching staff is justified and beyond that the Madrasah is not entitled to any sanction of teaching and non teaching staff. The appeal is accordingly disposed of. No order as to costs."

7. The Supreme Court was once again approached with special leave petitions against the said judgment and order dated April 25, 2001. On January 7, 2002, the special leave petitions were disposed of with the following order:

"Learned counsel for the petitioners seeks permission to withdraw this petition with liberty to approach the Secretary, West Bengal Education Department to consider individual case of the petitioners. Permission granted. SLPs. are disposed of." 8. Availing the liberty granted by the Supreme Court, the Secretary to the Government of West Bengal, Education Department was once again approached whereupon the order impugned dated April 28, 2003 surfaced.

9. For long 8 (eight) years since the impugned order came into existence, the petitioner was in slumber. She woke up in July, 2011, when the Chief Minister of the State was approached by her. The application submitted before the Chief Minister is not part of the records and it is thus not possible to ascertain why the Chief Minister was approached and what the petitioner desired her to do. Be that as it may, the office of the Chief Minister had forwarded the application to the Director whereupon the Director issued the letters dated November 11, 2011 and April 27, 2012.

10. Responding to a query of this Bench as to why the Court had been moved belatedly and how the belated approach has been explained, Mr. Lahiri referred to paragraph 22 of the writ petition where, according to him, the petitioner had explained the belated approach. For facility of decision, paragraph 22 of the writ petition is set out hereinbelow:

"22. Your petitioner states that even after making representation before the concerned authorities no effective step has yet been taken in order to grant approval in favour of the petitioner who rightfully deserves to be approved for the abovesaid post in the said madrasah." 11. The cause of action for presenting this writ petition cannot be reckoned with regard to the perceived inaction of the DIoS to respond to the letters of the Director; on the contrary, the order dated April 28, 2003 passed by the Principal Secretary would remain as the one and only cause of action for the petitioner to seek redress before the Court of writ. The petitioner being conscious that she would not be entitled to any relief on this writ petition unless the said order dated April 28, 2003 is set aside, has impugned the same herein while putting up a frontal show of feeling aggrieved by the inaction of the DIoS to take action in terms of the Director's request and

making such inaction as the cause of action for seeking writ remedy. The petitioner by reason of her tardy, lethargic and indolent conduct over the last 11 (eleven) years has disabled this Bench to even look into the point canvassed on her behalf by Mr. Lahiri that the said Md. Raquibuddin was a Social Science teacher and not a Work Education and Physical Education teacher.

12. The ill effects of directions passed by judicial fora without examining the merits of representations submitted by litigants who approach them, has been considered by the Supreme Court in its decision, reported in C. Jacob Vs. Director of Geology and Mining Indus. Est. and Another, In paragraph 9 it was observed as follows:

"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored." 13. The said decision was considered by the Supreme Court in its decision reported in Union of India (UOI) and Others Vs. M.K. Sarkar, , wherein it was observed as follows:

"15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without

itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

14. Having regard to the dicta as aforesaid, one may unhesitatingly hold that mechanical disposal of a writ petition by directing consideration of a representation, without examining the merits thereof, has the potential of unsettling settled positions. Any direction made by the Court in exercise of writ power that would facilitate revival of an old claim, which by efflux of time may have become stale or dead, is an abuse of power and the Courts ought to be cautious and stay at a distance.

15. Mr. Lahiri referred to the decisions of the Supreme Court reported in Shivagangagiri Vidyabiruddi Samste Vs. State of Karnataka and Others, and Lajja Ram and Others Vs. Union Territory, Chandigarh and Others, in support of his contention that delay ought not to be considered as a relevant factor to deny relief to the petitioner.

16. The said decisions have been perused. In Sivagangagiri (supra), the Supreme Court in paragraph 5 held that there was no delay or laches on the part of the appellant in filing the writ petition. In Lajja Ram (supra) too, the Supreme Court held in paragraph 10 that the delay in approaching the Court had been satisfactorily explained by the appellants.

17. The nature of explanation proffered by the petitioner has been noticed above. It is well-known that representations not provided for by the statute do not have the effect of keeping the cause of action alive so as to enable a party to approach the Court of writ long after accrual of real cause of action by submitting unprovided for representations and on the allegation that such representations have not been considered. It is doubtful whether the Director was at all aware of the order of the Principal Secretary dated April 28, 2003 before desiring that an enquiry be made and a report submitted, assigning top priority considering the gravity of the matter. If indeed the Director was aware of the same, his conduct is open to question. An order passed by the Principal Secretary following an order of the Supreme Court could not have been taken lightly by the Director, merely because the office of the Chief Minister wanted a report to be submitted. So long the order of the Principal Secretary dated April 28, 2003 is not set aside by a competent court of law, it was not open to the administration to cause further enquiry on the application of the petitioner. It was incumbent on her part to challenge the said order dated April 28, 2003 at the earliest. Once such order was allowed to attain finality, the Director ought to have brought all facts to the notice and knowledge of the office of the Chief Minister and regret the petitioner's claim. Any direction upon the DIoS to consider the petitioner's claim, as desired by the Director and as prayed for by Mr. Lahiri, would result in a stale, if not dead, claim being revived at the instance of the Court of writ. This Bench is disinclined to come to the rescue of the petitioner, in the given facts and

circumstances.

18. The writ petition is dismissed, without order for costs.

Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefor.