
(2011) 02 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 13922 (W) of 2010

Bhanu Prokash Srivastava

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Citation : (2011) 02 CAL CK 0046

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : Amit Lahiri, for the Appellant; Santi Das and Amar Mitra, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—On 30th August, 1980 the District Inspector of School (S.E.), Howrah, sanctioned four posts of teaching staff and two posts of non-teaching staff for Sri Hanuman Jute Mills Hindi High School in the District of Howrah. Permission was also granted to the School Authority to fill up those sanctioned posts.

2. The Petitioner herein was appointed as an Assistant Teacher in one of such sanctioned posts for the subject of Economics on 12th August, 1992. The Petitioner has been continuously working in the said post since the time of his appointment. During the tenure of this service the Petitioner improved his educational qualification. He passed B. Com Examination in 1995. Subsequently, in 1999 he acquired Master Degree in Economics.

3. The Petitioner prayed for regularization of his service. Since the Petitioner's prayer for regularization of his service was kept pending for a long time, the Petitioner earlier filed a writ petition being W.P. No. 18280(W) of 2003 praying for regularization of his service. The said writ petition was disposed of by a Learned Single Judge of this Hon'ble Court on 24th December, 2003 whereby the concerned District Inspector of School (Secondary Education), Howrah, was directed to regularize the appointment of the Petitioner as an Assistant Teacher

in Economics in the said School within a period of four weeks from the date of communication of the said order. His Lordship was further pleased to direct that the Petitioner would also be entitled to the monthly salary and other benefits on the basis of such approval in accordance with law.

4. The State Respondent did not accept the said order. They preferred an appeal being F.M.A. No. 1251 of 2009 before the Division Bench of this Hon''ble Court. The said appeal was ultimately disposed of on 21st July, 2009. The appeal was allowed. The order impugned in the said appeal was modified to the following extent:

The managing committee of the school concerned shall send up all the records relating to the appointment of the writ Petitioner to the Board and the appropriate committee of the Board shall examine this aspect of the matter whether appointment of the writ Petitioner has been done following the aforesaid method or not. If it is done, then the Board will obviously accord approval to the appointment. If not, then the Board will pass a speaking order and in that case, managing committee of the school concerned will proceed with fresh appointment in accordance with the aforesaid provisions of law and in that case, the writ Petitioner shall be allowed to participate in the selection process, condoning his age bar, as his case was pending before this Court and he has acted bonafide pursuant to the decision of the school and spent valuable part of his life. In the event, the concerned committee of the Board cannot be constituted at an early date, then President of the Board shall take a decision in terms of this order. Therefore, appropriate committee of the Board and/or the President, as the case may be, shall take a decision within a period of eight weeks from the date of receipt of the records from the school authority, who shall transmit all the records relating to the appointment of the writ Petitioner within three weeks from the date of communication of this order. If appointment of the writ Petitioner is approved by the Board then benefit of such appointment shall be given from the date when he is entitled to get such benefit, under the law. There will be no order as to costs.

5. While disposing of the said appeal, Their Lordships held that the order of Learned Trial Judge cannot be maintained without ascertaining as to whether the Petitioner's appointment was given in accordance with the provision contained in Rule 28(4)(i) of the Rules of Management of recognized Non-Governmental Institutions (Aided and Un-Aided), 1969 or not. Their Lordships further held that the papers which were available to Their Lordships were not sufficient for coming to the conclusion that such appointment was made by following the methodology of appointment as mentioned in the aforesaid Rule.

6. All the parties accepted the said order of the Appeal Court. As such the said order is binding upon the parties.

7. Pursuant to the aforesaid direction of the Appeal Court, the Executive Committee of West Bengal Board of Secondary Education considered the

Petitioner's prayer for grant of approval to his appointment in its meeting held on 26th March, 2010. The Executive Committee of the Board refused to accord approval to the appointment of the Petitioner on diverse grounds which are as follows:

1. At the time of appointment, the Petitioner was not a Graduate. He was an Higher Secondary passed candidate at the time of his appointment. An H.S. pass candidate cannot be appointed as an Assistant Teacher in the Higher Secondary School as per the recruitment Rules. No document could be produced showing grant of prior permission by the Director/Board for appointing an H.S. pass candidate to the post of Assistant Teacher in the said School.

2 Appointment of the Petitioner was given by the School Authority beyond the sanctioned strength of the School.

3 Appointment of the Petitioner was given by the School Authority without having any prior permission either from the concerned D.I. of School (Secondary Education) or the D.S.E., West Bengal or the Board. Thus Rule 28(4)(i) of the Management Rules was not followed.

8. These are the grounds for which the Petitioner's prayer for grant of approval to his service was rejected by the Executive Committee of the Board. The said decision of the Executive Committee of the Board was communicated to the Petitioner by the letter written by the Secretary of the Board on 23rd April, 2010 being Annexure P/6 to this writ Petitioner at page 45.

9. The propriety of the said order and/or legality thereof is under challenged in the writ petition at the instance of the said teacher.

10. Mr. Lahiri, learned Advocate for the Petitioner, submitted before this Court that in an identical situation service of another Assistant Teacher in the said School was approved by the concerned District Inspector of School. Mr. Lahiri thus submitted that when the service of another similarly placed Assistant Teacher in the very same School was regularized by the District Inspector of School (S.E.) by following an order passed a Learned Single Judge of this Court on 28th November, 2008 in the writ petition being W.P. No. 20932(W) of 2008, the Petitioner's prayer for approval of his service ought not to have been rejected by the said District Inspector of School. In fact, Mr. Lahiri wanted to highlight the discriminatory treatment which was meted to his client in the instant case. He thus prayed for Court's intervention so that the Petitioner's prayer for regularizing his service at least from the date when he acquired requisite qualification for the said post, is allowed by the concerned District Inspector of School (S.E.), Howrah.

11. The submission made by Mr. Lahiri, as recorded above is apparently very attractive. But still then such submission cannot be ultimately accepted as none of the parties to the said proceeding can overcome the binding effect of the order of the Appeal Court, as aforesaid, as none of the parties to the said proceeding

challenged the order of the Appeal Court in any Higher Forum. The said order of the Appeal Court became final and is binding upon the parties. That apart, Court cannot permit repetition of any illegality even on the ground of discrimination as submitted by Mr. Lahiri.

12. After giving anxious consideration to the order impugned, though this Court finds that the Executive Committee of the Board was not justified either in holding that at the relevant time there was no sanctioned post in which such appointment could have been given or in holding such appointment was given without any prior permission of the appropriate authority, but still then this Court finds much justification in the findings of the Executive Committee of the Board wherein it was recorded that the Petitioner did not have requisite qualification at the time of his appointment in the post in question. Admittedly, the Petitioner was not a graduate at the time of his appointment. He was an Higher Secondary passed candidate at the time of his appointment. Recruitment Rules do not permit any H.S. Pass candidate to be appointed as an Assistant Teacher in Higher Secondary School. As such the ultimate conclusion which was arrived at by the Executive Committee of the Board in the impugned order cannot be disturbed for the reasons as aforesaid.

13. Thus, this Court disposes of this writ petition by permitting the School Authority to take steps for filling up the said post by fresh appointment by following the direction passed by the Division Bench of this Hon'ble Court on 21st July, 2009 in F.M.A. No. 1251 of 2009 being Annexure P/5 to this writ petition at page 38 as early as possible.

14. The writ petition is thus disposed of with the above observation.

15. Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.