
(1990) 09 CAL CK 0032
In the Calcutta High Court

Bhikha Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 09-09-1990

Acts Referred:

Citation : (1994) 2 ILR (Cal) 91

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Joyanta Kumar Biswas, for the Appellant; Bidyut Kiron Mukherjee and Soma Laha, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—Upon notice to all the Respondents, the writ petition was moved on June 29, 1990. Since it was brought to the notice of this Court that the life of the impugned panel is likely to expire in the month of September 1990, the District Inspector of Schools (Secondary Education), Hooghly, was directed to produce all the relevant records before this Court within a fortnight for effective, adjudication in case no affidavit is filed within a fortnight from the date of receipt of the intimation. Ad interim order was made for maintenance of status quo until further order. On August 6, 1990, the matter was heard further and the learned Advocate for the State sought for an adjournment to enable the District Inspector of Schools (Secondary Education) to file the record. The District Inspector of Schools of Hooghly was further directed to produce all the relevant records as observed earlier. Pursuant to such directions, the relevant records have been filed.

2. The grievance of the Petitioner is that he is the Founder Member of D.S. Hindu Madhyamik Vidyalaya, at Chak Bansberia, district Hooghly and he is the Secretary of the present Managing Committee and he is aggrieved by the impugned order passed by the District Inspector of Schools (Secondary Education), Hooghly, under Memo No. 1358/Law/S.E. dated May 14, 1990 (copy of which is Annex. "H" to the writ petition) and prays for a direction to accord

approval to the panel (Annex. "C" to the writ petition) prepared by the Selection Committee consequent upon the interview held on September 23, 1989, for appointment of Headmaster of D.S. Hindu Madhyamik Vidyalaya, Chak Bansberia, district. Hooghly. It is stated in details that on October 30, 1980, Sri Ganesh Prasad Dwiwedi, the approved Headmaster of the said School, retired from service. At the time of retirement, the said Headmaster handed over the charge to Sri Ramprit Singh who was the seniormost Assistant Teacher at the relevant point of time. The charge was handed over according to the instructions of the then Managing Committee. For the purpose of filling up the said vacant post and for appointment of a capable Headmaster of the said School, the Managing Committee of the said School by unanimous resolutions dated August 3, 1989, authorised the Petitioner to take necessary steps to fill up the vacant post which was lying vacant since October 30, 1980, after the retirement of the previous Headmaster.

3. The Petitioner as Secretary of the said School made an application on August 8, 1989, to the District Inspector of Schools (Secondary Education), Hooghly, seeking prior permission to appoint the Headmaster of the said School according to law. On repeated reminders, the District Inspector of Schools (Secondary Education), Hooghly, did not accord prior permission and in the circumstances the School authority pursuant to the appropriate rule inserted an advertisement in the Statesman, Calcutta, on September 6, 1989 and simultaneously requested the Employment " Exchange authorities to furnish names of candidates within a specific date of requisition. In response to the aforesaid advertisement, the School authority received applications from the prospective candidates, a Selection Committee was duly constituted according to Rule 4(a) and 4(c) of the procedure for recruitment and the said Selection Committee duly interviewed the eligible candidates who applied for the post and the interview was taken on September 23, 1989. A panel was prepared by the Selection Committee and the Managing Committee of the School after due consideration forwarded the panel prepared by the Selection Committee with all relevant papers to the District Inspector of Schools for approval. The said panel and all the relevant papers are alleged to be submitted to the District Inspector of Schools (Secondary Education), Hooghly, on September 28, 1989, against proper receipt. It is placed on record that according to Item No. 5(d) of the Recruitment Rules, the District Inspector of Schools is required to convey his decision regarding the approval of the said panel ordinarily within a fortnight from the date of the receipt of the said panel.

4. Since the matter was kept in the Cold Storage, the Petitioner moved a writ petition before this Court by Civil Order No. 12672(W) of 1989. The said writ petition is alleged to have been heard and disposed of by the Hon'ble Paritosh Kumar Mukherjee J. on March 21, 1990, directing the aforesaid District Inspector of Schools, Secondary Education, Hooghly, to accord approval to the said panel if the candidature of the candidates fulfilled the conditions and the panel was otherwise valid in law. It is further alleged that thereafter the Petitioner received

a letter dated April 9, 1990 and by the said letter the District Inspector of Schools directed the Petitioner to furnish various documents as indicated thereto. In reply to the aforesaid letter, the Petitioner allegedly submitted all the relevant papers by a forwarding letter dated April 22, 1990. It is complained that the District Inspector of Schools by the impugned order dated May 14, 1990, has since been held that the panel could not be considered for approval for the reasons recorded therein.

5. Being aggrieved, the Petitioner has again come to this Court on the ground that the District Inspector of Schools has arbitrarily held that the School authority did not submit any application for prior permission before taking steps for filling up the post of Headmaster of the said School whereas the admitted position is that the School authority applied for such prior permission on August 8, 1989 and as such the impugned order has been passed for certain extraneous reasons and not in accordance with law. The Petitioner has further made out a case that the District Inspector of Schools misconstrued the Education Department's Memo. No. 585-Edn.(S) dated July 27, 1989 and wrongfully held that the empanelled candidates did not possess the minimum qualification for being appointed Headmaster of the said School whereas it would be found that the empanelled candidates possess the necessary qualifications and the reasons assigned by the District Inspector of Schools are contrary to law.

6. An affidavit-in-opposition has since been filed on behalf of the Respondents Nos. 1, 3 and 4 by one Md. Nazrul Islam, the Assistant Inspector of Schools, Secondary Education, Hooghly. He has placed on record that none of the empanelled candidates possesses minimum qualifications for appointment to the post of a Headmaster of recognised, non-Government Junior High School. The required academic qualification for appointment to such post as Education Department's Memo. No. 585-Edn.(S) dated July 27, 1989, are as follows:

Regular Honours or any Master Degree in any academic subject in Language, Science and Social Science group with 5 years continuous teaching experience in Secondary Schools.

7. It is further placed on record that the necessary constitution of the Selection Committee was defective inasmuch the Teacher-in-Charge was included in the said Selection Committee and no prior permission was obtained before taking any steps to fill up the vacancy. It is asserted that the School authority has no legal authority to prepare a panel to give appointment of a post of Headmaster. It is also highlighted that the panel prepared by the Selection Committee did not conform to the Recruitment Rules inasmuch as while applying to the Employment Exchange for sponsoring the names of the candidates, particular preference was shown to the candidates only ignoring all other qualified candidates having B.Sc., B.Ed. and B.Com. B.Ed, the assessment seat on the basis of which the panel has been prepared as many errors in awarding marks on academic qualification of the candidates.

8. Since the entire record of the aforesaid case has been produced in Court, this Court has the occasion to examine the aforesaid entire records and the various developments and different stages. Admittedly, the School authority asked for prior permission to fill up the post by a letter dated August 8, 1989, copy of which is Annex. "A" to the writ petition. It is fully disclosed thereto that the Secretary of the said School tried his best to get permission from the office of the District Inspector of Schools (Secondary Education), Hooghly, to appoint Headmaster as per CO. No. 1404/16 G.A. dated April 24, 1981 and No. 1066(16) G.A. dated June 16, 1981. The School had 340 students and the regular Headmaster retired on October 30, 1980 and the post of Headmaster was lying vacant since then. Being desperate the School authority gave a reminder on August 25, 1989 and submitted relevant papers. It is not appreciated as to why the District Inspector of Schools (Secondary Education), Hooghly, remains silent to discharge his statutory duties. It is not explained as to why the said District Inspector of Schools failed to perform his duties according to law. The matter was brought to the notice of this Court by earlier writ petition. By order dated March 21, 1990, Paritosh Kumar Mookherjee J. was pleased to dispose of the said writ petition by directing the aforesaid District Inspector of Schools to accord approval to the said panel if the candidature of the candidates fulfilled the conditions and the panel was otherwise valid in law. The question of obtaining prior permission under the aforesaid circumstances was overruled. Since the District Inspector of Schools did neither grant permission nor refused permission. The School authority cannot remain silent and upon proper intimation the School authorities proceeded to constitute a Selection Committee in conformity with the Recruitment Rules and asked the local Employment Exchange authority to sponsor the candidates having the minimum qualifications. There is nothing wrong on the part of the School authority to constitute the Selection Committee and to ask for the candidates in accordance with law.

9. Upon proper scrutiny, this Court does not find any defect in constituting the Selection Committee which is not otherwise contrary to and inconsistent therewith in law as to the procedure of recruitment of the teachers. This Court has scrutinized the impugned order copy of which is Annex. "H" to the writ petition. The reason to refuse according to the panel in the absence of permission is unwarranted and uncalled for. It cannot be said that the steps taken by the School by way of advertisement for the vacancy and other consequential follow up actions are nullity inasmuch as no permission from the concerned District Inspector of Schools was taken. All the relevant aspects in this regard have been considered by this Court and it is found that the District Inspector of Schools himself has acted arbitrarily in refusing to grant prior permission upon repeated reminders and under the said circumstances the intimation given by the School authority will justify the School authority to proceed according to law and the School authority has fulfilled the statutory requirements.

10. This Court is of the view that in case there is inaction on the part of the

Statutory authority to remain silent, the intimation would be deemed to be, after expiry of the reasonable time, an implied permission to proceed according to law. The next objection is that none of the empanelled candidates possesses minimum qualification for appointment to the post of Headmaster in a recognized Non-Government Junior High School. The required academic qualification for appointment to such post as per Education Department's Memo. No. 585-Edn. (S) dated July 27, 1989, is as follows:

Regular Honours or any Master Degree in any academic subject in the Language, Science and Social Science Group with 5 years continuous teaching experience in Secondary School.

A copy of the said Circular is Annex. "I" to the present writ petition. For better appreciation, the context of the aforesaid Circular is quoted hereinbelow:

Sub. Qualifications for appointment to the post of Headmaster/Headmistress in a recognised Non-Govt.

Jr. High School.

The undersigned is directed to say that, under existing orders, the minimum qualification for appointment as Headmaster/Headmistress of a Non-Govt. Jr. High School is "Trained Graduate with 3 years teaching experience". This was fixed when all Assistant Teachers of Jr. High Schools were entitled to only Graduate scale of pay, irrespective of their qualifications. In terms of G.O. No. 372-Edn(B) dt. 31.7.81, the Assistant Teacher of a Non-Govt. Junior High School is now entitled to revised pay scales, according to his/her qualifications, from 1.4.81 or any subsequent date.

The Government have, therefore, decided that the minimum academic qualification for appointment as the Headmaster/Headmistress of a Non-Govt. Junior High School should, henceforth, be regular Hons or any Master's Degree in any academic subject in the Language, Science or Social Science Group and this subject may or may not be relevant to the subject usually taught in a Jr. High School.

The minimum teaching experience required for recruitment to the post of Headmaster/Headmistress of a High School has already been raised from 5 years to 10 years and for the post of Assistant Headmaster/Headmistress from 3 years to 5 years.

Government have decided that, henceforth, 5 years' continuous teaching experience in Secondary Schools shall be an essential qualification for recruitment to the post of a Headmaster/Headmistress in a Non-Govt. Junior High School.

All concerned may be informed accordingly.

Sd/- H.P. Mukhopadhyaya

Joint Secretary

11. In the light of the said circular, Ah is Court has scrutinized the panel prepared by the School authorities according to law on September 23, 1989 and submitted in the office of the District Inspector of Schools. This Court has perused the original panel from the file and record produced by the District Inspector of Schools, Hooghly. It appears therefrom that all the 4 (four) candidates appearing in the panel are M.A., B.Ed and all of them have minimum qualification as per the Government Circular. The second objection raised by the District Inspector of Schools in the impugned order dated May 14, 1990, is wholly incorrect. The third objection about the Constitution of the Selection Committee for participation of the Teacher-in-Charge has been commented. This. Court finds that since October 30, 1980, the present Teacher-in-Charge being the seniormost Teacher is discharging the function of the Headmaster, his inclusion in the Selection Committee cannot vitiate and the observation, of the District Inspector of Schools that in case there is no Headmaster, the position had to remain vacant is not appreciated by this Court. The fourth objection that the Selection Committee in preparing the panel did not conform the Recruitment Rules are without any basis and upon scrutiny, this Court docs not find that there is infringement of any recruitment rule in preparing the panel by the Selection Committee and the allegation that the assessment sheet has many errors, is wholly unwarranted and uncalled for. Although this. Court is not sitting in appeal upon the decision or order of the District Inspector of Schools, but upon examination of the decision-making process this Court is of the clear view that the impugned order of the District Inspector of Schools copy of which is Annex. "H" to the writ petition is perverse and it has ho merit. Since, it is causing manifest injustice, this writ Court has to interfere in the matter and quashes the same.

12. Having perused all the materials on record, this Court does not find any bar and/or any impediment to direct the District Inspector of Schools (Secondary Education), Hooghly, to accord necessary approval to the panel prepared by the School authority as it fulfils all the necessary conditions for obtaining the approval according to law.

13. For the foregoing reasons, the writ petition is allowed. The impugned order of the District Inspector of Schools (Secondary Education) at Hooghly, copy of which is Annex. "H" to the writ petition is set aside. Let an appropriate writ be issued commanding the Respondents and in particular, the District Inspector of Schools, Hooghly, to accord approval to the panel prepared by the Selection Committee in terms of the interview held on September 23, 1989 and the panel prepared on the said date within a period of 4 (four) weeks from date. There will be no order as to costs.