

(1998) 04 CAL CK 0020

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 3023 of 1997

Chairman, Ad-Hoc Committee

APPELLANT

Vs

Swaraj Kumar Paul and Others

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Bengal (Rural) Primary Education Rules, 1930 — Rule 3, 3E
Constitution of India, 1950 — Article 14, 16, 21, 226, 4
West Bengal Primary Education Act, 1973 — Section 105
West Bengal Primary Education Rules, 1973 — Rule 8, 9

Citation : (1998) 3 CALLT 94 : (2000) 2 ILR (Cal) 35

Hon'ble Judges : Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J

Bench : Division Bench

Advocate : Mr. Pabitra Kumar Basu, Mr. Utpal Basu Mallik, for the Appellant; Mr. Amar Nath Das, for the Respondent

Judgement

S.B. Sinha, J.—This appeal is directed against the judgment and order dated 6.6.90 and order dated 7.1.97 whereby and whereunder the writ petition filed by the writ petitioners was allowed and the same benefit has been extended to the added respondents and has also been directed to give appointment to the writ petitioners and the added respondents. The admitted fact of the matter is that a panel was prepared in the year 1981. The writ petitioners and the added respondents are said to have been empanelled as no appointment was given to them from the said panel for a long time. They filed a writ petition in the year 1988 praying, inter alia, for the following reliefs:--

(a) A writ of or in the nature of Mandamus commending the respondents and their men and agents to forbear from giving any or further effect to the purported order as memo No.17 Edn. (P)/55-5-85 dated 10.1.1985 issued by the Respondent No. 1 and Memo No. 23 (120)/ RE. dated 1.2.85 issued by the District Inspector of Schools (RE.) 24-Parganas inviting the names of the candidates from different employment exchanges for recruitment of Primary School Teachers in different schools in the Urban areas within the District 24-

Parganas.

(b) A Writ of Mandamus or in the nature thereof directing the respondents to forbear from cancelling or withholding the panel as was duly prepared in the year 1981 wherein your petitioners have been selected as eligible candidates for being absorbed to the posts of primary school teachers so long as the petitioners are not appointed as teachers and so long as the existing panel is not exhausted and also commanding the respondents to fill up all the vacancies by observing the persons in the panel within a reasonable time.

(c) Writ of Certiorari commanding the respondents to certify and to transmit all the relevant papers and records in connection with the impugned memo/order No. 17 Edn(p) 55-5-85 dated 10.1.1985 issued by the Respondents No. 1 and Memo No. 23(120)/RE. dated 1.2.85 passed by the District Inspector of Schools (P.E.) 24- Parganas and relating to Memo No. 384(15000)/P.E. dated 9.12.80 issued by Respondents No. 2 to this Hon"ble Court within such time as this Hon"ble court may deem fit and proper so that conscionable justice may be done by commanding the respondents to cancel, rescind, withdraw and quash the impugned orders.

2. The learned Judge by a judgment and order dated 6.6.90 upon following a decision of a learned Single Judge in the case of Asoka Roy & Ors. v. State of West Bengal & Ors, reported in Calcutta Law Times 1989(2) HC 139 held that the petitioners should be appointed. In Asoka Roy's case it was directed as follows:

"In my view it is sheer that those candidates who have been empanelled in 1981 should deprived of the opportunity of having an employment within a course of one year or maximum one-and-a-half year for no fault of theirs and a fresh panel would be prepared. There is no dispute of the fact this panel was prepared in 1981 and the steps for preparation of a fresh panel were taken only in 1985 after a lapse of four years. This itself indicates that the respondents themselves kept the panel alive for pretty longer than one-and-a-half years in utter violation of the said Rule 3E and thought of fresh panel only in 1985. Further by their own act of giving appointment in 1988 to Bhaskar Goon, a candidate of 1981 panel, the submission of the State that the panel exhausted in force by virtue of Rule 3E has no force at all. For the ends of justice it is necessary to strike down the limitation of 12 months and further extension of 6 months from the amended Rule 3E of the Notification dated 8th February, 1974 when the State itself is not following the time-limit prescribed in the said Rule and whimsically giving appointments on pick and choose basis from the old panel of 1981 much beyond its life and which according to the State Authorities themselves is no more valid. Even candidates were appointed from outside the panel. The action of the State respondents in exercising this executive power in the facts of this particular case offends the right of equality and is violative of Article 14 of the Constitution."

3. In the writ petition the appellant was not initially impleaded as a party. However, from the order of the court it appears that the appellant was impleaded

as a party on a later date. Paper Book was filed. In the meantime, the West Bengal Rule of Primary Education was repealed and replaced by the West Bengal Primary Education Act, 1973. The State of West Bengal in exercise of its power u/s 105 of the 1973 Act framed rule in the year 1991. The District Primary School Council was constituted by the State Government. Pursuant to the order, in furtherance of the provisions of 1973 and 1991 Rules, the Recruitment and Leaves Rules were framed, in terms thereof. Rules 8 and 9 of Recruitment and Leave Rules lay down the procedure in what manner the recruitments have to be done. It is now well settled that in terms of Rule 3E of the Bengal Primary Education Rules, 1940 the life of the panel was one year with a power to the State of extend the same for a further period of two years. A Division Bench of this court comprising the Hon'ble N.P. Singh, C.J. and Tarun Chattcrjce, J. in Jitendra Nath Chatterjee's case reported in (1990)II CLJ 1. inter alia, held that in view of Rule 3 the life of the panel would not have been extended. The learned judges held that after expiry of the said panel no direction could be issued for appointment from the said panel. Asoka Roy (supra), therefore, stood overruled by the necessary implication of the Division Bench of this court.

4. After the 1991 Rules came into force, the West Bengal Headmasters' Association again filed a writ petition before this court. The vires of 1991 Rules, though upheld by the learned Single Judge of this court, was directed to be suspended. Further, in appeal a Division Bench of this court, as reported in (1997) 1 CLJ 165 categorically held that the said rules were intra vires. This Court in exercise of jurisdiction under Article 226 of the Constitution gave a direction to the State authorities to act according to law. After the Division Bench decision in the case of West Bengal Board of Primary Education, as reported in [1997) I CLJ 165 (supra), there cannot be any doubt whatsoever that an appointment can be made only in terms of Rules 8 and 9 of the Recruitment of Leave Rules and not contrary thereto.

Furthermore, it is well-settled that life of (he panel cannot be directed to be extended. A reading in this connection may be made to the case of N. Mohanan Vs. State of Kerala and Others, wherein it has been, inter alia, held that the existing vacancies should be filled up from the select list and that the omission therein is arbitrary and violative of his right. In Shankarasan Dash v. Union of India, 1992-II-LLJ-18, a Constitution Bench has held that mere inclusion of the name in the list of selected candidates does not confer any right upon any candidate to be selected unless the relevant so indicate.

5. The learned counsel appearing on behalf of the respondents, however, submits that despite the decision in the case of Jitendra Nath Chatterjee (supra), the State Government has been making appointment from the said panel. In fact, according to the learned counsel, appointments have been made even in 1987 and also in 1996. If despite the aforementioned legal position, any appointment has been made by the State Government, the same is in our opinion clearly illegal. The question, however, which has been raised before us, is whether in

view of the said appointments any direction can be issued upon the appellant to appointment the petitioner and the added respondents from the said panel of 1988. Our answer to the said question must be rendered in the negative. It is not necessary for us to go back to the history of referring to primary education in the State of West Bengal inasmuch as the same has been stated in details in the case of West Bengal Board of Primary Education (supra). Upon taking into consideration the decisions of this court as also the apex court relating to the same panel, it has been held that either before this court or the apex court, the mandatory requirements of law as laid down under Rules 8 and 9 of the Recruitment and Leave Rules having not been referred to nor any argument having been advanced, the said decision are not binding.

6. In view of the aforementioned Division Bench decisions as also the decisions of the Supreme Court, in the case of I.C.A.R. and another Vs. T.K. Suryanarayan and others, and Bihar Public Service Commission and another Vs. State of Bihar and others, , there cannot be any doubt whatsoever that neither any direction can be issued to violate the provisions of law nor can any direction be issued despite the fact that life of the panel has expired. The contention of the learned counsel is that the State Government has directed for appointment from the said panel but such a direction cannot be issued by this court since such appointment in view of the decisions of this court as also the apex court are illegal and illegality cannot be directed to be perpetuated. If some persons have been appointed illegally, this court cannot direct the appellant to follow suit. We, however, in view of the submissions of the learned counsel must deprecate such action. Since the life of the panel has expired, no appointment can be given since such appointments are per se violative of Articles 14 and 16 of the Constitution of India.

7. We keeping in view the facts and circumstances of this case direct that the cases of the writ petitioners and the added respondents who would come within the provisions of Rules 8 and 9 of the Recruitment and Leave Rules be considered along with other eligible candidates since appointments have not been made for a long time. We hope and trust the District Primary School Council would pass necessary orders for appointment to the post of Assistance Teachers as expeditiously as possible. The appeals are allowed in view of the facts and circumstances of the case but with no order as to costs.

8. If the petitioners approach the Employment Exchange and their names are registered, the Employment Officer is expected to take suitable steps for sponsoring the names of the petitioners and the added respondents in accordance with law keeping in view the fact that they are fighting out this court for a long time.

9. Xerox certified copy, if applied for, be supplied at the earliest.

D. B. Dutta. J.

10. I agree.

11. Appeals allowed