
(2003) 09 CAL CK 0017
In the Calcutta High Court
Case No : M.A.T. No. 4117 of 1999

Chairman, Ad Hoc Committee, Calcutta District Primary
School Council

APPELLANT

Vs

Alpana Devi and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Constitution of India, 1950 — Article 46

Citation : (2004) 4 CHN 455 : (2004) 102 FLR 767

Hon'ble Judges : Rajendra Nath Sinha, J; Dilip Kumar Seth, J

Bench : Division Bench

Advocate : Tulsidas Maity, for the Appellant; Kanak Kumar Chatterjee and
Bhabani Prasad Mondal, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : State of West Bengal and Another Vs. Alpana Roy and Others, AIR 2005 SC 3657 : (2005) 107 FLR 556 : (2005) 8 SCC 296 : (2005) SCC(L&S) 1115 : (2005) 1 SCR 482 Supp : (2006) 1 SLJ 147 : (2005) AIRSCW 4920 : (2005) 6 Supreme 485

Dilip Kumar Seth, J.—In this appeal, stay of operation of the judgment and order appealed against has been asked for. The impugned order directed the District Inspector of Schools to regularize the service of the appellant in view of the facts and circumstances of the case.

2. The learned Counsel for the appellant contends that the initial appointment of the petitioner/respondent being illegal, there is no scope for regularization. According to him, at a point of time when the petitioner was given appointment, there was no sanctioned post. According to him, the authority to give appointment by the Managing Committee of the school was deleted from the statute in the year 1974. Therefore, appointment given in 1997 cannot be regularized.

3. The learned Counsel for the respondent, on the other hand, points out that after appointment was given to the petitioner, representations were being made showing that the strength of the school required more than seven teachers, whereas there were only five teachers. At the relevant point of time, according to him, the Managing Committee had the authority to give appointment. That apart, the name of the petitioner/respondent was included in the panel prepared by the District Inspector of Schools for regularization against future vacancies. Therefore, the decision cited by the learned Counsel for the appellant does not apply. He also cited a few decisions to which reference shall be made at different stage.

4. The learned Counsel for the appellant, however, pointed out that the panel to which attention of the Court has been drawn by the learned Counsel for the respondent is not a panel but a list of unapproved teachers working in the school. Therefore, the contention of the learned Counsel for the respondent cannot be accepted.

5. After having heard the learned Counsel for the parties, it appears that the order directs the respondents to consider the petitioner's case in accordance with law after giving opportunity of hearing to the respondent/petitioner and by passing a reasoned order and regularize and approve the appointment. According to the learned Counsel for the appellant, such a direction cannot be given.

6. We do not find any reason to interfere with the order simply on the ground that it was a direction for consideration of the case of the petitioner for regularization in accordance with law by passing a reasoned order. That apart, from Annexure "P-2" disclosed in the affidavit-in-opposition, a circular dated 24th of May, 1972, makes it clear that the Managing Committee was continuing to be the appointing authority but the sanctioning authority would be the District Inspector of Schools. It was also pointed that from Annexure "P-7" that the number of students at the relevant point of time was 334 and that three unapproved teachers were working, The list of unapproved teachers working against normal or additional posts in different schools under order of the District Inspector of Schools, Calcutta. This is Annexure "P-8". This shows the names of three teachers mentioned in Annexure "P-7". Out of them, one is the name of the petitioner/respondent. It is contended by the learned Counsel for the appellant that since 1974 the authority to give appointment of the teacher by the Managing Committee was not in existence and, therefore, appointment given in 1976 was illegal.

7. Admittedly, the petitioner had been working since 1976 and her name was included in the list of unapproved teachers working against normal or additional posts at different schools. The expression "normal or additional post in different schools" does not indicate that there was anything to debar the petitioner from continuing to work. Even if initial appointment was illegal even then the list shows that the authority was aware of the names of the teachers who were working. Admittedly, the strength of the students required more than seven

teachers. It is incumbent on the authorities to sanction posts and take appropriate steps for selection and appointment of teachers. But the authority did not take any steps and allowed the situation to continue. Now they cannot turn around and say that the appointment, being illegal, cannot be regularized, after having exploited the service for almost about 20 years. The State being an authority is expected to be an ideal employer. They are not supposed to indulge in exploitation of human resources taking advantage of their helpless conditions. The respondents cannot overlook and act in violation of Article 46 of the Constitution of India. The word "weaker section" used in Article 46 cannot be read to mean only the Scheduled Castes or Scheduled Tribes, nor the same can be interpreted on the principle of ejusdem generis. The expression refers to all weaker sections and in particular the Scheduled Castes and Scheduled Tribes. Inasmuch as, if we confine the meaning of the expression "weaker section" only to Scheduled Castes or Scheduled Tribes or the likes viz., Backward Class, then it will expose the weaker section of the citizens, other than Scheduled Castes, Scheduled Tribes and Backward Class people, to exploitation without any protection from it. Admittedly, the petitioner is helpless against the mighty machinery of the Government. Such an interpretation would definitely be against the spirit of the Constitution. She definitely is weak. Along with all such people similarly situated, she belongs to a weaker section of teachers who were recognized in the list for working in different schools against normal or additional posts and were allowed to continue without taking any steps to fill up those normal or additional posts through regular recruitment process in accordance with the recruitment rules within a reasonable time and were subjected to perpetual exploitation by the State machinery over a long period of time, though these people were otherwise qualified and eligible.

8. The learned Counsel for the respondent had relied on the decision by the learned Single Judge of this Court in *Dinabandhu Bandopadhyay v. State of West Bengal* 2002(2) CLJ 238, where such a view was taken. He also relied on the decision of *Uttam Kumar v. U. P. Higher Education Service Commission*, Allahabad 1995 (Supp)1 SCC 460, wherein it was held that it would be a mockery of justice if the appellant is thrown out of service after he has served for 15 years. In the facts and circumstances of the said case, the State Government was directed to approve the appointment.

9. The learned Counsel for the appellant cited the decisions in *Baul Sarkar v. Mina Chakraborty* 2003(1) WBLR (Cal) 254; *Subedar Singh and Ors. v. District Judge, Mirzapur* 2001(1) SCC 37; *West Bengal Board of Secondary Education v. State of West Bengal and Ors.*, 1997(1) CLJ 165; *Puspa Singh and Ors. v. State of West Bengal* 1999(1) CLT (HC) 393 and also an unreported decision of this Court in the case of *Chairman, Calcutta District Primary School v. Tripti Guha Karmakar*, in M.A.T. No. 992 of 1988, disposed of on 5th of February, 2003 by a Division Bench of this Court.

10. The ratio decided in these decisions is undisputed. In fact, if any appointment

is made de hors the rules, the same does not confer any right on the appointee to claim regularization. But all these rules in one voice have reiterated the said proposition, which is a settled principle of law. But a ratio is to be applied in given facts and in a context in which the case stands. In the present case, as has already been observed that though initial appointment might have been illegal but still then that appointment was not objected to and that the school required more than seven teachers and they were allowed to continue and their names were included in the list as working against normal or additional posts but unapproved which itself indicates acceptance of the appointment by the respondent themselves. Once having accepted the situation, the respondent cannot turn around and take advantage of the legal principle and that too after such a long time without taking any active step for recruitment or for dispensing with the service of the respondent. There is nothing to indicate that the District Inspector of Schools disapproved the appointment of the petitioner or had asked the school authority to dispense with their service or that the responsibility would be that of the school authority. Neither there was any overt action on the part of the District Inspector of Schools to initiate regular recruitment process nor was any direction or intimation given to the school authority or to the petitioner/respondent about initiation of any regular recruitment process. On the other hand, by preparing the list, it had given an impression that the appointment of the petitioner would be regularized. It created an atmosphere of legitimate expectation. Thus, decisions cited by the learned Counsel for the appellant appears to be distinguishable and have no manner of application in the present case. In view aforesaid, we do not think any interim order could be passed in this application, being CAN No. 829 of 2000, and the same is accordingly dismissed.

11. After this order is passed, we find that the merit of the appeal has been gone into and nothing remains to be decided in the appeal. By consent of the parties, the appeal is treated as on day's list for hearing and is disposed of in terms of the above order by dismissing the appeal.

12. There will be no order as to costs.

Rajendra Nath Sinha, J.

13. I agree.