

(1998) 02 CAL CK 0029

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 1553 of 1997

Chairman, Ad-hoc committee, District Primary School, South 24-parganas **APPELLANT**

Vs

Subhas Chandra Samanta and Others **RESPONDENT**

Date of Decision : 23-02-1998

Acts Referred:

West Bengal Primary Education Act, 1973 — Section 106(1)

Citation : (1998) 3 CALLT 111

Hon'ble Judges : Satyabrata Sinha, J;Ronojit Kumar Mitra, J

Bench : Division Bench

Advocate : Mr. Arun Kumar Mitra and Mr. Taraprasad Halder, for the Appellant;
Mr. Ashok Kumar Maiti and Mr. Bhabesh Chandra Maiti, for the Respondent

Judgement

S.B. Sinha, J.—This appeal is directed against a judgement and order dated 31st March, 1997 passed in C.O. No. 19671(W)/95 by a learned single Judge of this Court as modified by an order dated 16.4.97. The writ petition was filed by 10 petitioners claiming, inter alia, the following reliefs:

"(A) Writ in the nature of Mandamus commanding the respondent No.5 to send name of the petitioners to the respondent No.4 so that they may be allowed to appear at the interview to be held for preparation of panel for appointment of Primary teachers in the District of 24-Parganas (South):

(B) Writ in the nature of Certiorari directing the respondents to transmit and authenticate the records of the case so that conscionable justice may be done to the petitioners by empanelling them for appointment of primary teachers."

2. The basic fact of the matter is not in dispute.

3. The President, District Board, 24-Parganas, the predecessor in-interest of the appellant herein issued a notification on or about 27.6.78 inviting applications for preparation of panel to recruit an Assistant Teacher under the District School Board from the candidates having the minimum qualification. The minimum

qualifications are:

"School Final passed in 1970 or before 1970. Higher Secondary passed in 1971 or before 1971. To be registered in any Employment Exchange. Age limit between 19 to 35 years on 1.4.78. Primary Basic Training will be an added qualification."

4. Admittedly the petitioners did not file any application for being empanelled pursuant to the said application as they were not qualified at the relevant time. Later on they obtained an opportunity to secure basic training under the Government of West Bengal. The writ petitioners contend that pursuant to an agreement entered into by the Parties the petitioners were required to get their names enrolled in the Employment Exchange, and they were to serve the State. They got their names enrolled in the Employment Exchange and were given a special code being No. 153.10. it is admitted that a panel was prepared by the District Board 24-Parganas in 1979 whereafter no panel had been prepared.

5. The petitioners did not file any writ application for appointment as Assistant Teacher pursuant to or in furtherance of the said agreement. in other words they had never made any attempt to enforce the said purported agreement. The appellant now intends to fill up the panel. The petitioners filed writ application praying, inter alia, for the reliefs referred to hereinbefore.

6. In the said writ application two applications were filed for addition of parties. Before the learned trial Judge an application for addition of parties were taken up for hearing. The appellants were not given an opportunity to file any affidavit-in-opposition. The learned trial Judge by reason of the impugned order dated 31.3.1997 disposed of the writ application itself following judgment dated 27.1.1997 in FMAT No. 3168/96 (Ratan Kumar Saha & Ors. v. State & Ors.) since reported in 1997(1) CLJ 165. However, on the next date fixed several mistakes were pointed out-in the name of the District, the number of the vacancies, the name of the appellants which were corrected. Even the operative portion of the said judgment was changed.

7. Mr. Mitra, the learned counsel appearing on behalf of the appellant inter alia, submitted that the learned trial Judge committed a serious error in passing the impugned judgment, at the stage of hearing of the application of addition of party without taking into consideration that not only the said decision was not applicable to the fact of the present case but the case of the petitioner was squarely covered by division bench decision of this court in FMAT No. 1094/96. FMAT No. 1931-33/96 with C.O. No. 19839 [W]/95 (Ramakrishna Prodhan & Ors. v. The State of West Bengal) wherein one of us S.B. Sinha, J. was a member. The learned counsel contends that the decision of the Supreme Court as also of this court upon which reliance has been placed by the learned counsel for the writ petitioners have no application inasmuch as now statutory rules have been framed in the year 1991 and after coming into force of the appellant-Council in the year 1994, the matter of recruitment has to be governed in terms

of the said Rules.

8. Mr. Maiti the learned counsel appearing on behalf of the respondent, on the other hand, submits that the petitioners are entitled to be treated alike in terms of the judgment of the Supreme Court of India in Paschimbanga Prathamik Sikshak Sikshan Prapts Bakar-O-Sikshak Samiti and Others Vs. President, West Bengal Primary School Council and Others, .

9. There had been various litigations relating to the matter in question. For the purpose of disposal of this appeal, the following fact may be noticed:-

(a) Different District Primary School Councils of West Bengal were formed under West Bengal Primary Education Act. 1973. Prior to that in different districts there were District School Boards.

(b) In the District of 24-Parganas (South and North) and Darjeeling, District Primary" School Councils could not be formed because of pendency of interim order in a writ petition. in so far as the district of South and North 24-Parganas is concerned the said writ petition was disposed of and interim orders were vacated by a judgment and order passed by the Hon"ble Mr. Justice Samarsh Banerjee and immediately on the disposal of the said writ petition two separate District Primary School Councils for two districts i.e. South 24-Parganas and North 24-Parganas were formed and both the Councils started functioning with effect from 11th March 1994.

(c) in exercise of powers conferred by sub-section (I) of section 106 of the West Bengal Primary Education Act. 1973 Rules regarding the recruitment and leave of teachers of Primary Schools in West Bengal were framed and as per the gazette notification which was made effective from 25th November, 1991.

10. The contentions raised herein by the petitioner were also raised in Ramkrishna Prodhan's case (supra) wherein the court relying upon several decisions of the Supreme Court of india came to the conclusion that the petitioners therein having never worked were not entitled to any relief. As regard the question as to whether the provisions of 1973 Act or the 1991 Rules are ultra vires or not has been considered in a division bench judgment of this court again wherein one of us (S.B. Sinha) was a member in West Bengal Board of Primary Education v. Stale of West Bengal & Ors. reported in 1997(1) CLJ 165 wherein it was held that the same are infra vires. it has further been held that in the aforementioned decision all the recruitments must be made in terms of the statutory rules.

11. Keeping in view the aforementioned decisions there cannot be any doubt whatsoever that the impugned order could not have been passed.

12. Mr. Maiti has referred to a passage from Paschimbanga Prathamik Sikshak Sikshan Prapta Bekar-O-Sikshak Samiti & Ors. case (supra) which is to the following effect :

"As the applicants, at whose instance the writ petitions were filed in the High Court by their societies, which ultimately gave rise to the present appeals, have been ventilating their legitimate grievances for a number of years it is just and desirable that they should not be debarred from being considered for appointment solely on the ground that they have crossed the age bar provided under the Rules, Notifications or Circulars, as the case may be. Needless to say, that this direction of ours is to be complied with while preparing the initial panels in terms of this order and not subsequent panels. Since the matter is long pending the panels should be prepared within a period of six months from today. Any appointments already made from the panels of the above two districts may be continued on the clear understanding that such appointments shall stand terminated on corresponding appointments being made from the fresh panels unless, of course, such appointees also qualify to be empanelled therein. As regards (he other concerned districts, we, however, make it clear that the directions given by the High Court in the impugned judgment for being complied with before giving appointment from the panel prepared for the district of Howrah, will also apply to them and in complying with the above directions the respondents shall keep in view the observations and findings of the Special Officers appointed by this court.

13. This court in Ramkrishna Pradhan's case as also various other decisions held that the said decisions of the Supreme Court of India was rendered in the context of the fact of the matter in that case as a question arose therein as to whether the untrained candidates were to be treated alike to that extent of 50 per cent of the vacancies.

14. The apex court appointed the District Judges and found that the panel prepared in respect of the District of Malda and Midnapore had not been prepared in accordance with law. Evidently the aforementioned direction had been given in respect of those candidate who fought a litigation and were not empanelled for the District of Malda and Midnapore. The very fact that their Lordships had considered the case of other districts separately, evidently the said decision has no application in respect of district other than Malda and Midnapore. In Ratan Kumar Sofia's case (supra) again upon which Mr. Mally placed strong reliance the Employment Exchange had sponsored the names of those candidates who are juniors to the petitioners as would appear from paragraph 6 of the said judgment.

In the said judgment the following direction was made:--

"Accordingly, we are directing the local Employment Exchange to forward the names of 21 petitioners/appellants if their names have not yet been forwarded for appointment in the post of primary teachers as there are at present 497 vacancies in (he said post under the Dakshin Dinajpur District Primary School Council and for which requisition has already been made and the Employment Exchange has forwarded some trained and untrained teachers. Petitioners' names should be so forwarded within ten days from the date of the

communication of this order by the Employment Exchange and the authority concerned shall consider the cases of the petitioners along with other eligible candidates and select them if they are found suitable condoning the age bar."

15. It is now well known that each case has to be considered in the fact situation existing therein. No case can be decided in vacuum. It is also well known that a little difference in facts or in additional facts may make a lot of difference. Reference in this connection may be made to *The Regional Manager and Another Vs. Pawan Kumar Dubey*, wherein it has been held:-

"It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and noisome conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

16. Reference in this connection may be made to the cases of *Krishna Kumar and Others Vs. Union of India and others*, and *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, .

17. In the instant case the petitioners did not apply for their appointment pursuant to the 1978 advertisement as they were not qualified therefore but now they have become qualified. The petitioners did not question non-preparation of panel from 1979 till 1997. The appellant has clearly stated that because of various orders of injunction passed by this court from time to time no panel could be prepared. None of the petitioners was a party in the said writ applications. At the case of the repetition it may be mentioned that the petitioners never insisted on their right under the so-called agreement. The said agreement had admittedly not been enforced against the petitioner. Only because the petitioner had been given a separate code in the Employment Exchange the same does not alter the position. The Employment Exchange grants separate code in respect of the categories of the candidates as for example Secondary Teachers. Primary Trained Teachers. Doctors, Engineers etc. for proper identification only.

18. It is admittedly that by reason of division bench judgment presided over by Umesh Banerjee. J, the panel was directed to be exhausted. It is further admitted that in *Paschimnanga Prathamik Sikshak Sikshan Pratap Bekar-O-Sikshak Samity, West Bengal & Ors. v. The State of West Bengal & Ors.* reported in 1990(1) CLJ 26.10 teachers were directed to be given preference. The said decision has been modified only to some extent by the division bench in *District School Board, Midnapore & Ors. v. Paschimnanga Prathamik Sikshak Sikshan Pratap Bekar-O-Sikshak Samity, West Bengal & Ors.* reported in 1991(1) CLJ 479. It is against that judgment that SLP was filed and the decision in *Paschimnanga Prathamik Sikshak Sikshan Pratap Bekar-O-Sikshak Samity and Others Vs. President, West Bengal Primary School Council and Others*, was rendered. It is accepted that so far as South 24-Parganas district is concerned no panel existed in the year 1983-85 by virtue of judgment and/or orders of any

court of law. No panel could be prepared without exhausting the 1978-80 panel. The apex court although was initially concerned with all the districts of the State of West Bengal, it found illegalities only in respect of 2 districts and directed preparation of the panel.

19. For the reasons aforementioned we cannot uphold the judgment and order passed by the learned trial Judge. This appeal is, therefore, allowed. The impugned judgment is set aside and writ petition of petitioners is dismissed. However, in the facts and circumstances of this case there will be no order as to costs.

R. K. Mitra, J.

20. I agree.

21. Appeal allowed