
(2011) 09 CAL CK 0048
In the Calcutta High Court
Case No : Writ Petition No. 14517 (W) of 2002

Chhaya Mishra and Others

APPELLANT

Vs

The Director, School Education and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Citation : (2011) 09 CAL CK 0048

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Tapas Kumar Bhattacharya and Jayanti Saha, for the Appellant; P.S. Deb Barman and Anjan Chakraborty for the Respondent No. 3 and Tapabrata Chakraborty and Kumaresh Dalal for the State, for the Respondent

Judgement

Harish Tandon, J.—This Petitioners have prayed for issuance of mandamus upon the Respondent No. 3 to give appointment to the writ Petitioners as primary teachers in terms of an approval accorded by the Respondent No. 1.

2. The writ Petitioners claimed themselves to be the Organizer Teachers. It is stated in the writ petition that the school namely Bildaha Primary School was granted recognition in the year 1979 but the Petitioners were not accorded approval to such appointment by the Respondent authorities. The Petitioner filed a writ petition before this Court which was disposed of with a direction upon the Respondent authorities to consider the case of the writ Petitioners within certain period. Having failed to do so within the said period an application for contempt was taken out which was also disposed of by extending the period by this Court.

3. It is contended that the Respondent No. 3 has recommended to the Respondent No. 1 to grant approval to the appointment of the Petitioners. In spite of recommendation the Respondent No. 1 did not accord approval which constrained the writ Petitioner to move before this Court by filing writ petition being WP No. 2170 (w) of 2001 praying for a direction upon the Respondent No. 1 to grant approval to the appointment of the Petitioner to the post of the primary teacher. The said writ petition was disposed of on 23.2.2001 by directing

the Respondent No. 1 to treat the writ petition as representation and to consider and dispose of the same within ten weeks from the date of communication of the order by passing a reasoned order.

4. In spite of such direction the Respondent No. 1 did not adhere thereto which gave rise to filing of the contempt application being CPAN 1065 of 2001. However, by a letter being memo No. 719/2(4)-Sc/P dated 7.5.2002, the Respondent No. 1 granted approval to the appointment of the Petitioners to the post of the assistant teacher. Pursuant to the said order of approval, the Respondent No. 3 directed the Petitioner to appear before it on 10.6.2002 along with the educational mark-sheet, admit card, pass certificate including all orders passed by the Hon'ble High Court. The Respondent No. 3 thereafter issued several notice viz. 3.7.2002, 14.8.2002 asking the Petitioner to submit papers and documents as requisitioned therein. It is contended by the Petitioner that the Petitioners duly complied the said requisition. The Petitioner contends that in spite of the approval being granted the Respondent No. 3 is not giving appointment to the Petitioner and hence the instant writ petition.

5. Although the original copy of the affidavit-in-opposition is not filed by the Respondent No. 3 but the Petitioner concedes before the court that a copy of the said affidavit-in-opposition has been served upon his client. It is submitted by the learned Advocate appearing for the Respondent No. 3 that previously Mr. Anjan Chakraborty, learned Advocate was engaged in this matter but subsequently the present advocate is appointed but the cause paper could not be handed over by the erstwhile advocate as a result whereof the original affidavit-in-opposition could not be filed before this Court.

6. By my order dated 22.2.2011, I permitted the Xerox copy of the affidavit-in-opposition be kept in record and be treated as affidavit-in-opposition filed by the Respondent No. 3 and directed the Petitioner to file affidavit-in-reply thereto. In terms of the said order the affidavit-in-reply is filed by the Petitioner and the same is also kept on the record.

7. Before dealing with the submissions made by the respective parties I feel that the fact, which is very interesting in my view, narrated in the affidavit-in-opposition is required to be stated. At the very outset it is stated by the Respondent No. 3 in the said affidavit-in-opposition that the Petitioner is guilty of suppression of material fact. It is contended that prior to moving of the writ petition in 2001 as stated in the writ petition, the writ Petitioner moved a writ petition in the year 1989 praying for a direction upon the Respondent No. 3 to accord approval to the appointment as primary teacher of Bildaha Primary school with effect from its recognition. The said writ petition was registered as CO No. 2407(w) of 1989 and an interim order was passed therein restraining the Respondents from giving appointment to anyone in the school concerned with a direction upon the writ Petitioner to produce therein relevant papers relating to the strength of the students and the other documents. The said writ petition was dismissed for default on 4.6.1990. It is further stated that even prior to the said

writ petition another writ petition was filed in the year 1987 where the direction was made upon the concerned authorities to consider the claim of the Petitioner and pursuant to the said order the claim of the Petitioner was rejected on the ground that there is No. recognition to the alleged school. However, it has been stated by the Respondent No. 3 that certain orders relied upon by the Petitioner stating that the same has been passed in a proceeding initiated by them is in fact not correct as those orders were passed in a proceeding initiated by the West Bengal Organizer Primary Teachers Organization and Ors.

8. It is specifically contended that after the dismissal of the writ petitions in the 1987 and 1989 after a gap of 12 years the Petitioner moved the writ petition in the year 2001 and the same was disposed of with a direction to consider the claim of the Petitioner. Pursuant to the said order several dates were fixed for hearing by the Respondent No. 1 and last of such date was fixed on 15th July, 2002. It is strenuously contended that if the date was fixed on 15th July 2002 by the Respondent No. 1 there was No. occasion to pass an order on 7th May 2002 for granting approval to the appointment of the Petitioners to the post of a primary teacher. It is specifically contended that the moment it has been brought to the notice of the Respondent No. 3 such approval is granted an application has been taken out on 17th July 2002 for recall or review of the said order. The Respondent No. 3 contends that the said application for review/recall has not been disposed of as yet by the Respondent No. 1.

9. In reply I could not find any denial of such fact by the writ Petitioner.

10. The learned Advocate appearing for the Petitioner submits that the Respondent No. 1 being a competent authority to grant approval, duly approved the appointment of the Petitioner to the post of primary teacher and the Respondent No. 3 being the appointing authority cannot withhold such appointment. It is further contended that once an approval is granted by the Respondent No. 1, the Respondent No. 3 has No. authority to withhold such appointment. It is strenuously argued that the application for review/recall filed by the Respondent No. 3 is filed with the motive to delay the appointment of the Petitioners although the same is not legally maintainable in absence of any statutory provision. The Petitioner placed reliance upon the judgment of the apex court in case of Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, and in case of H.C. Suman and another Vs. Rehabilitation Ministry Employees Co-operative House Building Society Ltd. New Delhi and others, to contend that the review being a creature of statute is not maintainable in absence of any statutory provision.

11. The learned Advocate appearing for the Respondent No. 3, District Primary School Council submits that the erstwhile Chairman made recommendation without adhering to the legal procedure and as such granting of approval on the basis of such recommendation by the Respondent No. 1 is not legal. It is further contended that the Respondent No. 1 fixed several dates for hearing relating to the grant of approval and last of such date was fixed on 15th July 2002, thus

there could not have any occasion to accord the approval to the appointment of the Petitioner on 7th May 2002. He strenuously argued that the mistake which has been committed is capable of being rectified either in the form of a review or recall or in whatever form. He contends that there is an apparent error, mistake or illegality committed by the Respondent No. 1 and the same cannot be allowed to stand.

12. The learned Advocate appearing for the State adopts the submission of the Respondent No. 3.

13. Having heard the respective submissions it is undisputed that the Respondent No. 1, the Director of the School Education issued letter dated 7.5.2002 granting approval to the appointment of the Petitioners to the post of a primary teacher. According to the Petitioner once an approval is granted by the Respondent No. 1, the director of the School Education, the Respondent No. 3, Chairman District Primary School Council cannot withhold such appointment whereas it is contended by the Respondent No. 3 there is an apparent mistake, lacuna, illegality or error in issuing such letter granting approval and for such reason an application for review/recall is made before the Respondent No. 1.

14. It is no doubt true that the approval can be granted to the erstwhile teacher only after the school is recognized by the authority concerned. The Petitioner claims that such recognition is made in the year 1979 but No. document in support of such recognition is annexed to the writ petition. It is a specific case of the Respondent No. 3 that the said school was never recognized and annexed a copy of the order issued under memo No. 2494 dated 29.6.1987 by the District School Board, Malda that No. recognition is granted to the said school. Thus it appears that the claim of the Petitioner that the said school was recognized in the year 1979 is not correct. It is a positive case of the Respondent No. 3 that the school which the Petitioner claimed to have organized, was set up on 1st July 1979 under the Fifth plan as per GO No. 153/Edn(p) dated 31st October 1978.

15. Under the administrative law the authority can recall and review an order on the ground of fraud, misrepresentation or other similar grounds under the inherent jurisdiction (see P. Satyanarayana Vs. The Land Reforms Tribunal and Others,). Thus if an application for review and recall is pending any order directing the concerned authority to give appointment to the Petitioner would render such application nugatory and/or otiose and/or in fructuous.

16. The matter can be viewed from another angle. The alleged approval granted by the Director of the School Education on 7th May 2002 was on the basis of the statement made by the Chairman, District Primary School Council, Malda in his recommendation letter. The said Director of the School Education granted the approval merely on the basis of the statement made in the said recommendation. The said memo No. 719/1(4)-Se/P dated 7th May 2002 reads thus:

Government of west Bengal School Education Directorate Bikash Bhawan (7th

Floor), Salt Lake City Kolkata - 91

Memo No. _____ dated, Kolkata, the 30th April, 2002

From : The Director of School Education West Bengal

To : The Chairman, Malda District Primary School Council P.O & Dist : Malda

This has a reference to his letter in Memo no. 1247 dated 9.5.2000 regarding appointment/approval of appointment of three organizer teachers, namely,

1. Md. Arab Hossain Khan,

2. Smt. Tandra Mishra and

3. Smt. Chhaya Mishra

in the organized primary school at village - Bildaha under Sultanpur G.P. of Harish Chandrapur-II Block.

As stated by him the aforesaid three persons, who are the writ Petitioners in WP No. 2170 (w) of 2001, fulfill the conditions as contained in the guidelines issued in the Government Order No. 539-SE (Pry) dated 4.8.97 in this connection and as recommended by him, the undersigned hereby accords approval of appointment of the aforesaid three Petitioners to the posts of Assistant Teachers in primary schools under this council subject to their fulfilling the minimum educational qualification as laid down in GO No. 721-Edn (P) dated 6.7.71

Necessary action towards appointment of the aforesaid three persons as primary school teachers may be taken accordingly and immediately under intimation to the undersigned.

(S. Som), Director of School Education West Bengal

17. Thus on perusal of the said memo this Court does not find that the Director of the School Education made any independent finding about satisfaction as to the veracity and/or sanctity of the statement made by the Chairman, District Primary School Council, Malda. The Chairman, District Primary School Council, Malda subsequently detected the anomalies as certain relevant facts were not taken into consideration in an earlier letter of recommendation and thereafter submitted an application inviting the said Director of the School Education to reconsider and review its own order.

18. In a similar circumstance, the apex court in case of G. Srinivas Vs. Govt. of A.P. and Others, held that any order passed by mistake or ignorance of relevant fact can be reviewed by the authority concerned in these words:

20. An order passed by mistake and ignorance of the relevant facts indisputably can be reviewed, if inter alia, it is found that a fraud was practiced or there was willful suppression on the part of the Appellant.

19. A mistaken decision can always be corrected by the administrative

authorities and such power to correct the mistake is inherent, inbuilt in the administrative law. The apex court in case of Union of India (UOI) and Another Vs. Narendra Singh, held:

32. It is true that the mistake was of the Department and the Respondent was promoted though he was not eligible and qualified. But, we cannot countenance the submission of the Respondent that the mistake cannot be corrected. Mistakes are mistakes and they can always be corrected by following due process of law. In ICAR v. T.K. Suryanarayan it was held that if erroneous promotion is given by wrongly interpreting the rules, the employer cannot be prevented from applying the rules rightly and in correcting the mistake. It may cause hardship to the employees but a court of law cannot ignore statutory rules.

20. By holding that the authorities have power to review and/or correct a mistaken decision the same should be done upon giving an opportunity of hearing to the person who would be affected by the decision that would be taken by the administrative authority.

21. In view of above, the Respondent No. 1 is directed to consider the said application for review/recall dated 17th July 2010 within six weeks from the date of communication of this order upon giving an opportunity of hearing to all the parties in this writ petition in accordance with law. The Petitioner shall free to produce all documents before the Respondent No. 1 which shall be considered by the said Respondent at the time of making decision as aforesaid.

22. The writ application is disposed of in the light of the observations stated above.

23. However, there shall be no order as to costs.

24. Urgent Photostat certified copy of this order, if applied for, is given to the parties on priority basis.