

(2014) 02 CAL CK 0055

In the Calcutta High Court

Case No : F.M.A. No. 901 of 2012, C.A.N. No. 2771 of 2011 and W.P.C.R.C. No. 6308 (W) of 2003

Dinabandhu Roy

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Citation : (2015) 5 CHN 153 : (2014) 4 WBLR 685

Hon'ble Judges : Jyotirmay Bhattacharya, J; Ishan Chandra Das, J

Bench : Division Bench

Advocate : Amal Baran Chatterjee and Susanta Kr. Bhattacharya, Advocate for the Appellant

Judgement

1. This Mandamus Appeal is directed against an order dated 12th August, 2003 passed by the learned Single Judge of this Court in a contempt proceeding being W.P.C.R.C. No. 6308 (W) of 2003. While disposing of the said contempt application His Lordship recorded that the petitioner No. 61 therein had already been appointed as an organizer teacher in the primary school with the permission granted by the Director of School Education. Considering the fact that the recommendations which were given in favour of the petitioner Nos. 2 and 3 therein were kept pending before the Director of School Education (Primary Section), the Director of School Education (Primary Section) was directed to decide the recommendations made in favour of those two petitioners within seven days from the date of service of a copy of the said order upon him and the respondents were also directed to discharge their obligation in relation thereto on the basis of the action of the Director of School Education (Primary Section) in terms of the said order. Since the reliefs which the petitioners herein were seeking for their appointment as assistant teacher in the primary school being an organizer teacher, was not given to them by the concerned respondent in terms of the order passed by another learned Single Judge of this Court on 14th of January, 1998 in C.O. No. 9872 (W) of 1989, they moved a contempt petition which having been rejected by the learned Single Judge of this Court, this

Mandamus Appeal is taken out before us. Let us now consider as to how far the learned Single Judge of this Court was justified in disposing of the said contempt proceeding in the manner as it was done in the instant case.

2. Admittedly the petitioners herein were not serving as organizer teachers in the primary school on the date when it was established. It is an admitted fact that they were appointed as assistant teachers in the said primary school subsequent to the establishment of the said school but prior to its recognition. They claimed their right to be considered for appointment as assistant teachers in the said school in the light of the Govt. order No. 1176-Edn. (P) dated 1st December, 1971. They claimed that the right of similarly placed organizer teachers, to be considered for appointment was recognized by the Division Bench of this Hon'ble Court in the case of West Bengal Board of Secondary Education v. State of West Bengal and Ors., reported in 1997 (1) CLJ 165. They further claimed that since while disposing of their writ petition being C.O. 9872 (W) of 1989 on 14th of January, 1998, Chairman, Jalpaiguri District Primary School Council was directed to consider the petitioners' claim for appointment in the light of the judgment reported in CLJ 1997 (1) 165, the concerned authority ought to have considered their claim for appointment as assistant teachers in the primary school in the light of the said Division Bench judgment and since their claim was not considered by the Chairman, Jalpaiguri District Primary School Council in the light of the said decision of the Division Bench, the said respondent was liable to be punished under the Contempt of Courts Act for willful and deliberate disregard and/or violation of the said order passed by this Court. Thus they contended that the learned Single Judge of this Court was not justified by not punishing the alleged contemnor under the Contempt of Courts Act.

3. We have already mentioned above that the petitioners were all appointed as assistant teachers in the said school subsequent to its establishment but before it received recognition.

4. Let us now consider as to whether such teachers who were appointed subsequent to the establishment of the school but before it received recognition can avail of the provision contained in Rule 3D (Old) which was incorporated by the Notification No. 975 - Edn. (p) dated 26th October, 1971 which is set out hereunder.

"Rule 3D (Old): Notwithstanding anything contained in Rule 3, Rule 3A or Rule 3B, but subject to the provision of Rule 3C, a qualified person serving as an organizer teacher in a primary school, ever since that school was established, may be appointed, with the prior approval of the Director of Public Instructions, West Bengal, as an assistant teacher of the school at the time it is granted recognition."

5. On careful consideration of the said Rule we have no hesitation to hold that since admittedly the petitioners were not serving as organizer teachers in the said school ever since the school was established, they cannot avail of the benefit

which was granted to the organizer teachers who were serving in the said school ever since the school was established.

6. The petitioners, however, claim that their right to be considered for such appointment flows from the subsequent Notification being No. 1176-Edn. (p) dated 1st December, 1971--The relevant provision of the said Notification on which they relied upon is set out hereunder:

"Rule 3B provides for an appointment of organizer teachers in a primary school at the time it is granted recognition. An organizer teacher is one who possesses the minimum qualification for appointment as an assistant teacher and who has been working in the concerned primary school since its establishment. At the time of recognition of a primary school, one organizer teacher or more can be appointed, provided the rules governing the entitlement of a school to teachers on the basis of roll strength, are strictly observed. There may be some teachers who have been working in such a school before recognition but from a point of time after the establishment of the school. These teachers may be treated as teachers-in-position and may be given appointments in that school provided they possess the minimum qualifications and the teachers - entitlement rules are strictly observed in that school, and provided that such preference in the matter of retention given according to seniority calculated on the basis of the date of appointment, that earlier appointments get some protection....."

7. On consideration of the said Notification we are of the view that the petitioners may be considered as teachers-in-position and not organizer teachers.

8. The right of such teachers-in-position to be considered for appointment as teachers in the primary school was considered by the Division Bench of this Hon"ble Court in the case of West Bengal Board of Secondary Education v. State of West Bengal & Ors. (supra) wherein it was held that organizer teachers are those teachers who had been working since the inception of the school and the teachers who had joined the school after its establishment are known as teachers-in-position and such teachers-in-position had no statutory right even under the Old Rule 3D.

9. Thus the petitioners' right to be considered for such appointment as teachers in position was not recognized by the Division Bench of this Hon"ble Court in the said decision. The learned Single Judge of this Court while disposing of the contempt application also took an identical view by not recognizing the claim of the teachers in position to be considered for such appointment. It was held by the learned Single Judge that Govt. order issued by the authority in its administrative capacity cannot override the rules framed by the State in exercise of its delegated legislative power. It is thus held therein that since the Rule 3D (old) does not extend such relief to the teachers in position, no relief can be granted to the teachers-in-position in pursuance of the subsequent Govt. order issued on 1st December, 1971 for the reasons as aforesaid.

10. Before concluding we like to refer to the ultimate direction which was given

by the Division Bench of this Hon''ble Court in the case of West Bengal Board of Secondary Education v. State of West Bengal & Ors. (supra). The relevant portion of this direction given by the Division Bench is set out hereunder:

"However, there cannot be any doubt whatsoever, that in view of our findings aforementioned in cases where schools had been recognised prior to coming into force of New Rule 3D, the organizer teachers had derived a right to be considered for appointment, and thus they having acquired such a right were entitled to be considered in terms of the circular letters existing at the relevant time and as such writ petitioners, thus, had been deprived of their right for a long time, the respective District Primary School Councils are hereby directed to consider those cases and consider their cases for appointment in terms of Old Rule 3D and the circulars existing at the relevant point of time and if they were suitably qualified therefore. If in any such case interview has already been held, appointment may be made on the basis of such interview."

11. On consideration of the said direction we have no hesitation to hold that the right of the organizer teachers to be considered for such appointment was recognized by the Division Bench of this Hon''ble Court. The claim of the organizer teachers who had been serving in the said school ever since its establishment having requisite qualification, was directed to be considered in terms of the circulars existing at the relevant time. In our view the expression circulars which were referred to by the Division Bench of this Hon''ble Court were the circulars which were relevant pertaining to the appointment of the organizer teachers and not the teachers-in-position. As such we conclude by holding that the concerned authority did not commit any illegality by not appointing the petitioners who were teachers-in-position, as assistant teachers in the primary school in the facts of the instant case. We do not find any illegality in the order passed by the learned Single Judge of this Court on 12th of August, 2003 in W.P.C.R.C. 6308 (W) of 2003 which is impugned before us in this appeal.

12. Accordingly, the appeal being F.M.A. 901 of 2012 stands rejected, however, without any costs. Since the appeal is disposed of, no further order need be passed on the application being CAN No. 2771 of 2011. The application being CAN No. 2771 of 2011 is deemed to be disposed of.