

(2019) 08 CAL CK 0199

In the Calcutta High Court

Case No : C. Appeal From Order (FMA) No. 1738 Of 2018 With Civil Application (CAN) No. 11246 Of 2017

Director Of School Education, West Bengal And Others

APPELLANT

Vs

Dilip Kumar Sarkar And Others

RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

West Bengal School Service Commission Act, 1997 — Section 9(1), 9(2)
West Bengal School Service Commission Rules, 1997 — Rule 6(2), 6(3), 28

Citation : (2019) 08 CAL CK 0199

Hon'ble Judges : Dr. Sambuddha Chakrabarti, J; Abhijit Gangopadhyay, J

Bench : Division Bench

Advocate : Joythosh Majumder, B.P. Vaisya, Suman Dey, Abhishek Prasad, Raghunath Adhikari, Arpan Roy Kanjilal, Suranjana Bhattacharyya

Final Decision : Allowed/ Disposed Of

Judgement

Sambuddha Chakrabarti, J

This appeal is directed against an order, dated December 12, 2016 passed by a learned Single Judge in W.P. No. 3783 (W) of 2006. By the said order the learned Single Judge observed that the right of the writ petitioners for being treated as organizing teachers had accrued in their favour in 1995 when they were appointed as organizing teachers. The District Inspector of Schools (SE), Siliguri, i.e. the respondent no. 3 to the writ petition was directed to take appropriate steps in terms of the said observations.

The case of the writ petitioners inter alia is that Champasari Junior High School was established in 1995 in the district of Dargiling for the benefit of the local people on a piece of land donated by two tea estates. The school authorities constituted the managing committee and made several representations before the District Inspector of Schools (SE) as well as the West Bengal Board of Secondary Education praying for recommendation of the said school. The managing committee appointed the petitioners as members of their staff.

Subsequently, the name of the school was changed to Amiyo Pal Chowdhury Smriti Vidyalaya at the behest of the District Level Inspection Team. The petitioners have alleged that there was a clear understanding that after the change of the name the school would be recognized and there would be no necessity for starting a new school. With the change of the name there was no change in the constitution or the functioning of the school.

By a communication, dated June 20, 2001 the Secretary of the West Bengal Board of Secondary Education informed the Secretary of the Organizing Committee of the school that the president conveyed grant of provisional recognition from Class V to Class VIII (newly set-up) of the school for a period of one year with effect from May 1, 2001 with the condition and instruction that the school would take immediate steps for appointment of teaching staff on the recommendation of the West Bengal School Service Commission for the concerned region after observing the procedure laid down in Rule 6(2) and Rule 6(3) of the West Bengal School Service Commission Rules, 1997 and in respect of non-teaching staff by obtaining names from the Employment Exchange as also by observing other procedures in accordance with law. It was further directed that the school after obtaining a Clearance Certificate from the District Inspector of Schools (SE) was to apply to the West Bengal Board of Secondary Education for formal recognition. Until formal recognition was granted by the Board the school would not admit any student in any class.

The writ petitioners contend that since the school was founded in the year 1995 and was functioning with the teaching and non-teaching staff there was no reason not to recognize the school from that year or to deny the existence of the original school. They moved a writ petition in the year 2001 which was disposed of by a learned Single Judge by an order, dated March 19, 2003 wherein a learned Single Judge observed that the "new set up" in the letter of recognition or up-gradation by the government authorities was not backed by any rule to give a separate meaning and it was nothing but a colourable exercise of power to deprive the institution of the benefit prior to the recognition or up-gradation of the school. The court declared that the incorporation of the words "newly set-up" was a misdemeanour. Therefore, they cannot put an embargo upon the school from having their benefit available to them in accordance with the rules. The authorities were directed to issue a memo making corrections to that extent and treating the same as part of the original memo on the strength of the order of the court within a period of two months from the date of the communication of the order.

It is a grievance of the writ petitioners that they had been deprived of their right and claim as members of the organizing teaching staff who had rendered their services for long. The teachers were duly appointed by the validly constituted managing committee through proper selection process. Once the authority had found that the school was functioning since 1995 there was no reason to recognize the school on and from May 1, 2001. The writ petitioners prayed for a

writ in the nature of mandamus commanding the respondents to accord approval to the service of the petitioners as organizing teaching staff of the concerned school from the date of their appointments and to release the salary and for other ancillary reliefs.

A learned Single Judge of this Court by an order, dated September 27, 2012 directed the concerned District Magistrate to enquire and submit a report within eight weeks as to whether the writ petitioners were appointed as organizers teachers and whether they were performing their duties as such in the said school since the date of appointment.

Pursuant to the order, the Sub-Divisional Officer, Siliguri had submitted a report inter alia to the effect that Amiyo Pal Chowdhury Smriti Vidyalaya which was previously known as Champasari Junior High School, was granted provisional recognition in 2001 with the conditions and instructions as contained in the relevant memo. The then managing committee was not in a position to give employment to the writ petitioners though they were serving the schools since 1995. At present all the teachers working in the said school were appointed by the Regional School Service Commission. The Sub-Divisional Officer further reported that the writ petitioners were appointed as organizer teachers by the managing committee of the Champasari Junior High School which has now been renamed as Amiyo Pal Chowdhury Smriti Vidyalaya and performed their duties as such since the date of their appointments till October 2001.

On the basis of the said report, the learned Single Judge has passed the impugned order as mentioned above.

We have heard the learned advocates for the parties. It appears that the learned single Judge proceeded on the basis that the right of the petitioners for being treated as organizer teachers accrued in their favour in 1995 when they were appointed by the then school authorities. The learned single Judge had observed that the respondents to the writ petition had failed to establish that the School Service Commission Act, 1997 had taken away any right which had accrued in favour of the writ petitioners in 1995. In the process a very important aspect in the chronology of events seems to have been totally ignored by the learned single Judge. The school was granted provisional recognition from Class V to Class VIII for one year only with effect from May 1, 2001 with the condition and instruction that the school would take immediate steps for appointment of teaching staff on the recommendation of the West Bengal School Service Commission after observing the procedure laid down in Rule 6(2) and Rule 6(3) of the West Bengal School Service Commission Rules. This made it obligatory on the part of the school authorities to follow the procedure mentioned in the letter of provisional recognition.

Mr. Majumdar, the learned Government Pleader appearing for the appellants, have rightly contended that after the West Bengal School Service Commission Act came into being no appoint to a school can be made except upon compliance

of the requirement of the said Act. Section 9(1) of the said Act inter alia says that notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary appointments to the posts of teachers in a school would be made by the managing committee on the recommendation of the Regional Commission having jurisdiction. Section 9(2) specifically declares that any appointment of a teacher made on or after the commencement of the said Act in contravention of the provisions thereof would be invalid and would have no effect. A teacher so appointed shall not be a teacher within the meaning of the relevant Act.

The Act of 1997 has brought a very major change in the power of the District Inspector of Schools to appoint or approve any teacher who was claiming to act as an organizing teacher. Since the law does not recognize any such power the District Inspector of Schools can approve the appointment of teaching and non-teaching staff of school who had been selected and recommended by the School Service Commission.

Even if there was an earlier direction by a learned single Judge of this Court upon the District Magistrate to submit a report, the learned single Judge while disposing of the writ petition ought to have appreciated that the District Magistrate or the Sub-Divisional Magistrate was not the appropriate authority to make an enquiry as regards the service of any organizing teacher. The Sub-Divisional Magistrate conducted the enquiry and submitted a report as per the direction of the Court. The learned single Judge while passing the impugned order should have appreciated that such report from an authority not recognized by law could not be relied on.

There is yet another aspect of the matter which cannot be lost sight of. A bare perusal of the Board's letter, dated June 20, 2001, makes it obvious that the concerned District Inspector of Schools (SE) would, on receipt of the names of the candidates for the appointment to the posts of teachers and also the panel in respect of the non-teaching staff, furnish a certificate to the effect that names in respect of every admissible normal post of the school had been received by him from the school authority strictly on observance of the existing rules. The school in its turn was to apply to the Board for formal recognition after receiving a clearance certificate from the District Inspector of Schools (SE). The writ petitioners originally were appointed by the managing committee in non-sanctioned posts in an unrecognized school and after the school had been recognized in the year 2001 the West Bengal School Service Commission Act, 1997 would have its automatic application. This was specifically mentioned in the Board's letter in the year 2001. Thus, the learned single Judge ought to have appreciated that any appointment made by the school before its recognition cannot be said to have been made against a sanctioned vacancy. As such the question of accruing any right in favour of the writ petitioners in 1995 does not arise.

There is still another aspect of the matter which does not appear to have been

addressed by the learned single Judge i.e., the question of recognizing the right of the writ petitioners to be treated as organizing teachers. An answer to the issue takes us to the consideration of whether organizing teachers as a separate class of teachers have any entity to be recognized in law. Such a question came up for consideration in the case of *Manindra Nath Sinha and Others Vs. State of West Bengal and Others*, reported in 2006 (4) CHN 513. In that case the writ petitioners claimed that the concerned school in which they were working had been functioning since 1986 and they entered into the service of the school after being duly appointed by its organizing committee. The West Bengal Board of Secondary Education for the first time recognized the school as a Class IV Junior High School for three years with effect from May 1, 1994 which was subsequently extended for a further period of three years. The claim of the writ petitioners was for regularization of their service after the recognition of the school. The Division Bench observed that appointment of the petitioners as so-called organizer teachers was not in conformity with the parent Act viz., the West Bengal Board of Secondary Education Act, 1963 or the Rules as they were not appointed by the managing committee constituted in accordance with the Act or the Rules, but by a purported organizing committee. The word 'organizer-teacher' is unknown in the parent Act or the Rules and no instruction has been issued by the Government permitting any purported organizing managing committee to appoint teaching or non-teaching staff as organizer teachers before a school is formally recognized. Therefore, the appointment of the writ petitioners was without the authority of law.

The Division Bench in *Manindra Nath Sinha and Others* (Supra) further observed that there is no provision for appointment of any organizing managing committee or organizer teacher in the parent Act nor is there any authority conferred upon such managing committee to appoint any teacher or employee before recognition of the school and conferment of the prescribed sanctioned strength under the Act. If the initial appointment is illegal according to the parent Act and the Rules the Government by issuing notifications through its Joint Secretary cannot approve or regularize such illegal appointments. The moment the school is recognized, the Division Bench observed, the managing committee is to be constituted in accordance with the Act and the Rules framed thereunder and such duly constituted managing committee can alone appoint teaching or non-teaching staff according to the provision contained in Rule 28 of the Management Rules within the sanctioned strength. But even then, there is no right conferred upon the duly constituted managing committee to appoint any staff who before the recognition of the school was appointed by the organizing managing committee.

This judgment and order of the Division Bench in *Manindra Nath Sinha and Others* (Supra) was challenged before the Supreme Court. The Supreme Court observed that the judgment and order did not call for any interference and the appeal was dismissed.

In the present case, provisional recognition was granted in the year 2001 when the West Bengal School Service Commission Act has come into being. That is why the letter of provisional recognition specifically attached the condition that the school would take immediate steps for appointment of teaching staff on the recommendation of the West Bengal School Service Commission in respect of the concerned region. Thus, there was no question of approving the appointments or regularizing the service of the writ petitioners as prayed for by them in their writ petition. The learned single Judge erred in not appreciating that the question of taking away any right by the subsequent West Bengal School Service Commission Act of 1997 did not arise. In fact, no right had accrued in favour of them at all.

The learned single Judge did not appreciate that the initial appointments of the writ petitioners having been made without the due process of law or not against a sanctioned strength the reliefs claimed by them could not be granted. It is a settled principle of law that all appointments must be made in accordance with law and the procedure laid down therefor against sanctioned vacancies. Any appointment made in contravention of the settled principle of law and not against a sanctioned vacancy is bad ab initio. The learned single Judge does not seem to have addressed the issue from this aspect of the matter as well.

For these reasons we find no merit in the impugned order and it calls for interference in appeal.

The impugned judgment and order is set aside.

The appeal is allowed.

With this the connected application being CAN 11246 of 2017 has become infructuous and the same is disposed of.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

(Sambuddha Chakrabarti, J.)

I agree.