
(2009) 07 CAL CK 0103
In the Calcutta High Court
Case No : M.A.T. No. 2970 of 2005

District Primary School Council, Bankura	APPELLANT
Vs	
Janardan Mukherjee and Others	RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Citation : (2009) 07 CAL CK 0103

Hon'ble Judges : Md. Abdul Ghani, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Subir Sanyal, Arabinda Bhattacharjee, Sujata Saxena, for the Appellant;Probal Kumar Mukherjee, Rajat Datta and Keshab Bhattacharjee, Hare Krishna Halder for the State, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Sengupta, J.—This is an appeal against judgment and order of the learned Trial Judge dated 20th July, 2005 by which His Lordship has been pleased to allow writ application filed by the respondents before us, with a speaking order passed by Chairman, District Primary School, Bankura was challenged. By the impugned judgment the learned Trial Judge after having set aside the said order directed the Chairman again to consider the issue in terms of earlier order passed by the learned Single Judge, dated 9th January, 2002 and in the light of the observation made by the learned Trial Judge. The short fact for which the action as aforesaid was brought is stated hereunder.

2. Respondents before us are the aspirants for the post of primary school teachers and they are amongst exempted category. The fathers of the respondents had been uprooted from their respective places of residences as the land was acquired for construction of Kangsabati Project. Under the scheme they were entitled to be appointed to the post of primary school teacher and as such their names were classified as an exempted category and they were called for interview. In spite of their appearance in the interview and selection no step was taken for giving appointment. In the aforesaid background the petitioners had

filed writ petition in 1988 in this Hon"ble Court, being Matter No. 1170 of 1988. By an order dated 19th May, 1988, the Hon"ble Mr. Justice Ajit Kumar Sengupta (as His Lordship then was) was pleased to dispose of the writ petition by directing the respondent No.8 to forthwith issue letters of appointment to the petitioners as primary school teachers on the basis of interview already taken on 20th September, 1981, in the light of the Government Circular being Annexure "C" to the petition. The District Inspector of Schools was also further directed to approve of the appointment in accordance with rule.

3. The said judgment and order was appealed against by the President, Ad Hoc Committee, District School Board, Bankura, and the said appeal was disposed of by the following orders:

"During the course of hearing the parties agree that the names of the writ petitioners may be sympathetically considered for being added in the next panel for the purpose of appointment as primary school teacher. Such being the position all interim orders are vacated."

In spite of the aforesaid order passed on consent, by the Division Bench no step was taken as such subsequently another writ petition was filed by the petitioners in 1991. The said writ petition was disposed of by an order dated 18th November, 1991 by the Hon"ble Mr. Justice K. M. Yusuf (as His Lordship then was). While disposing of the said writ petition it was observed and ordered as follows:

"After hearing the learned Advocates for the parties I pass following order:

It is an admitted position that petitioners belonged to untrained categories and are candidates for the primary school teachers. A panel was prepared on 19th September, 1991 but in that panel the names of the petitioners did not figure because they belonged to exempted categories.

By consensus of the parties, it is ordered that the names of the petitioners who belonged to exempted category shall be included when the next panel will be prepared and the petitioners shall be given preference of absorption as primary school teachers as far as practicable by the authorities. At the time of absorption if age bar stands in the way the same shall be condoned.

In spite of the said order passed by the Single Bench no action was taken by the respondents. The petitioners were compelled to file third writ petition in W.P. No. 1403 (W) of 1999. By this order the Hon"ble Mr. Justice Alok Kumar Chakraborti (as His Lordship then was) pleased to dispose of the same by directing the respondents to consider the respective claim of the petitioners for appointment as belonging to the exempted categories and disposed of the matter by a reasoned order within the period of two months from the date of communication of this order."

4. Thereafter, the respondents, Chairman, District Primary Education, heard the petitioners and examined their claims and passed speaking order which was impugned by the fourth writ petition on which the impugned judgment and order

was passed.

5. Mr. Subir Sanyal, learned Advocate, appearing for the appellant, contends that the learned Trial Judge ought not to have set aside and quashed speaking order and further directed to hear out any matter afresh. The speaking order was passed after hearing the writ petitioners/respondents and considering the law relevant on this point in terms of the judgment and order of Justice Chakraborti. According to him, consent and consensus recorded in the Division Bench judgment as well as the order of Justice Yusuf are concerned, the same are not binding upon the parties as the same is contrary to provision of law. In his submission, in sum and substance, he argues that those earlier judgments should be ignored altogether. Factually, the President found that the petitioners did not come within the purview of case of land looser as the lands of their predecessor-in-interest were never acquired, and rather their land was submerged in the Kangsabati Reservoir Project. As such they do not belong to exempted category. In the alternative, he argues, even if they come within exempted category then appointment given to the land looser is a matter of concession and such concession cannot be enforced in the writ jurisdiction as a matter of right. The logic is very simple as for acquisition compensation is paid to the land losers. Therefore, there is no warrant to give any appointment as a further measure of compensation. In support of his submission he has brought the decision of the Division Bench of this Court reported in 2002 (1) CHN 404, which was also relied on by the Chairman of this Primary Council.

6. The decision cited by Mr. Sanyal is not at all applicable on the facts and circumstances of this case as it is not the issue as to whether the employment should be offered to the petitioners as being land losers or not. The issue of petitioners' entitlement of getting employment under exempted category has been settled and have been recognized earlier to a large extent by pronouncement of this Court that they should be included in the panel and they should also be absorbed under the exempted category.

7. After hearing him and after going through the records we felt that no assistance of the respondents/writ petitioners was required as the only issue is whether the learned Trial Judge is justified in setting aside and quashing speaking order and remanding the matter for fresh hearing or not.

8. In other words whether there was necessity of fresh decision or not. We have gone through the speaking order and we find that the President has made an endeavour to unsettle the settled issue by holding the petitioners do not belong to exempted category and their lands were not acquired. In our view, that such finding is contrary to the judicial pronouncement of this suit. When we read the order of Justice Ajit Kumar Sengupta (as His Lordship then was) dated 19th May, 1988, wherein His Lordship was pleased to record them that the petitioners were invited for taking interview from and amongst exempted category and they were empanelled as such the respondents were directed to issue letter of appointment there was no scope to decide this point once again. However, this judgment was

appealed against but the aforesaid findings of Justice Sengupta was not set aside or quashed in the appeal Court by order dated 21st August, 1990 which has made clear that the parties agreed that the names of the writ petitioners may be sympathetically considered for being added in the next panel for the purpose of appointment of primary teacher. Subsequently by an order dated 18th November, 1991, Justice K. M. Yusuf (as His Lordship then was), it has been specifically recorded amongst other that a panel was prepared on 19th September, 1991 but in view of that panel the names of the petitioners do not figure because they belonged to exempted category. By this order it was provided as follows:

"By consensus of the parties, it is ordered that the names of the petitioners who belonged to exempted category shall be included when the next panel will be prepared and the petitioners shall be given preference of absorption as primary school teacher as far as practicable by the authorities."

9. In view of the aforesaid successive pronouncement of this Court there is no manner of doubt that the petitioners belonged to exempted category and were eligible to be considered for the appointment. But the President of the District Primary School Council has really up-set the findings as above, holding that the petitioners failed to prove that they belong to exempted category. Such finding cannot be accepted at all as the same is in essence nullifying judicial pronouncement and the same is accordingly void.

10. It is, of course, contended by Mr. Sanyal that the orders of the Division Bench and the Single Bench of Justice Yusuf, on consent and consensus are contrary to law and the same are not binding. Such an argument, at this stage, is wholly merit less and deserved to be rejected for the simple reason, whether there has been any consent being lawfully recorded by the Court or not ought to have been raised before the same forum at an appropriate stage. No attempt has been made even today. It is not open now for the parties to challenge it before different forum and in different proceedings on the ground of validity and legality of the consent.

11. Those orders cannot be said to be void or void ab initio even if argument of Mr. Sanyal is assumed to be correct; at the highest, it may be an irregular recording. Point of irregularity or even illegality cannot be agitated in respect of judicial order in a collateral proceeding. In our view all the aforesaid orders are binding upon all the parties including the respondents.

12. Justice Alope Kumar Chakraborti (as His Lordship then was), in His Lordship's order dated 9th January, 2002, has specifically directed amongst other, to examine the claims and contentions of the writ petitioners.

13. We note that while passing the speaking order the President did not make any whisper with regard to implementation of the two orders passed by this Court as quoted above. It could not be desire of Justice Chakraborti that those two orders should be ignored, or for that matter those points are agitated at that point of time. Indeed, before the learned Trial Judge it does not appear that

those points were agitated. In view of the discussion, as above, we are of the view that the learned Trial Judge has passed correct order.

14. We, therefore, uphold the same, however, we direct the President to rehear the matter in terms of the order of the learned Trial Judge and take a decision taking note of the earlier Division Bench order and also the order of Justice Yusuf without fail, and for this purpose time limit is extended till 10 weeks from the date of communication of this order.

15. Thus the appeal fails and the same is hereby dismissed.

16. However no order as to costs.

Md. A. Ghani, J.

17. I agree.