

(1998) 07 CAL CK 0010

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 1599 of 1998

Dr. Suniti Ranjan Roy Chowdhury

APPELLANT

Vs

West Bengal College Service Commission and Others

RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 226
Contract Act, 1872 — Section 70

Citation : (1998) 2 CALLT 572

Hon'ble Judges : Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J

Bench : Division Bench

Advocate : Mr. Bhudeb Bhattacharjee and Dipak Chakraborty, Mr. Milan Chandra Bhattacharjee and Mr. Tapabrata Chakraborty, for the Appellant; Mr. P.R. Mondal and Ms. Bandana Das, for the Respondent

Judgement

S.B. Sinha, J.—This appeal is directed against a judgment and order dated 24.4.1998 passed by a learned single Judge of this court in W.P. No. 26818 (W) of 1997 whereby and where under the said writ application was dismissed. The basic fact of the matter is not in dispute. The writ petitioner/ appellant was a Reader and Head of the Department of Charuchandra College (Evening). He attained the age of superannuation on 30th July, 1994. It is not disputed that in terms of the recommendation made by the University Grant Commission, the Secretary of the Education Department issued a letter to the Registrar of the University, in terms whereof a policy decision was evolved to grant re-employment to the eligible teachers upto the age of 65 years. Such period of re-employment would be initially for a period of two years and subsequently for a period of one year or less. On 24.2.94, that is, much prior to attaining his age of superannuation the appellant filed an application for re-employment to the Principal & Secretary, Governing Body of the College, pursuant where to a resolution was adopted on 2.4.94 requesting the Secretary to take necessary steps for constitution of Screening Committee for re-employment of the appellant, whereafter a letter was sent to the Vice-Chancellor for nominating his

nominee in the Screening Committee. As despite the same no nominee was nominated in terms of the aforementioned policy decision dated 15.11.79 as contained in annexure "C" to the writ application, the Governing Body adopted a resolution allowing the appellant to continue in his post till holding of the next meeting of the Governing Body. On 29.5.95 a Notification was issued by the Deputy Secretary regarding re-employment of teachers including Principals of non-Government Colleges. As despite knowledge, the statutory authority did not nominate their nominee, a writ application was filed by the petitioner which was marked as C.O. No. 21590 (W) of 1993 and by a judgment and order dated 19.12.95 a learned single Judge of this court directed :

"The respondent No, 1 the W.B. College Service Commission is directed to place their nominee in the Screening Committee for considering the question of extension of service of the petitioner, within three weeks from the date of communication of this order and thereafter the Screening Committee will take a decision regarding the question of extension or -re-employment of the petitioner's service beyond 60 years within three weeks from the date of placement of the nominee of the College Service Commission and forward their decision to the D.P.I within a week from the date of taking of the decision and thereafter the D.P.I shall consider the matter and take a decision regarding the extension of service of the petitioner within two weeks from the date of receipt of the report of the Screening Committee and shall communicate his decision to the College Authorities and to the petitioner.

The writ application is thus disposed of without any order as to costs".

2. Despite the communication of the order to the authorities concerned including the College Service Commission, Secretary, Higher Education Department, Principal/Secretary, Charuchandra Evening College and the Director of Public instruction, West Bengal, No action was taken for a long time. The College Service Commission however nominated an expert only on 9.1.96, wherein an error having been committed in the name of the appellant to which the Principal of the College drew the attention of the Commission in terms of his letter dated 12.1.96. In February, 1996 the said error was corrected. Again on 8.3.96 the Principal of the College asked the inspector of College for placement of another expert in the Screening Committee. In the meantime, Dr. Naresh Jana, who was nominated as expert earlier had declined to function in the said capacity. Despite the same, no action had been taken for a long time. On 12.8.96 the Governing Body adopted a resolution for extension of second term employment of the appellant. As no action had been taken in the matter, the petitioner approached this court again by filing a writ application which was marked as C.O. No. 12252(W) of 1996 and by an order dated 16.12-96 S.R. Misra, J. directed the respondents therein to comply with the order dated 19.12.96 passed by G.R. Bhattacharjee, J.

3. The said order was also communicated to the respondent authorities. The University for the first time appointed a person as the new University nominee

and on 17.4.97 the College Service Commission intimated the name of Commission's nominee. On 19.4.97 the Principal of the College sent a letter to the nominees for fixing the date of meeting of Screening Committee but no reply was received, whereafter a reminder letter was issued on 6.5.97 by the Principal of the College. On 19.5.97 the appellant also through his learned Advocate demanded compliance of the order passed by this court. In September, 1997 the present writ application was filed. The petitioner however had been pressurized to submit his resignation which he did on 13.7.97.

4. The learned trial Judge refused to grant any relief to the petitioner stating :

"in the writ petition the scenario of the facts has a chequered career. It appears that the petitioner, who at the point of material time was the departmental head at the concerned College after attaining the age of superannuation. The College authorities are reported to have extended his service by way of re-employment, which, according to the submission of the parties, are required to be approved by a Screening Committee. There are earlier writ petition. The allegation is now that for one reason or other, the Screening Committee could not arrive at a decision because of the reluctance of some of the members of the Screening Committee to participate in the said meeting. Within the date-time, the concerned court was not approached. It was followed by successive applications. Now the confusion seem to have become worst confounded at this court has been told that the writ petitioner has subsequently tendered his resignation. In that view of the matter, it becomes somewhat difficult for this court to make post mortem analysis with regard to the service benefits to be accorded to an incumbent whose appointment was not regularised. If there is any residuary right flowing from the earlier order passed by the Writ Court, the petitioner is given leave to seeking direction from the disposed of writ proceeding from which there does not appear to be any fresh cause of action.

Subject to the said leave, the writ petition stands disposed of."

5. Mr. Milan Chandra Bhattacharjee, learned counsel, appearing on behalf of the appellant submits that in the back-drop of events as noticed hereinbefore would clearly shows a gross inaction on the part of the respondents. The learned counsel submits that in this situation and particularly in view of the fact that the appellant had since submitted his resignation, the respondents should be directed to pay the arrears of salary as also the retiral benefits.

6. Mr. Bhudeb Bhattacharjee, learned counsel, appearing on behalf of the State however submits that keeping in view the tenor of the policy decision of the State as contained in annexure "C" to the writ application, it would appear that the appellant was not entitled to obtain re-employment as a matter of course. According to the learned counsel, the question of getting salary would arise provided his service was found necessary by the Screening Committee and sanction therefore was made.

7. Mr. P.R. Mondal, learned counsel appearing on behalf of the College Service

Commission adopted the said submissions and added that in this situation the appellant must be held to have rendered voluntary service.

8. The case, in our opinion, depicts a sordid state of affairs. All the respondents are State within the meaning of Article 12 of the Constitution of India. Article 14 of the Constitution of India mandates all the limbs of the State to see that no citizen is denied equal opportunity of law and equal protection of law. Fairness and reasonableness are embedded within the framework of Article 14 of the Constitution of India.

9. If the State fails and neglects to perform the statutory duty within the reasonable time, the High Court has the competence and Jurisdiction to issue a writ of or in the nature of Mandamus directing the respondents to do so. However in the earlier writ application the State, College authority and the University were impleaded as parties and they were at all material time aware of the fact that the appellant had been working in the said College at the instance of the Governing Body. It is the contentions of the State and the College Service Commission that for the aforementioned action of the Governing Body they were not liable. Admittedly the respondents failed to perform their duties as contemplated in the resolution dated 15.11.79 as amended from time to time. Admittedly they also failed to comply with the order passed by this court.

10. Whenever a policy decision is made by the State, such a policy decision is to be implemented in letter and spirit. In our considered view it does not lie in the mouth of the State or the College Service Commission to contend that despite its obligation under the aforementioned policy decision dated 15.11.79 the case of the appellant for re-employment could not be considered by the Screening Committee. Here is a case where a person having a right to be considered for re-employment is sought to be denied therefrom by reason of inaction on the part of the respondent-authorities.

11. In this situation, this court could have initiated a proceeding of contempt as against the officers who had failed and/or neglected to comply with the court's order.

12. We, however, keeping in view the fact that the appellant has since submitted his resignation, are of the opinion that both in law and in equity the appellant deserves to be compensated in monetary terms. It may be true that the re-employment of the appellant was not in the strict term of the said policy decision dated 15.11.79. But the said policy decision does not have the force of the statute.

13. It is accepted by Mr. Bhattacharjee, learned counsel for the State that the College authorities are the limb of the State in the matter of imparting of education to the students. The College authorities were the appointing authority as also the disciplinary authority. The College authority was merely acting in terms of the policy decision of the State itself.

14. We are, therefore, of the view that the petitioner/appellant should be paid his salary from the date of his retirement for the period he actually worked, but and for the purpose of grant of retrial benefits the age of the appellant shall be taken to be 60 years. The aforementioned direction, in our opinion, shall be in consonance with the provisions of section 70 of the Contract Act as also Article 21 and 23 of the Constitution of india. If the State in Its opinion thinks that the other respondents erred in not granting re-employment to the appellant, It may take such action including initiating appropriate proceeding as against them as is permissible in law.

15. Such payment should be made at an early date and preferably within a period of 6 weeks from the date of communication of this order.

16. It is expected that all the retrial benefits be paid to the appellant within a period of eight weeks from the date of communication of this order.

17. The impugned judgment thus cannot be upheld.

18. This appeal is, therefore, allowed to the extent aforementioned. The writ application is also disposed of with the aforementioned terms.

There will be no order as to costs.

D.B. Dutta, J.--I agree.

19. Appeal allowed to some extent