
(2017) 05 CAL CK 0028
In the Calcutta High Court
Case No : 7641(W) of 2015

Gobinda Guria

APPELLANT

Vs

The State of West Bengal & Ors.

RESPONDENT

Date of Decision : 16-05-2017

Acts Referred:

Citation : (2017) 05 CAL CK 0028

Hon'ble Judges : Arijit Banerjee

Bench : SINGLE BENCH

Advocate : Samim Ahammed,?Arka Maiti,?Utsav Dutta, Chaitali Bhattacharyya,?
Sukla Das Chandra

Judgement

1. The undisputed facts of the case leading to the present writ application are as follows.
2. The writ petitioner (in short "Gobinda") participated in the selection process for appointment to the post of Additional Para-Teacher and upon being successful in the selection process was appointed as an Additional Para Teacher at the Chandpur Upendra Nath High School (H.S.)(in short the "School"). This was in June, 2007.
3. While Gobinda was serving as a Para Teacher in the said School, a complaint was lodged against him by one Madhumita Mondal alleging that Gobinda had behaved in an indecent manner with her. On the basis of such complaint, which was lodged on 4 July, 2007, the Managing Committee of the School discharged Gobinda from the post of Additional Para Teacher by adopting a resolution on that date itself i.e. 4 July, 2007.
4. Gobinda challenged the said resolution of the Managing Committee of the School by filing WP 4562(W) of 2009. Tapabrata Chakraborty, J. passed an order dated 25 April, 2014 holding that the impugned resolution was violative of the principles of natural justice inasmuch as Gobinda had not been granted any opportunity of hearing prior to such resolution being adopted. Accordingly, the

His Lordship set aside the impugned resolution. The operative portion of the said order reads as follows:- "Mere expiry of the panel during pendency of the legal proceeding cannot defeat the claim of a candidature for appointment to the post. Such proposition would be explicit from the judgment delivered in the case of Nirupama (Roy) Barmanvs.- State of West Bengal and Others, reported in (2013) 2 CLJ page 462.

Accordingly, I direct the petitioner to make a representation for engagement to the said vacant post of additional para teacher in the said School. The said representation should be made inclusive of all relevant documents to the respondent No. 3 within a period of three weeks from date.

Upon receipt of the said representation, the respondent no. 3 shall consider the same upon granting an opportunity of hearing to the writ petitioner and the said school authorities and shall pass a reasoned order in accordance with law.

The entire exercise should be concluded within a period of twelve weeks from date.

Needless to observe, in the event that the petitioner's claim deserves acceptance, necessary follow up steps should be taken by all the respondents for engagement of the petitioner to the post of additional para teacher in the concerned school."

5. Pursuant to such order Gobinda Made a representation dated 14 May, 2014 to the District Project Officer, Sarva Shiksha Mission, Howrah.

6. It appears that on 26 July, 2007 the School Management Committee had adopted another resolution to the effect that since Gobinda had failed to produce the residential certificate as a resident of VEC Balichaturi- X before the School Authority as asked for, his engagement to the post of para Teacher in the said School was treated as cancelled.

7. The District Project officer held a hearing on 25 July, 2014 and passed a reasoned order on the same date. He held that the office records and all available documents point to the fact that Gobinda was a resident of earlier VEC-10 which became VEC 7 and no physical verification report was available which contradicted that fact. Hence, there was no valid ground for cancellation of the candidature of Gobinda. As regards Gobinda's prayer for reinstatement, the District Project Officer held as follows:- "As regards to the appeal of Sri Gobinda Guria, at this point of time there is no such provision to reinstate him to his former post of para-teacher in Chandpur Upendranath High School because of the order of the State Project Director, PBSSM vide Memo No. 278(20)Ped/PBSSM/2010 dtd. 27.03.2010,"if any para teacher engaged previously in any schools, leaves the job or has already left the job or if his position falls vacant due to any other person, the vacant position also shall not be filled by engagement of Para- Teachers and the position shall lie sine die till if it is filled up through regularly recruited teacher(s)."

With the above observation, the matter is disposed of."

8. The said order dated 25 July, 2014 passed by the District Project Officer was challenged by Gobinda by filing WP 30053(W) of 2014. Dipankar Dutta, J. passed an order dated 9 February, 2015 disposing of the said writ application, the operative portion whereof reads as follows:- "Having heard the learned advocates for the parties, I am of the considered view that the DPO has failed to interpret the terms of the order dated 27th March, 2010 in the proper perspective. The work "position falls vacant due to any other reason" has to be read ejusdem generis "leaves the job" or "has already left the job"; the embargo imposed by the Government Order dated 27th March, 2010 would not apply in a case where a vacancy occurs because of the para teacher being thrown out of service without justifiable ground. Since the DPO has given a positive finding to the effect that the petitioner was illegally deprived of the post which was held by him, I hold that the order dated 27th March, 2010 could not have been applied to his detriment and prejudice.

The writ petition, accordingly, stands disposed of with a direction upon the DPO to reconsider the question of the petitioner's re-engagement as a para teacher in the light of the above observation. Let the appropriate order be passed by the DPO as early as possible, but not later than three weeks from the date of receipt of a copy of this order."

9. Pursuant to the said order, the District Project Officer, SSM, Howrah passed an order dated 4 March, 2015 which is impugned in the present writ application. The operative portion of the impugned order reads as follows:- "Gobinda Guria joined the post of para-teacher for a contractual basis of one year in Chandpur Upendra Nath High School on 18.06.2007. Being the 1st empanelled candidate he was discharged from the post of para-teacher by Managing Committee on 04.07.2007. Ishaque Ali Mollah being the 2nd empanelled candidate joined the post of para-teacher in the said school on 23.08.2008 and continued till 27.11.2013. After resignation of Ishaque Ali Mollah on 28.11.2013 a vacancy is created and for filling up this vacancy new recruitment process will have to be initiated since as per G.O. No. 7196-F(P), Kolkata, the 2nd July, 2010 issued by the Finance Department (Subject: Instruction regarding preparation, cancellation, appointment out of panels for filling up the non-PSC posts.), "A panel should not remain valid for more than a year. The panel will automatically stand cancelled when all the notified vacant posts are filled up from the panel within the said one year validity period of the panel."

Therefore, the previous panel prepared on 27.04.2007 for the post of para teacher of English in Chandpur Upendra Nath High School is no longer valid.

Also as per order of Secretary of the Govt. of West Bengal, School Education Department vide memo No. 376-SE(Pry) dated 09.06.2010, "No new engagement of Para Teacher or any other category of employees can be made after issue of this order."

Therefore, no new recruitment can be done against the said post.

As per memo No. 154/PD/PBSSM/2011 dated 27.07.2011, State Project Director, PBSSM has stated that "the concept of para teachers was a purely temporary measure to combat the adverse PTR in the schools". The State Project Director also stated that "there has been sea change in both the law and government policy regarding engagement of any teaching personnel in the schools especially as the government policy is our functioning."

Therefore, the representation of Sri Gobinda Guria being a candidate of the panel prepared on 27.04.2007 cannot be considered and hence his reengagement is not possible keeping in view the existing Government Policy."

10. Learned Counsel for Gobinda submitted that the reliance placed on GO No. 7196-F(P) dated 2 July, 2010 issued by the Finance Department and on the Memo No. 376-SE(Pry) dated 9 June, 2010 issued by the School Education Department, Government of West Bengal, by the District Project Officer was misplaced. The issue of expiry of panel was decided by order of this Court dated 25 April, 2014. No appeal was preferred from the said order and hence, the same has attained finality. He submitted that the School Education Department's Memo dated 9 June, 2010 would have no manner of application since this is not a case of new engagement but is a case of re-engagement. He submitted that the entire basis of the impugned order is erroneous. He referred to a memorandum dated 23 April, 2010 issued by the School Education Department (Annexure 13 to the writ petition) and relied on paragraph 2 of the said memorandum which reads as follows:- "All the existing Para teachers and others will now be re-engaged by the Government Officials in the manner to be notified in due course for a period of 1 (one) year subject to renewal till they attain 60 years of age or till the Sarva Siksha Project is winded up, whichever is earlier. But no new Para teacher or other contractual employee shall be engaged by any authority except with prior written approval of this Deptt."

Learned Counsel submitted that since Gobinda was wrongly discharged from service, he should be re-engaged in terms of paragraph 2 of the aforesaid memorandum.

11. Learned Counsel for the State submitted that there has been a complete change of policy. Appointment of Para-Teachers was a temporary policy which had been adopted in connection with the Sarva Shiksha Mission. Appointment of Para-Teachers was made on a purely contractual basis for a specified period of time. After expiry of such specified period, the concerned Para-Teacher had no right to have the contract renewed. Renewal of the contract was entirely at the discretion of the employer. From 2010 the State has adopted a policy of not engaging Para-Teachers.

12. Learned Counsel further submitted that admittedly Gobinda's appointment was contractual and initially for a period of one year from June, 2007. He was discharged from service prior to completion of one year tenure. If the discharge

has been found to be wrongful, at best Gobinda can claim monetary compensation for wrongful discharge. However, Gobinda cannot claim the benefit of the School Education Department's Memo dated 23 April, 2010. That memo applies only to those who were in service as Para-Teachers on the date of issuance of that memo. Even if Gobinda had not been discharged, his contractual tenure would have come to an end in 2008 and there is no guarantee that his service contract would have been renewed. Hence, there is no guarantee that as on 23 April, 2010 he would have still been serving as a Para-Teacher. Thus, Gobinda's prayer for re-engagement on the basis of the Memo dated 23 April, 2010 is not maintainable.

13. I have considered the rival contentions of the parties.

14. It is not in dispute that Gobinda was engaged as an Additional Para- Teacher on 18 June, 2007. He was directed to dis-continue on 28 June, 2007. Two resolutions were passed by the Managing Committee of the concerned School. The first one was on 4 July, 2007 on the basis of a complaint made against Gobinda alleging indecent behavior towards a lady. By the said resolution he was discharged from service. This resolution has been set aside by this Court by its order dated 25 April, 2014. The said order has attained finality since the same was not carried up in appeal by any of the concerned parties.

15. The second resolution was adopted by the Managing Committee of the School on 26 July, 2007, whereby the candidature of Gobinda was treated as cancelled on the ground that Gobinda was unable to produce any document/certificate to the School evidencing that he was a resident of VEC 10. The District Project Officer by his order dated 25 July, 2014 categorically held that Gobinda was a resident of erstwhile VEC 10 which became VEC 7 and hence, there was no valid ground for cancellation of Gobinda's candidature. This finding has not been challenged by any of the concerned parties. It is a finding of fact by a competent officer and is binding on the parties not having been assailed in an appropriate forum.

16. Hence, it is conclusively established that the discharge of Gobinda by the School Authorities was wrongful and unlawful. The issue as regards whether or not Gobinda can be engaged since the panel for the concerned year has expired, has also been decided by this Court by its order dated 25 April, 2014. It has been categorically held that mere expiry of the panel during pendency of legal proceeding cannot defeat the claim of a candidate for appointment to the post and in this connection reliance was placed by the learned Judge in the case of *Nirupama (Roy) Barman-vs.-The State of West Bengal & Ors.*, (2013) 2 CLJ 462. This finding has also become final.

17. The only question is that whether the change of Government policy should stand in the way of re-engagement of Gobinda. In my opinion, it should not. The policy of the Government as reflected in the Government Orders and memorandum issued by it is prospective in nature. It cannot have retrospective

operation. The policy is not to engage new Para-Teachers. However, the re-engagement of Gobinda would not be a new appointment.

18. In view of the aforesaid, the impugned order dated 4 March, 2015 is set aside. The respondent no. 3 is directed to re-engage/reinstate the writ petitioner in the post of Para-teacher(English) in the Chandpur Upendra Nath High School (H.S.) in terms of his appointment letter for the unexpired period of his tenure treating his discharge from service on 4 July, 2007 to be ineffective.

19. I do not express any opinion as to whether or not the petitioner will be entitled to get the benefit of the memorandum dated 23 April, 2010 issued by the School Education Department, Government of West Bengal, (annexure 13 to the writ petition) and that is also not the prayer of the writ petitioner.

20. WP No. 7641(W) of 2015 is accordingly disposed of, without, however, any order as to costs.

21. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.