

(1988) 08 CAL CK 0022
In the Calcutta High Court
Case No : F.M.A.T. No. 2490 of 1988

Gopal Chandra Panda

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-08-1988

Acts Referred:

Citation : 93 CWN 592

Hon'ble Judges : Pabitra Kumar Banerjee, J;G.N. Ray, J

Bench : Division Bench

Advocate : Rabilal Maitra and N.K. Das, for the Appellant;J.N. Maity and Manoranjan Das, for the Respondent

Judgement

G.N. Ray, J.—This appeal is directed against an order dated the 26th July, 1988 passed by the learned trial Judge disposing of the writ petition in C R. No. 10883 (W) of 1987. The appellant Gopal Chandra Panda was a teacher of Birulia Pitambar High School and after attaining the normal age of superannuation, he applied for extension of his service. It appears that he obtained the first extension of his services for one year. Thereafter, he made an application for extension for the second term by another year and initially the Managing Committee recommended such extension for the second time for one year. But it is the case of the Managing Committee that while the recommendation of the Managing Committee for second extension was pending for consideration before the District Inspector of Schools, the health of the teacher deteriorated considerably and the said teacher became seriously ill and he himself made an application before the Managing Committee for grant of medical leave on the ground that he was unable to discharge the duties and functions as a teacher and it was not possible for him to indicate as to how long he would remain on medical leave. The Managing Committee thereafter took a resolution that in view of the change in the condition of health of the said teacher, the original resolution recommending him for getting extension for a full one year for the second term should stand modified and extension for second time should be given up to the

30th June, 1987. The District Inspector of Schools, however, did not accord approval either on the basis of original resolution of the Managing Committee or on the basis of revised resolution for giving the second extension for a period up to the 30th June, 1987. The District Inspector of Schools, by his Memo dated the 10th November, 1987, accorded approval of extension up to the 9th June, 1987 and intimated the Managing Committee that the service of the teacher should stand terminated with effect from 10th June, 1987. The concerned teacher who is the appellant in this appeal after sometime obtained a Medical Certificate to the effect that he had recovered from the illness and it appears that on the basis of such representation that he had recovered from illness, the District Inspector of Schools purported to recall his earlier order and purported to accord approval for extension of the services of the said teacher for the second term for full one year, namely, up to the last day of February, 1988. It is the case of the Managing Committee that the said teacher is suffering from cancer of prostate gland and he is completely unable to discharge his functions as a teacher and he had to be literally carried on to the school by others. It is also the case of the Managing Committee that the said teacher was not granted medical leave for the entire period of absence and his unauthorised absence has resulted in the break in his service and unless the concerned teacher had continued in service without any break the teacher concerned was not entitled to get second extension for full one year. The Managing Committee, therefore, did not allow him to resume his duties and functions as teacher on the basis of revised order of the District Inspector of Schools. It was at this stage that the appellant moved the writ petition before this court inter alia asking for appropriate writ or order for enforcing the revised order of the District Inspector of Schools by which the District Inspector purported to accord approval to the said Teacher for extension of service for the second term for full one year. The learned trial Judge, however, dismissed the writ petition after a contested hearing and it was, inter alia, held by the learned trial Judge that the District Inspector of Schools not having agreed to accord extension on the basis of the recommendation of the Managing Committee initially made or on the basis of subsequent resolution should have referred the matter under Rule 28(2) of the Rules of Management of the Aided Schools to the Director of Secondary Education. But the District Inspector of Schools had no authority to pass the order of extension only upto June 9, 1987. He had also no authority to pass the subsequent order according approval for the second term for one year on consideration of a subsequent medical report. In that view of the matter, the writ petition made by the appellant was dismissed by the learned trial Judge and the instant appeal has been preferred against the said order. After hearing the respective submissions of the parties and having considered the facts, it appears to us that the District Inspector of Schools, under the Rules of Management of the Aided Schools, could accord approval on the basis for extension to be given to a teacher. But the District Inspector of Schools had no power to disapprove such recommendation and pass an order for extension for any other period. If, however, he was not within to accord approval as per the resolution of the Managing Committee, then his reasons for not according

approval were to be forwarded to the Director of Secondary Education for final decision and the Director of Secondary Education is the appropriate authority who can take a decision either in favour or against the teacher, In the- instant case, it appears that the District Inspector of Schools did not consider the case of recommendation of the Managing Committee initially made for extension of the second for one year and while such recommendation of the Managing Committee was pending consideration by the District Inspector, the Managing Committee revised its recommendation and requested the District Inspector of Schools to accord approval for extension upto the 30th June, 1987. On such revised recommendation the District Inspector of Schools could accer approval as contained in the revised resolution but unfortunately he did not accept such recommendation but purported to accord approval only upto 9th June, 1987 and specifically directed that, the service of the teacher would stand terminated with effect from 10th June, 1987. Such order of the District Inspector of Schools appears to be without jurisdiction. If he was not willing to approve the resolution of the Managing Committee for granting extension the matter ought to have been referred to the Director of Secondary Education with his reasons for disapproval. There was also no occasion for him to recall his earlier order and pass the subscquent order purporting to grant extension for the second time for full one year on the basis of a subsequent medical report. As the writ petitioner moved the writ petition for implementing the second order which was without jurisdiction whatsoever, in our view, the learned trial Judge has rightly rejected the writ petition inter alia on the view that the said order of the District Inspector could not be given effect to.

2. It, however," appears to us that the maximum period which can be granted for second extension has lapsed in the meantime. But still then the question of consideration for second extension may be germane even today for the purpose of deciding as to whether or not the concerned teacher was eligible to get second extension and if so what extent. In our view, such consideration is required to be made for two reasons, namely, for enabling the teacher to get the effect of approval for the second time if extension is granted by the Director of Secondary Education pursuant to the recommendation of the Managing Committee and secondly to enable him to ask for further extension in the event such extension for the second time is given to him and he is not otherwise disqualified for further extension. In the aforesaid circumstances, we do not think that the writ petition has become infructuous because of the lapse of time.

3. It, however, appears to us that in the meantime, there has been an" enquiry made by the Assistant Inspector of Schools under the direction of the District Inspector of Schools to verify whether the teacher had physical and mental ability to teach the students effectively. Such report could not however be taken into consideration in view of the pendency of the writ petition. We, therefore, dispose of this appeal by directing that the recommendation of the Managing Committee initially made along with the modified resolution of the Managing Committee for extension of the service of the teacher for the second time upto

the 30th June, 1987 be forwarded by the District Inspector of Schools to the Director of Secondary Education in view of the fact that the District Inspector of Schools was not willing to accord approval on the basis of the recommendation made by the Managing Committee of the said School but he was of the view that the extension for second term should be upto 9th June, 1987. The Managing Committee of the School in the meantime, received representations by the guardians of the students of the School about the physical and mental disability of the concerned teacher and an enquiry about the teaching capability of the teacher was also held. The Director of Secondary Education should, therefore, take into consideration all these materials and decide as to whether or not the concerned teacher deserved a second extension and if so up to what period. Since the matter is pending for a long time it is reasonably expected that the Director of Secondary Education would finalise the matter as early as possible, preferably within two months from the date of communication of this order., It has been strenuously argued by the learned counsel appearing for the Managing Committee that if a teacher was not of good health and incapable of imparting education as a teacher in the School, his case for extension should not be approved and it was immaterial whether subsequently he had regained his condition of health. The learned counsel has also contended that admittedly the concerned teacher had been suffering from cancer of the prostate gland and it cannot be reasonably contended that he had the proper physical capability for which he deserved second extension for any period beyond June 1987. That apart, even if it is assumed that he recovered from his ailment to some extent subsequently, that by itself will not enable him to get second extension as a matter of course. A teacher will not only possess sound health but must have full alertness of mind also so that he can discharge the duties and functions as a teacher and the interest of the large number of students should not be lost sight of in the anxiety to give benefit to a teacher. The learned counsel has also contended that the enquiry held by the Sub-Inspector of School has revealed a very sorry picture about the teacher's mental capability to teach the students. As the matter of second extension was subjudice, such report could not be considered. we, however, do not intend to express any opinion about the eligibility of the concerned teacher because such consideration, in our view, should not be made by this Court and must be left to be decided by the appropriate authority who in the instant case is the Director of Secondary Education. There is no manner of doubt the Director of Secondary Education being a very senior and responsible officer of the Education Directorate will take into consideration all facts and circumstances relevant for taking decision in the matter of extension and dispose of the matter in accordance with law.

The appeal is accordingly disposed of without cost treating the same as on day's list for hearing. All applications are also disposed of.

Pabitra Kumar Banerjee, J.

I agree.