
(1975) 02 CAL CK 0008
In the Calcutta High Court
Case No : Civil Rule No. 762 (W) of 1973

Gour Hari Dutta

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-02-1975

Acts Referred:

Bengal (Rural) Primary Education Act, 1930 — Section 66(2)
Bengal (Rural) Primary Education Rules, 1930 — Rule 3, 3(1), 3(2), 3A, 3B(1)

Citation : (1976) 1 ILR (Cal) 107

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra, Mahitosh Mazumdar and Suproakash Banerjee, for the Appellant; Nagendra Mohan Saha and Jamini Kumar Banerjee, for the Respondent

Judgement

P.K. Banerjee, J.—This Rule is at the instance of the Petitioners who contend that they are the teachers-in-opposition as also, it is alleged, organiser teachers of Radhanagar Free Primary School under the Burdwan District School Board. The Petitioners have challenged the appointment of the Respondents Nos. 14, 15 and 16 as organiser teachers of the said school in preference to the Petitioners. The Petitioners' case is that on or about November 1, 1968, the villagers of Radhanagar established the school which started functioning on certain plots of land and the management of the school vested in the Management Committee formed by the local people present in the meeting held on October 24, 1968. In the said meeting the Respondents Nos. 14, 15 and 16 were appointed as teachers of the said school. It is alleged that the Respondent No. 14 resigned from the post of teacher with effect from January 27, 1969 and on the same date the resignation was accepted and the Petitioner No. 1 was appointed Headmaster of the school with effect from February 1, 1969. At a meeting of the Managing Committee held on February 17, 1969, it dismissed the Respondent No. 16 from service on the basis of charges levelled against him. After the said dismissal, the Managing Committee of the school at its meeting held on February 21, 1969,

appointed the Petitioner No. 2 as a teacher of the said school in place of the Respondent No. 16 with effect from February 26, 1969. Accordingly, the Petitioner joined the service in the said school. On December 12, 1969, the Managing Committee of the school appointed the Petitioner No. 3 as a teacher of the said school with effect from January 1, 1970. With effect from August 25, 1972, the Respondent No. 15 continuously absented himself from the school and he left the service of the school voluntarily. It is alleged that after their appointment, the Petitioners herein have all along been performing their duties efficiently and satisfactorily and that there was no complain against the Petitioners. It appears that the Respondent No. 13 inspected the school on February 7, 1972 and found that the Petitioners were all working since their appointments and after inspection the Respondent No. 13 submitted report to the Respondent No. 3 that all the Petitioners along with the Respondent No. 15 were serving in the school. The school was granted recognition by the State Government with effect from July 15, 1972. After recognition the Respondent No. 13 inspected the school checked up the relevant records as also the relevant roll of the teachers and the said Respondent also found that the Respondents Nos. 14 and 16 were not in service of the school on the ground of resignation and dismissal. The Respondent No. 14 thereafter submitted report to the Respondent No. 3 stating the actual teachers strength of the school. It is alleged that pursuant to the Government's policy to appoint teacher in the primary school after granting recognition, each of the Petitioners received a notice on January 11, 1973, whereby the Petitioners were directed to appear for interview before the District Selection Committee. In the said letter, which is annex. "A" to the petition, the Petitioners were stated to be organiser teachers of the school. It appears further that the Petitioners appeared before the said Selection Committee for an interview. It is stated that even though the Respondents Nos. 14, 15 and 16 were not in service, they received a letter for interview from the Respondent No. 3. The Selection Committee, however, was in favour of appointment of the Respondents Nos. 14, 15 and 16 though, it is alleged, that they were not in service at all. It is also alleged by the Petitioners that the Selection Committee refused to see the relevant papers of the Petitioners in support of their claim for appointment and also found that the selection of teachers was going to be made not in accordance with law but on other extraneous political consideration. Be that as it may, the Selection Committee forwarded the list of organiser teachers and teachers-in-opposition to the Director of Public Instruction for approval. It is alleged that the D.P.I, himself did not apply his mind in the matter and in fact, the Special Officer of the department approved the list. On the basis thereof, letters of appointment were sent to the Respondents Nos. 14, 15 and 16 and the Petitioners' appointment was not at all considered by the D.P.I. Being aggrieved by the said appointment of the Respondents Nos. 14, 15 and 16, the Petitioners Nos. 1, 2 and 3 moved this Court and obtained the present Rule.

2. While issuing the Rule ad interim order was given only to the extent that the

Petitioners would continue as organiser teachers but would not be paid salary pending the hearing of the Rule and the question of salary will be decided on the result of the Rule.

3. Mr. Nagendra Mohan Saha appeared on behalf of the District School Board, Burdwan and Mr. Jamini Kumar Banerjee for the Director of Public Instruction before me. It is argued by Mr. Nagendra Mohan Saha that the Selection Committee recommended the names of the Respondents Nos. 14, 15 and 16 which were approved by the D.P.I. On such approval, being communicated by letter dated August 21, 1972, the appointment was made. Mr. Jamini Kumar Banerjee appeared before me on behalf of the Director of Public Instruction and filed affidavit, the relevant portions of which are set out below:

4. With reference to the statements made in paragraph 10 of the said application I say that the State Government does not grant recognition to such schools. The Director of Public Instruction only approves the proposals submitted by the District Inspector of Schools (P) who is the Administrator of the Board.

5. With reference to the statements made in paragraph 20 of the said application I say that the Director of Public Instruction, West Bengal, approved the cases submitted by the District Inspector of Schools (P), District School Board, Burdwan. The Advisory Committee of the Board advises the District Inspector of Schools (P) who has the authority to agree or disagree with their recommendations. The Directorate therefore considers the proposals as the proposals of the District Inspector of Schools (P) unless the District Inspector of Schools (P) gives his note of dissent. In this case the District Inspector of Schools (P) considered the recommendations of the Advisory Committee, but in taking decision he applied his mind and acted upon his own discretion and as such, the approval of the proposal of the District Inspector of Schools (P) is valid and legal.

4. It appears from the said affidavit that the D.P.I, did not personally approve the case or does not consider the proposal unless the District Inspector of Schools (P) gives his note of dissent to the list sent by the Advisory Committee. It is, however, stated that by taking decision the District Inspector of Schools has applied his mind and acted on his discretion and as such, the approval of the District Inspector of Schools is valid and legal.

5. Before submissions of the parties are considered, it is convenient for me to set out the Rule as amended by notification dated October 26, 1971, in respect of the appointment, more so, of the appointment of the organiser teachers or teachers-in-opposition. The said Rule was framed in exercise of the power conferred by Clause (p) Sub-section (2) of Section 66 of the Bengal (Rural) Primary Education Act, 1930. The relevant Rules with which we are concerned are Rules 3(1), 3(2), 3A, 3B(1), 3B(2), 3B(3) and 3D which run as follows:

3(1). A Board shall appoint teachers, whether temporarily or substantively, only from the panel of qualified teachers for the district forwarded by the Director of

Public Instruction, West Bengal and in accordance with the directions, if any, given by him.

3(2). In issuing letters of appointment, Board shall ensure, as far as possible, that a person is appointed as a teacher in the school which is nearest to his residence. This, however, shall not be construed to mean that he cannot be appointed elsewhere or transferred subsequently to any other school, if the Board so considers necessary.

3A. No name shall be forwarded by the Director of Public Instruction, West Bengal, for appointment under a Board unless it has been included in the panel of qualified teachers prepared for the district after adequate publicity and in the manner provided in Rule 3B.

3B(1). The Director of Public Instruction, West Bengal, may, with the approval of the State Government, set up a Selection Committee in each district to assist him in selecting suitable persons from amongst the candidates for inclusion in the panel of qualified teachers for the district.

3B(2). The Selection Committee may hold such tests including interview, as they may deem proper and necessary, for the candidates; but it is open to the Selection Committee to call only those amongst the candidates they may consider suitable. The interview and other tests shall be held at a convenient place or places in the district or with the proper approval of the State Government outside the district.

3B(3). The Selection Committee shall send their list of names of qualified persons recommended by them to the Director of Public Instruction, West Bengal, who may modify or alter the list. Only the names as finally approved by the Director of Public Instruction, West Bengal, shall be included in the panel for the district.

3D. Notwithstanding anything contained in Rule 3, Rule 3A or Rule 3B, subject to the provision of Rule 3C, a qualified person serving as organiser teacher in a primary school, ever since that school was established, may be appointed, with the prior approval of the Director of Public Instruction, West Bengal, as an assistant teacher of the school at the time it is granted recognition.

6. On perusal of this Rule it will be clear that the appointment letter will be issued by the District School Board only from panel of qualified teachers for the district approved by the Director of Public Instruction, West Bengal and in accordance with the directions, if any, given by the D.P.I. No name will be forwarded by the D.P.I, for appointment unless it is included in the panel of qualified teachers prepared for the district. In the matter of selection of such qualified teachers it has been provided that the Selection Committee will have to be set up in each district to assist him in selecting suitable persons from amongst the candidates for inclusion in the panel of qualified teachers for the district. The Selection Committee may hold tests, interview etc from amongst the candidates

whom they may consider suitable. After the selection of the qualified persons, a list of such persons will be sent to the Director of Public Instruction who may modify or alter the list. The only names in the list which are approved by the D.P.I., shall be included in the panel for the district and appointment must be made from the said approved panel.

7. In the present case, however, Mr. K.K. Moitra argued on behalf of the Petitioners that from the records as produced and from the affidavit on behalf of the Director of Public Instruction it is clear that the Director of Public instruction did not give approval to the list. The case of the District School Board is that they have made appointments on the basis of the list as approved by the D.P.I.

8. Rule 3B(3) makes it clear that the power of approval of the list of qualified persons recommended by the Selection Committee vests in the Director of Public Instruction, West Bengal, alone and he alone has the power to modify or alter the list. This is a statutory power given under the statutory rules to the Director of Public Instruction. The Director of Public Instruction has no power to delegate this power to any of his subordinates or any other authority. When a power is given to a particular authority by a statute unless the statute provides for delegation of the power to any other authority, the delegation cannot be read into the said Rules. In the present case, it appears from the record as produced that there was a, blanket approval by the Deputy Secretary of the State Government which is annexed as annex. "A" to the affidavit-in-opposition on behalf of the Director of Public Instruction. It will appear that the said memorandum is nothing but a policy decision in respect of preference being given for appointment to the organiser teachers and teachers-in-opposition. It has been stated that such teachers, who possess minimum, academic qualification prescribed for the post, should be appointed with prior approval; of the D.P.I. and that the existing teacher-pupil ratio 1:40 will have to be maintained. In my opinion, this letter cannot by any stretch of imagination be said to be an approval of the Director of Public Instruction in respect of the qualified persons recommended by the Selection Committee for appointment as teachers of primary schools. But the Respondents contended that the letter dated August 25, 1972, is a document by which the Director of Public Instruction sought to approve the list of qualified teachers. It is stated that the list forwarded by the District School Board, Burdwan, was approved by letter dated February 27, 1973. The Court directed Mr. Banerjee to produce the approval by the Director of Public Instruction himself. Rule 3B(3) provides that the Director of Public Instruction himself can modify or alter the list and unless approved by the Director of Public Instruction, the name of the teacher cannot be included in the panel of qualified teachers for the district and the Board can only appoint teachers from the said panel. Unfortunately, however, no such paper has been produced before me. In fact, it has been stated that no such approval by the D.P.I., is in the record. In my opinion, under Rule 3B(3) of the Rules framed under the Bengal (Rural) Primary Education Act, 1930, it is incumbent on the part of the Director of Public Instruction himself to consider the list and to

approve the same. In doing so, he has power to modify or alter the list. In the present case, however, the Director of Public Instruction has not considered himself the list at all in accordance with Rule 3B(3) read with Rule 3(1) of the Rules framed. In my opinion, therefore, the order of appointment in violation of Rule 3(1) read with Rule 3B(3) of the Rules cannot be supported and must be held to be illegal and without jurisdiction.

9. Mr. Moitra, however, contended that under Rule 3B(3) it is incumbent on the part of the Director of Public Instruction to hear the Petitioners before approving the list. In my opinion, to that extent I must hold that Mr. Moitra's contention cannot be correct. It is for the Director of Public Instruction to consider the list himself and thereafter, either to approve or modify or alter the list. In so doing, no question of hearing does arise. But, Mr. Moitra contended that under Rule 3D if a person has minimum qualification and is serving as organiser teacher ever since the school was established, he may be appointed with prior approval of the Director of Public Instruction as assistant teacher at the time it was granted recognition. It is argued by Mr. Moitra that the Petitioners are all organiser teachers or teachers-in-opposition and possess minimum qualification and should have been approved by the Director of Public Instruction. Mr. Moitra argued that unless representations made by the Petitioners are considered by the D.P.I., it cannot be said that the D.P.I. has applied his mind in considering the list itself before approval or modification or alteration of the list and as such, unless the hearing, is given the Petitioner cannot convince the D.P.I., that they are organiser teachers of the school. In my opinion, this argument cannot be correct. The Petitioners have appeared before the Selection Committee and the Selection Committee is to make recommendation. The Petitioners had produced all their records before the Selection Committee and the Selection Committee forwarded their selection with their recommendations which will have to be considered by the D.P.I and the D.P.I, alone is to come to decision on the point. It has been held by the Supreme Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , that even the executive action of the authorities must act justly and fairly. If the Petitioners contend that they are the organiser teachers though they were not recommended, they can certainly make representations and if such representations are made, the D.P.I., may have to consider the said representation before coming to a decision on the question of approving the list sent by the Selection Committee. But, it cannot be held that in considering the list for approval forwarded by the Selection Committee the Petitioners must be heard. The order of appointment of the Respondents Nos. 14, 15 and 16 must stand quashed. The Director of Public Instruction will reconsider the list sent by the Selection Committee in so far as Radhanagaf Free Primary School is concerned and this Rule is limited to the said school in respect of those three appointments which are challenged in this Rule.

10. While issuing the Rule the Petitioners were asked to continue as teachers of the school. But, it was directed that their salary would be subject to the result of the Rule. The Petitioners have, in fact, worked as teachers under orders of this

Court. If they have worked in the school as recognised by the District School Board, they must be paid salary for their services rendered.

11. In the result, the Rule is made absolute to the extent indicated above. There will be no order as to costs.