

(2014) 04 CAL CK 0131
In the Calcutta High Court
Case No : Writ Petition No. 14535 (W) of 2014

Gulzar Hussain

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Citation : (2014) 3 CHN 180

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Sourav Sengupta, Advocate for the Appellant; Partha Sarathi Bhattacharya, Advocate for the Respondent

Judgement

Sambuddha Chakrabarti, J.—The sole question involved in the writ petition is whether a candidate topping the panel can be superseded by the second in the panel if he does not respond in time and, if so, who can take the decision in the context of the present case. The petitioner who is a local resident applied for the post of a para-teacher. He appeared at the interview but he was empanelled as the second candidate and the respondent No. 7 herein topped the list. This was a ground of grievance for the petitioner as, according to him, he was best suited to top the list-both according to qualification as well as age. He raised an objection about the placement of the respondent No. 7 at the top and sent it to different authorities including the District Project Officer.

2. He is also aggrieved by the fact that the District Project Officer, the respondent No. 2 herein, without disposing of his objection approved the panel and the Village Education Committee (the Committee, for short) issued an appointment letter in favour of the respondent No. 7 directing him to join the school by a certain date.

3. According to the petitioner as the said respondent did not join by the date fixed the Committee called a meeting and decided to issue an appointment letter in favour of the petitioner and the President of the Committee intimated the

Headmaster of the West Chownagara High School to take steps accordingly. The petitioner joined the school and signed the agreement.

4. The problem for the petitioner started soon thereafter. According to him although he was discharging his duties he had not been granted any remuneration for the post and in the last week of June, 2007 was served with a memo. issued by the respondent No. 2 where from it appeared that he had informed the Head Teacher of the school to take necessary steps for joining of the first empanelled candidate to the post concerned. The petitioner has challenged the said decision by the present writ petition.

5. The school authorities undoubtedly supported the case of the petitioner. The Head Teacher of the concerned school has sworn the affidavit. He is also the Secretary of the concerned Committee. The answering respondents have not really shed much light on the factual aspect of the case beyond that what has been stated by the petitioner. He has also narrated the sequence of events that as the respondent No. 7 chose not to join the post the Committee called a meeting and appointed the petitioner in place of the first empanelled candidate and, accordingly a resolution was taken. The petitioner has been regularly attending the school as a para-teacher but no remuneration has been paid to him.

6. For the petitioner the real objection is from the respondent No. 2. He has affirmed an affidavit inter alia to the effect that one post of additional para-teacher was sanctioned in favour of the concerned school. The Head Teacher of the said school was working as the Secretary of the Committee and the authority engaged the additional para-teacher of the school after getting the approval from the respondent No. 2. He has very specifically mentioned that the President of the Committee or any other member has no right to engage any para-teacher in the school and only the Secretary of the Committee is empowered to engage any para-teacher subject to the approval of the respondent No. 2 who is the competent authority. The respondent No. 2 had taken steps as per the guidelines of the Sarba Siksha Mission.

7. According to the respondent No. 2 the process of engagement of additional para-teacher in a primary level school is totally dependant on the selection. In case of non-joining of the first empanelled candidate there should be clear evidence and declaration of the Secretary of the Committee recording this. But the Secretary of the Committee was kept in total darkness and the Head Teacher has done the wrongful act. A Head Teacher has no right to accept or reject any joining report for the post of an additional para-teacher in a primary level school. He has very specifically described the acts of the respondents as illegal as the petitioner was allowed to join by the Head Teacher. Therefore, the question of rendering services does not arise.

8. It may be mentioned that the respondent No. 2 had in fact gone that far to suggest that the entire incident proves that the Head Teacher had a hidden connection with the petitioner and has done everything surpassing the existing

rules and regulations for engagement of Additional Para-Teacher.

9. Thus the bone of contention between the parties boils down to two inter-dependant points: whether the respondent No. 2 without disposing of the dejection of the petitioner could approve the panel; and secondly, if he could, whether the second empanelled candidate appointed by the school could be directed to be replaced by the first empanelled candidate by the respondent No. 2.

10. The petitioner's contention in this case is that according to the concerned guideline of Sarba Siksha Mission for the recruitment of para-teachers the petitioner is bound to be placed at the first place in the panel according to his marks and age and when he found that the name of the respondent No. 7 was placed at the top of the panel he has lodged a protest by sending a letter to the respondent No. 2. His further case is that without considering his objection and subsequently without terminating the appointment of the petitioner the respondent No. 2 could not issue any letter directing the Head Teacher of the school to appoint the respondent No. 7. He has repeatedly mentioned that according to the qualification and age he was bound to be placed at the top of the panel. The petitioner has further mentioned that for the appointment of the para-teacher there is no provision for viva voce or interview and appointment should be made according to the marks and age of a local candidate.

11. The contention of the petitioner is, however, not borne by the guideline for the appointment of para-teachers. On the contrary the memo. dated February 20, 2004 supports the contention of the respondent No. 2 that a para-teacher may be appointed though an interview and a special committee has already been framed by the said Project Director. It has been specifically provided that the appropriate committee shall prepare a panel on the basis of interview, educational qualification, vocational experience, age etc. and this panel shall be sent to the Sarba Siksha Mission Committee of the district through appropriate special committee for final approval. Thus, it cannot be said that interview has no place in the selection process of a para-teacher and consequently the contention of the petitioner that he was bound to be placed at the top of the rank according to the qualification, age etc. must fail.

12. The concerned guidelines further provide that the Committee or the Secretary of the Managing Committee shall enter into a contract with the teacher concerned for one year within a certain time according to the approved panel. Here the petitioner has some scope to make a grievance. If the appointment is to be made on the basis of the approved panel the school should offer appointment to the first empanelled candidate. The second empanelled candidate may be appointed only if the first empanelled candidate does not join within the time stipulated in the appointment letter and this is precisely what has happened here. It may be that the Committee have not been informed or in the process there were certain irregularities. But this was a mere irregularity and the appointment of the petitioner could not be cancelled by the District Project

Officer (respondent No. 2) merely because the school authorities had not informed the Secretary of the Committee.

13. I find no justification in the submission made by the respondent No. 2 that in the present case the Secretary of the Committee was kept in the dark and the Head Teacher had done the wrongful act ignoring the fact that the Head Teacher was also working as the Secretary of the council. The petitioner had joined the first empanelled candidate as the respondent No. 7. He has not come forward to deny the allegations made by the petitioner that he did not join within the time stipulated. It is one thing to say that the school might have intimated the respondent No. 2 but the authority for issuing the appointment letter was the Secretary of the Committee and this has also been the stand of the respondent No. 2 in his affidavit-in-opposition: "I further say that the Village Education Committee President or any other member has no right to engage any para-teacher in the school only the Village Education Committee's Secretary is empowered to engage any para-teacher subject to the approval of the District Project Officer competent authority.." (para 7 of the affidavit-in-opposition). Again the said respondent says: "I say that the engagement letter issuing authority of Additional Para-Teacher is only the Secretary of the concerned Committee,....." (paragraph 8 of the affidavit-in-opposition) and the Head Teacher of the school being the Secretary of the committee further consent from him was not necessary. Moreover the appointment letter was also issued by Secretary of the concerned Committee.

14. In such view it even if there could be any procedural irregularity in the matter it cannot be said that the course of action taken by the school authority was clearly against the provisions of law or they had illegally appointed the petitioner. The petitioner in any case was supposed to be appointed after the first empanelled candidate had not responded to the appointment letter. The resolution annexed to the affidavit of the respondents Nos. 6 and 8 clearly states that the whole purpose of such decision was to maintain the continuance of the Sarba Siksha Mission so that the school gets the benefit. The offer of appointment was not made to the second empanelled candidate at the first stage. The Head Teacher of the school himself being the Secretary of the Committee the action cannot be condemned as illegal.

15. The writ petition is allowed.

16. The respondents are directed to release the salary in favour of the petitioner for the entire period he has rendered his services to the school and since the release of his salary improperly withheld I direct the respondents to pay interest at the rate of 8 per cent per annum from the date it fell due to the date of actual payment. The entire exercise is to be completed within a period of eight weeks from the date of the communication of the order.

17. There shall be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance

of all requisite formalities.