
(1991) 07 CAL CK 0005
In the Calcutta High Court
Case No : C.R. No. 384 (W) of 1983

Hariprasad Singh and Others

APPELLANT

Vs

Director of Primary Education and Others

RESPONDENT

Date of Decision : 09-07-1991

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 38, 39

Citation : (1991) 2 CALLT 205

Hon'ble Judges : Dilip Kumar Basu, J

Bench : Single Bench

Advocate : None, for the Appellant;None, for the Respondent

Judgement

Dilip Kumar Basu, J.—It appears from the endorsement dated 24th December, 1986 that the Rule is ready as regards service. None appears in support of the Rule. In spite of service of the Rule nobody appears on behalf of the respondents. No return has been filed as yet.

2. The petitioners-nine in number, who are appointed as assistant teachers by the managing committee of school in urban area of Malda District. On diverse dates sometime in the year 1974, 1976 and May, 1977, as routine exercise the Secretary of the Managing Committee of the respective schools submitted a statement along with a copy of relevant resolution to the Sub-Inspector of Schools, Primary Education, who in his turn forwarded to the District Inspector of Schools, Primary Education, Malda for necessary action. All these recommendations forwarded to the District Inspector of Schools, Primary Education, Malda, i.e. respondent No. 3, are Annexure "A" collectively to the writ petition. On receipt of such statement from the Sub-Inspector of Schools Primary Education, the District Inspector of Schools respondent No. 3 forwarded the matters to the Director of Primary Education, i.e. respondent No. 1 by two different memos., namely, memo. No. 726 dated 4th December, 1982 and memo. No. 732 dated 6th December, 1982 for approval. By forwarding the second memo dated 6th December, 1982 the respondent No. 3 noted that at the

material time no pending cases were lying with the office, i.e. with the office of respondent No. 3.

3. On 9th December, 1982 he made further reference to respondent No. 1 and indicated earlier reference of memo. No. 726 dated 4th December 1982 and memo. No. 732 dated 6th December 1982 that the teachers, who had been appointed by the Managing Committee of different schools and whose cases were referred on 4th December, 1982 and 6th December, 1982, were not approved by the urban advisory committee. In the above reference dated 9th December, 1982 which is Annexure "C to the writ petition, the District Inspector of Schools, Malda, i.e. respondent No. 3 addressed the respondent No. 1 stating, inter alia,

"A meeting of the Urban Advisory Committee has been convened by the undersigned on 13.12.82 and it is obvious that these cases will be placed in the said meeting. Pending final decision taken by the Urban Advisory Committee, the list of the incumbents is being forwarded for his kind perusal and information. It is informed" that 30 (thirty) post of Asstt. teachers are lying vacant as per record".

4. It appears from the record that respondent No. 3 addressed a letter to the Employment Officer-in-charge, District Employment Officer, Malda tender reference No. 5 dated 4th January, 1983, which is Annexure "D" to the writ petition. It appears from the aforesaid records that the respondent No. 3, by his office memo. No. 1982 dated 9th February, 1982, requested the employment exchange to send the names of the mother trained candidates for consideration of their candidature by the Urban Advisory Committee. By giving a reference of the aforesaid letter dated 9th February, 1982 the District Inspector of Schools, by his letter dated 4th January, 1983, requested the employment officer of the District Employment Exchange to send a list of mother trained candidates in order of seniority and simultaneously further request was made for ex-service man not more than five in number. In the said memo, dated 4th January, 1983, respondent No. 3 requested the employment exchange to send the names of physically Handicapped untrained candidates, if no trained physically handicapped candidates were available. It was indicated that interview for selection will be conducted by the urban advisory committee by the 15th January, 1983. The petitioners became apprehensive at the material time in view of the exercise taken by the respondent No. 3 and in not accepting and/or denying the claim of the petitioners inasmuch as admittedly in the month of February, 1982, there were thirty posts of primary teachers vacant in the urban area of Malda District. Admittedly the District Inspector of Schools, Primary Education, Malda, is the members' secretary of Urban Advisory Committee, Malda, who had written to the Director of Primary Education, West Bengal, i.e. respondent No. 1, on 4th December, 1982, 6th December, 1982 and 9th December, 1982 for his perusal and information.

5. This Rule was issued on 18th January, 1983 and while issuing the Rule this court granted an interim order as follows :

"There will be an interim order only to this extent that if any person is selected pursuant to the interview, he should not be given appointment for a period of two weeks from date. Liberty is, however, given to the petitioner for extension of interim order on the same application on notice to the respondents."

6. Subsequently, on 2nd February, 1983 this court extended the interim order till disposal of the Rule.

7. On 4th July, 1983 the petitioners filed an application for further interim order and/or direction upon the respondent No. 1, for consideration of approval of the petitioners as teachers in primary school. The aforesaid application was disposed of by this-court on 13th July, 1983 directing the respondent No. 1 to consider the question of recognition for approval of the petitioners' appointment within two months from date of communication of this order.

8. Subsequently the respondent No. 1, Director of Primary Education, Government of West Bengal disposed of the reference on 23rd September, 1983 which was communicated to the learned Advocate appearing for the petitioners by memo. No. 2722 SC/p-dated 29.9.83. On behalf of Primary Education, the learned Advocate appearing for the petitioners was informed by the aforesaid Memo, dated 29.9.83 quoting the extract of the orders which is as follows :

"In the list of the instructions of the High Court dated 13.7.83 as communicated to the undersigned by the Advocate Sri A. B. Majumdar, vide his letter dated 17.9.83 in connection with C.R. 384(W) of 1983 the case is taken up for consideration today.

9. The District Inspector of Schools (PE) Malda in his Memo. No. 736 dated 9.12.82 had forwarded the lists of 5 teachers each from the urban area of Englishbazar Municipality for the perusal and information of the Director of Primary Education. The District Inspector of Schools (PE) had also made no specific recommendation in the instant case and had specifically stated that the cases had not yet been placed before the Urban Advisory Committee, Malda. But in the light of Govt. Order No. 896-Edn(P) dated 28.4.78, 1234-Edn(P) dated 23-6-78 and No. 390-Edn(P) dated 24.3.79, reference to the Urban Advisory Committee for its recommendation is mandatory for approval of all panels for appointments of primary teachers from urban area of West Bengal.

10. Now, therefore, in the light of the above points and the relevant instructions of Government on the matter, after careful consideration of the merits of the entire case, approval for appointment of Shri Hariprosad Singh and 9 others referred to in the District Inspector of Schools (PE) Malda's Memo. No. 736 dated 9.12.82 cannot be accorded".

11. At the instance of the petitioner a contempt application was filed on 5th December, 1983. But the aforesaid contempt application was disposed of on 18th January, 1985 without any order inasmuch as the learned Advocate, appearing for the petitioner, made a reference, at the time of hearing, to the decision of the

Directorate of Primary Education pursuant to the order dated 13th My, 1983.

12. An application for further contempt was disposed of. The application for drawing proceeding under Contempt of Courts Act was also disposed of But the subject matter of the dispute in the Writ Petition was not considered by this Court and the rule is yet to be heard and disposed of though un-fortunately no return has been filed by the respondents, upon whom admittedly the rule has been served.

13. Though nobody appears on behalf of the petitioner and only on this ground this Court can discharge the rule. If the rule is discharged the court will betray the judicial conscience as the Court cannot be unmindful to the aspirations of the individual who came before this writ Court in the month of January, 1983. The petitioners have been rendering service since 1974, some of them from 1976 and the rest from 1977, They came before this Court in the year 1983. What is the fault on the part of the petitioners ? There is a fault, presumably, in the delivery system of justice for which, since 1983, if not 1974, 1976 and 1977, some citizens had deprived of their rights and ultimately, they were compelled to seek justice from the Writ Court with their limited meagre resources.

14. It is true that the present mechanism of delivery system of justice requires new out-look to inspire confidence in the minds of the litigants who are a considerable Section of the vulnerable segment of the society. To them it is an unequal battle when a challenge is thrown against Statutory Bodies, State Government and Public Officers.

15. Justice was virtually denied initially by Urban Advisory Committee, Malda : subsequently by the District Inspector of School (Secondary Education) Malda i.e. Respondent No. 4 & 3 respectively. Justice has been denied to them by Respondent No. 1 in rejecting their claim. Justice has also been denied by this Court by not disposing a Writ Petition within a reasonable period.

16. Almost about after 9 years this rule has come before this Court for consideration though, nobody appears on behalf of the petitioners. Presumably, petitioners have been rendering their services in the said school as un-approved teachers for more than a decade without any or adequate salary and/or allowance. Possibly, they could not afford the luxury to follow up and prosecute Writ Litigation and-possibly, they could not generate necessary funds and afford litigation costs.

17. I think for this reason this Court is under obligation to consider the entire claims of the petitioners on the facts and circumstances of the case and the documents available before this Court. As no return has been filed, obviously, the burden lies upon the court also to render effective and meaningful justice to the petitioner which I propose to do in the instant case.

18. Precisely inaction, apathy and non-performance of statutory obligation at the instance of the Public Officers are the subject matter of the Writ Petition. In our

society Public Officers are required to discharge their obligation and they must demonstrate their accountability in the matter of discharging their commitment to the society. We are indeed living in an age when our constitution has established a Government of laws and not of men. If the enactment by legislature is a thesis, sometime action of the Public Officers, Govt. Officers and authority of the Public Officers, Statutory Bodies become antithesis then, judicial interference may be synthesis. Judiciary is the guardian of the conscience of the people and it is necessary to strike a balance amongst aspiration of the individual, requirement of the community and the constitutional and statutory obligation of the public Officers in discharging of their public duties and social commitment.

19. Admittedly, various social Welfare Legislation, initiated by the Central and State Govt. have remained Paper Tiger without Teeth. Social legislation and welfare projects have not been implemented effectively for bringing changes in the life style of the vulnerable Section of the society. The litigants, large Section of the weaker Section of the society have been fighting with the Govt. Officers, Public Officers attached to Statutory Bodies. In the instant Rule, the litigants, during pre-litigation stage, did not get a fair deal from the Public Officers and i.e. why litigants are compelled to embrace a litigation even at the cost of their last resource available to them.

20. In the instant case, admittedly thirty posts were lying vacant at the material time. The State Govt. by sanctioning necessary post in the Urban Area, tried to mitigate the requirements of the communities but unfortunately some Public Officers, for the reasons best known to them, did not take effective steps in filling up those posts in the schools under consideration and the consequential effect of such apathy, deliberate inaction have created a bundle of Cause of action not only to the teachers who are applicants in the writ petition, but also to the community at large and vast Section of the student community of the school concerned.

21. Unfortunately beneficiaries of the entire social welfare project of the Government in the Development of education are being frustrated by a Section of officers who are not only accountable to their employer i.e. the State Govt. or the school authority particularly, but they are also accountable to the Society at large. The litigants feel that the law is an instrument in the hands of a Section of officers or a Section of authorities only to maintain its domination over the authority without any rhyme or reasons. The result is that the existing delivery system of justice is losing its credibility.

22. Admittedly, respondent No. 3 is an officer attached to the Urban Advisory Committee of Malda, and admittedly he has not disposed of the application by accepting or rejecting the claim. At the material time, admittedly, thirty posts of teachers were lying vacant but the District Inspector of Schools (PE), Malda referred the matter to the Director of Schools, Primary Education, i.e. respondent No. 1 without placing the matter before the Urban Advisory Committee, i.e.

respondent No. 4 for consideration.

23. The Director of Primary Education by his order dated 23rd September, 1983, could not approve the cases of the petitioners as the District Inspector of Schools, Primary Education had made no specific recommendation. In disapproving the prayer of the petitioners, the Director of Primary Education categorically observed that reference to the Urban Advisory Committee for its recommendation was mandatory for approval of panel for appointment of primary teachers for urban area of West Bengal.

23a. Considering the observation made by the Director of Primary Education, respondent No. 1 in his order dated 23rd September, 1983, I think that the respondent No. 4, Urban Advisory Committee Malda, did not consider and recommend at the first instance and consideration of Director of Primary Education should be on the basis of such recommendation of Urban Advisory Committee, Malda. In the instant case no consideration or recommendation by Urban Advisory Committee was available before the Director of Primary Education on 23rd September, 1983 and accordingly the order passed on 23rd September, 1983, was premature and hence set aside.

24. The order passed by the Director of Primary Education, respondent No. 1 has been considered by me as illegal and accordingly the entire exercise should be done *denovo*.

25. Considering the facts and circumstances of the case that the petitioners have been rendering service more, than a decade and the grievances of the petitioners have not been adjudicated by this Court for the last nine years and respondent nos. 1, 3 & 4 have not come with any return challenging the averment of the petitioners whether they have been working in primary school within urban area (English bazar) Municipal area, Malda and at the material time there are thirty posts for assistant teachers lying vacant. I do not think that there should be any further delay in deciding and adjudicating the matter effectively.

26. Accordingly, I direct the respondent No. 4, Urban Advisory Committee, Malda, to dispose of the claim of the petitioners by recommending their case to the Director of Primary Education within a fortnight from the date of receipt of this order and the Director of Primary Education, respondent No. 1 will dispose of the same by approving the said recommendation for issuing appointment in favour of the petitioners and the District Inspector of School (S.E) will follow up the entire matter with the Urban Advisory Committee, Malda, and with the Director of Primary Education, respondent No. 1, in the capacity of District Inspector of Schools, Primary Education, Malda, so also the authority of Urban Advisory Committee, i.e. respondent No. 4. The District Inspector of Schools, Malda, respondent No. 3 will monitor the entire matter for effective compliance of the order passed today and will see that the stigma i.e. "unapproved teacher" carrying more than a decade by the petitioners is removed and the petitioners' appointment are approved with effect from 1st September, 1991. There will be

no age bar and if there is any such age bar that will be relaxed by the Director of Primary Education.

27. The Rule is accordingly, disposed of without any order as to costs.

28. Registry is directed to serve this order upon the petitioner No. 1 and respondent nos. 1, 3 and 4 within two weeks from date. The Registry is also directed to submit a compliance report as regards service of this order on 12th August, 1991.