
(2010) 12 CAL CK 0024
In the Calcutta High Court
Case No : F.M.A. 514 of 2009

Jharna Mallick

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Citation : (2010) 12 CAL CK 0024

Hon'ble Judges : Shukla Kabir (Sinha), J; Amit Talukdar, J

Bench : Division Bench

Advocate : Mohinoor Rahaman, for the Appellant; Saikat Banerjee Junior Govt. Advocate and Amalesh Roy, Raksheswar Dey Sarkar and Arijit Dey for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—It is easy to cite Rules to avoid uncomfortable situations. It is difficult to intercept them by way of meeting such situations. Without being caught in the Scylla of the easy and Chharybdis of the difficult, we would be required to gain control over the situation that has fallen for consideration before us in this Appeal, wherein the Appellant having suffered reverses before the learned Trial Court, preceded by cold response from the Respondent No. 4 and 5, has sought to retrieve her lost fortune.

2. Having lost her soul mate, who was an erstwhile teacher in the Barakhata Primary School under the control of the Respondent No. 4, she prayed for compassionate appointment on 10/06/1998 i.e. just after two years of the demise of her spouse on 11/06/1996.

3. In her prayer for compassionate appointment before the Respondent No. 5, she had articulated the fact that she lacked the necessary qualifications for the said post but was awaiting her results of the National Open School Examination, which was yet to be declared and requested the Respondent No. 5 to keep the Matter in abeyance (Page 65 of the Paper Book).

4. Subsequently, she came back before Respondent No. 4 on 25/09/1998 (Page 67 of the Paper Book) stating that in the meanwhile she had attained necessary qualifications and may be considered for appointment.

5. After receiving no favourable response, the Appellant once again approached the Respondent No. 2 on 13/02/2001. This time she prayed for absorption in a Group-D post outlining her pathetic state of affairs in the post stage of her widowhood.

6. The Deputy Secretary of the Primary Education Department, mainly on 15/07/2002 wrote to her (at Page 69 of Paper Book) stating that since she did not have English as a subject in the National Open School Examination conducted at Delhi, she cannot be considered for appointment.

7. Followed by the same, another communication was made by the Appellant before the Respondent No. 2 on 26/03/2004 to the effect that she may be considered "in any post according to my qualification" considering the abject poverty she was subjected to and the plight of her children.

8. Logistically, this is the position which has surfaced from the Order rendered by the Hon'ble Trial Court as well as from the version of the learned Counsel for the Respondent No. 4 and 5, who have placed before us the relevant provisions and the Provisos of Rule 14 of the said Rules.

9. According to the learned Counsel for the Respondent No. 4 (School Council), it was his case that since the Appellant did not possess requisite qualifications- - she was rightly turned down from seeking a post of a teacher in the place of her Deceased Husband. Later on, the prayer made by her before the Authority concerned was not through proper channel, as submitted by the learned Counsel for the Respondent No. 4.

10. For the Respondent No. 5 (the State) it was submitted that their hands are absolutely bound within the ambit of Rule 14 of the said Rules in view of the fact as the prayer for absorption in the Group-D category has been made, admittedly after a lapse of two years--as such there is no way out that the Appellant can recuse herself from the fate that has been ordained on account of such situation.

11. Failure on her part to have any succor from the Respondents, pushed her to the fore of the Court, where her fate was sealed and her prayer was turned down before the Hon'ble Trial Court on the basis of Rule 14 of The West Bengal Primary School Teachers Recruitment Rules, 2001 (hereinafter referred to as the "said Rules"), on the ground that she had filed the prayer for compassionate appointment on 26/03/2004 (Page 70 of the Paper Book), i.e. eight years after the death of her Husband whereas, according to Rule 14 of the said Rules she was supposed to apply within two years from the death of her Husband.

12. Hence this Appeal.

13. Whereas the Appellant would submit that she diligently pursued her case

before the Respondents. Being pitch forked in the fortuitous circumstances on account of the loss of her spouse and being oblivious of the nuances of procedure, she should not be credited with any laches as sought to be made out against her--was also her primary contention before us.

14. According to her learned Counsel, once she realised that the last glimmer of hope faded out, as she came to know that she was not eligible for the chair in which her late Husband adorned--she made an alternative prayer before the Authorities to be absorbed in either a Group-D category post or any other post made available. As such, there was no delay or missing link in her persuasion.

15. Applying the Litmus Test as to whether the Order under Appeal is based on sound reasoning and is the result of a proper orientation of the issue involved, we have considered the judgment and Order under Appeal.

16. In our humble view, we feel that we are unable to break bread with the conclusion arrived at by the Hon''ble Single Judge for the reasons, which we would set out in this intra Court Appeal.

17. Cold logic of Law and rituals of the Rule are the trappings of the game, a player on any side is bound to abide. But as in life, there are several situations, which viewed from an intrepid lens, can make all the difference without breaching the Rules of the game.

18. In such trajectory, we feel in the event we abide by the situation that has so long prevailed, we would subject ourselves to mere mechanics of the system and would, in the process lose our sense of Justice.

19. Exercising our Power of extended Judicial Review under the Constitutional sweep of a Mandamus Appeal, we would be required to walk the extra mile. And in our opinion that would make all the difference.

20. In the gossamer white of the situation, we are of the opinion that if a wholesome reading of Rule 14 of the said Rules is made, it transpires that the period of two years, as stipulated therein did not stand in its breach at the instance of the Appellant for the simple reason that when the tragedy struck her on 11/06/1996 and she suffered the pain of losing her life's partner--within a period of two years i.e. on 10/06/1998 she approached the concerned Respondent.

21. Interfaced with several situations, which we have discussed hereinabove, by way of lack of qualifications etc., she however, relentlessly stepped on the gas to rev up the situation and continued petitioning the Authorities.

22. Putting a logjam on the earlier petitions and reading the last one, which was of primordial consideration before the Hon''ble Single Judge--we feel it will not be appropriate to say no to the Appellant. The first Petition, the second Petition and all subsequent Petitions are in continuation of each other.

23. Having faced with a stone wall situation, one after another she went on

petitioning. It was a continuing process, so is her suffering. We cannot bid with the fact that the Petition dated 26/03/2004 can be read in a segregated fashion. All these are inter linked with the first one preferred on 10/06/1998.

24. After all, each one is the culmination of the other.

25. The score of Petitions filed by her should be read in a conjunctive fashion so as to make it an organic whole, whereby at once the bar of two years would stand evaporated.

26. In a Court of Law we should not begin with a negative view. Although Rules cannot be bend in such a fashion to make the irregular; regular but it has to be interpreted, which furthers the cause of Justice. Making dead interpretations of Rules simply renders the process of Justice as cold meat.

27. As a fall out of our aforesaid finding, we set aside the Order rendered by the Hon"ble Single Judge in W.P. No. 21922(W)of 2004 on 16/06/2008 and would now request the Respondent No. 4 to forward the proposal for compassionate appointment of the Appellant to the Respondent No. 2, who, in turn, would approve the same within the steps as known to Law.

28. Since this unfortunate Lady saddled with children and exposed to the vagaries of life in the absence of her Husband, has weathered roller coaster movement, it would be our pious wish that the exercise as suggested, should be achieved within a period of four weeks from the date of communication of this Order.

29. Appeal Allowed.

30. Urgent xerox certified copy, if applied for, be given to the parties expeditiously upon usual undertaking.

31. As soon as this Order is sent to the Server, learned Counsel for the parties are at liberty to download the same and communicate it to the respective parties, who will act on the basis of the same.

32. I Agree - Shukla Kabir (Sinha), J.