

(2009) 02 CAL CK 0063
In the Calcutta High Court
Case No : Writ Petition No. 28490 (W) of 2008

Kakali Bandyopadhyay

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-02-2009

Acts Referred:

Citation : (2009) 02 CAL CK 0063

Hon'ble Judges : Sadhan Kumar Gupta, J

Bench : Single Bench

Advocate : Ekramul Bari and Syed Manjoor Ali, for the Appellant; Jhumur Chakraborty for the State and Biswarup Biswas for the respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

Sadhan Kumar Gupta, J.

The Judgment of the Court was delivered by:

1. This writ petition has been filed by the petitioner praying for directing the respondent No. 3 to approve the panel for filling up the post of Assistant-Headmistress in H.C.S.C. Srikrishna Balika Vidyapith (hereinafter referred to as the said school).
2. Case of the petitioner is that she was appointed in the said school as an Assistant-Teacher on 28.5.1993. The respondent No. 3, District Inspector of Schools (Nadia), duly approved such appointment. On 12.12.2000 the respondent No. 3 accorded necessary permission in favour of the petitioner to act as an Assistant-Teacher in "Language Group" in addition to her duty as a teacher of Physical Education, in the said school. After the petitioner joined the said school, she had obtained Post Graduate Degree in English with the permission of the competent authority in the year 2005.
3. In the meantime, the post of Assistant-Headmistress fell vacant in the said

school and the respondent NO. 3 accorded prior permission for filling up the said post. The Managing Committee of the said school notified such vacancy on 27.8.2007 and asked the eligible candidates amongst the approved Assistant-Teachers of the said school for submitting application for the said post. Accordingly, the petitioner also offered herself as a candidate for the said post. The interview was taken by the school authority on 14.9.2007. It may be mentioned here that although the petitioner had requisite qualifications and experience, she was initially denied by the School authority to appear before the interview board. As such, the petitioner had to file another writ petition when the Id. Single Judge of this Court directed the respondents to take into account the educational qualification and not the scale of pay in considering the candidate of the petitioner. Pursuant to such direction, the petitioner appeared in the said interview. The petitioner was selected by the members of the Selection Committee and such panel was duly approved by the Managing Committee and it was sent to the respondent No. 4 the Additional District Inspector of Schools, Ranaghat Sub-Division for approval. Though the panel was prepared and submitted in the month of September, 2007, the District Inspector of Schools, Nadia, did not accord approval to the said panel compelling the petitioner to file the present writ petition,

4. The case was contested by the respondent-State and it preferred to contest the writ petition on merit without filing any affidavit-in-opposition. The respondent No. 5, the School Managing Committee, in fact, supported the case of the petitioner.

5. It appears, that the petitioner has claimed that she has got requisite qualification and experience for being selected for the post of Assistant Headmistress of the school, but the District Inspector of Schools, Nadia, illegally refused to give approval to the panel in question in favour of the petitioner. In this respect, the Id. Advocate for the petitioner submitted that in order to be selected for the post of Assistant-Headmistress of a particular school a person must possess Honours/Masters" Degree with five years" teaching experience. According to the Id. Advocate for the petitioner his client has got all such requisite qualifications for being selected to the post. In this respect, he has drawn my attention to the guideline issued by the Government of West Bengal, School Education Department dated 10th July, 2002. This guideline has been mentioned by the Id. Single Judge of this Court in the earlier writ petition No. W.P. 19757(W) of 2007. In the said writ petition, the Id. Single Judge clearly passed direction to the effect:

"After considering the submissions made by the learned Advocate for the petitioner and upon perusing the writ petition, I am of the opinion that from the letter dated 1st September, 2007 it does not appear that she is not an approved teacher. On the contrary it appears that she is an Assistant Teacher of the concerned school. Whether she is enjoying higher pay scale or not, is inconsequential according to this Court since eligibility criteria, as indicated

above, makes it clear that she falls within the zone of consideration, having requisite qualifications. Accordingly, the letter dated 1st September, 2007, issued by the Secretary of the concerned school to the writ petitioner is hereby quashed.

In the circumstances, the writ petitioner may appear in the interview which is scheduled to be held on 14th September, 2007 or on any deferred date, as prayed for by the writ petitioner in the writ petition. The concerned school as well as the other respondents shall take into account her educational qualifications, and not whether she enjoys a higher pay scale."

6. So, it appears that there was a clear direction given by the Id. Single Judge of this Court in this respect and according to such direction two things are to be looked into while approving the panel, viz. (I) whether the petitioner had requisite educational qualifications or not; and (II) whether she had required teaching experience or not. It is undisputed that the petitioner has got the requisite qualification as well as the teaching experience. So, in view of the said order of the Id. Single Judge, there cannot be any reason for the District Inspector of Schools in not approving the panel in question. In the decision reported in 2009 (1) CLJ (Cal) 117, Abdul Rashid vs. State of West Bengal & Ors., the Id, Division Bench of this Court clearly observed that the direction in a previous writ petition passed by a Id. Single Judge cannot be held as "per incuriam" in a subsequent writ petition between the same parties by another Id. Single Judge. It has further been observed by the Id. Division Bench to the effect that such direction, as may be given in the previous writ petition, in absence of any appeal, became final and binding upon the parties. It appears that in the earlier writ petition the State was also a party and there is nothing on record to show that any appeal was preferred against such order of the Id. Single Judge as such, the order, so passed by the Id. Single Judge, has attained finality. If that is the position, then the District Inspector of Schools is duty bound to give effect to such direction by way of approving the panel. However, it appears from the report, as submitted by the District Inspector of Schools before this Court that he took several pleas in not granting approval of the panel in question. He has claimed that the petitioner obtained the M.A. degree without permission of the District Inspector of Schools and also he raised questions regarding the appointment of the petitioner in the "Language Group" in addition to her normal duty as a teacher of Physical Education, He has further raised objection to the effect that the petitioner was not enjoying the higher scale of pay and that in view of the West Bengal Schools" Control of Expenditure Act, 2005, the claim of the petitioner cannot be accepted. I fail to understand as to how the West Bengal Schools" Control of Expenditure Act, 2005 is applicable so far as the present case is concerned. I have already pointed out that in the earlier writ petition the Id. Single Judge clearly observed that the educational qualification and experience will be the sole criteria for granting approval of the panel in question and the question of getting higher scale of pay will not stand in the way. It is unfortunate that without preferring any appeal against the said decision, the District Inspector of Schools, Nadia, is bent upon not to approve the panel in favour of

the petitioner for reasons best known to him.

7. Be that as it may, since it appears that the petitioner has fulfilled all the criteria for being selected for the post of Assistant-Headmistress and since the School Managing Committee has selected the petitioner for the said post, under such circumstances in view of the earlier order of the Id. Single Judge of this Court, the District Inspector of Schools, Nadia, has no authority in not approving the panel in question. To my mind, it is a fit case where a writ of Mandamus should be issued upon the said District Inspector of Schools, Nadia, by way of directing him to take immediate steps for approval of the panel.

8. Considering all these things, the writ petition is allowed on contest but without cost. The District Inspector of Schools, Nadia, is directed to give approval in respect of the panel in question which was duly forwarded to him by the School Managing Committee for the post of Assistant-Headmistress of the concerned school in favour of the petitioner and this approval order must be given within one month from the date of passing of this order.

9. Urgent xerox certified copy of this order be given to the learned Advocates for the parties, if applied for.