

(2013) 12 CAL CK 0081
In the Calcutta High Court
Case No : W.P. No. 10426(W) of 2007

Kohinoor Khatun

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-12-2013

Acts Referred:

Citation : (2014) 1 CALLT 466

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sambuddha Chakrabarti, J.—By this writ petition the petitioner has inter alia prayed for a writ in the nature of Mandamus commanding the respondents to show cause why the order dated November 28, 2006, passed by the Director of School Education, West Bengal should not be set aside and why the respondents should not be directed to accord approval of the appointment of the petitioner as the Headmistress of the concerned school and for other relief's. The case of the petitioner inter alia is that the organizing managing committee of the Haji Md. Ali Junior High School within the district of Malda appointed the petitioner as an organizing teacher. The concerned authorities accepted the school for the purpose of according recognition as a 4-Class Junior High School and finally the West Bengal Board of Secondary Education by a memo, dated April 25, 2000 granted recognition on and from May 1, 2000 and the appointments of the assistant teachers were also approved. Subsequently the appointment of the petitioner was approved as the Teacher-in-Charge of the school by the District Inspector of Schools by a Memo, dated May 8, 2003. But she was not given the designation of the Headmistress of the school.

2. The Secretary of the school by a letter dated August 1, 2003 intimated the petitioner that for getting the designation of Headmistress five years" experience was necessary. On April 25, 2005 the Secretary of the school made a prayer before the District Inspector of Schools (SE), Malda, for approval of appointment

of the petitioner as the Headmistress.

3. The petitioner's first writ petition challenging a communication by the District Inspector of Schools was disposed of by an order, dated March 15, 2006 by a learned single judge directing the Director of School Education to take a decision and pass a reasoned order. Pursuant to the said order the Director of School Education had given a hearing to the petitioner.

4. By a memo dated November 28, 2006 the said authority had rejected the claim of the petitioner for approval of her appointment as Headmistress of the said school. It was held by the said authority that initially approval of appointment of the petitioner as the teacher by the District Inspector of Schools had no ambiguity. The school was granted recognition by the Board of Secondary Education as a 4-Class Junior High School with effect from May 1, 2000 and before recognition the service rendered by the petitioner could not be taken into account as recognized service. It was further observed that the West Bengal School Service Commission Act, 1997 had come into force since November 1, 1997 and the appointment of a Headmaster/Headmistress in any Junior High School would be made through Regional School Service Commission in terms of the relevant government order, dated January 8, 1998. According to clause 3B(iii)b of the said government order one of the requisite qualification of the candidates for the post of Headmaster or Headmistress in a Junior High School was five years' continuous teaching experience in approved service in a Higher Secondary School/High School/Junior High School/High Madrasah recognized by the West Bengal Council of Higher Secondary Education/West Bengal Board of Secondary Education etc. Therefore, if the petitioner wanted to hold the post of a Headmistress she would have to sit at the selection test as conducted by the School Service Commission for any optioned Junior High School.

5. The Director of School Education further held in the said order that the six filled-in posts of teachers in the school for its Junior High status were inclusive of the Teacher-in-Charge of the school. But since the school has been granted recognition as High School to open class IX and class X from the respective dates by the Board of Secondary Education the school authority would have to proceed to the School Service Commission concerned through the District Inspector of Schools for the recruitment of a Headmistress of the school maintaining the staff pattern and the procedure laid in the West Bengal Government orders under the West Bengal School Service Commission Act, 1997. It was lastly held that the petitioner did not possess the requisite minimum qualification of teaching experience for the post of a Headmaster or Headmistress of a High School which was required to be filled at the earliest for the interest of education and proper administration of the school. As such steps for the same were to be taken without any delay, In the meantime the school authority was directed to select all suitable and qualified assistant teachers from the teaching staff of the school including the petitioner as its Teacher-in-Charge to run the school smoothly as a stopgap measure.

6. This order has been impugned in the present writ petition. The petitioner has challenged the applicability of the Government Order, dated January 8, 1998 to the facts of the present case. The petitioner has referred to the case of Shila Ghosh v. State of West Bengal & Ors., reported in (2009) 3 CHN 461 for a proposition that the method of recruitment for the post of a Headmaster and Headmistress of a Junior High School as provided in the procedures prescribed under the said notification are not at all applicable for approving the services of an organizer teacher since appointment of an organizer teacher of a newly recognized Junior High School is to be approved in terms of the provisions mentioned in the circular dated December 20, 1984 issued by the Director of School Education, West Bengal and the subsequent circular dated February 24, 1995 issued by the Secretary, School Education Department, Secondary Branch, Government of West Bengal.

7. Ms. Sinha, the learned Advocate for the petitioner, had submitted that Shila Ghosh who was the appellant in the judgment referred to above was also an organizing teacher of a Junior High School which was subsequently recognized by the government and in that case also when her appointment was regularized she was shown as the Teacher-in-Charge and not the Headmistress. Ms. Sinha submitted that the judgment of the Division Bench was appealed against but the same was dismissed.

8. The petitioner has further assailed the observation made by the Director of School Education that she was not qualified to be appointed as a Headmistress of a Junior High School on the date of recognition i.e., on May 1, 2000. According to the petitioner at the material point of time the Government Order, dated July 27, 1989, prescribed the essential qualification for the post of Headmaster/Headmistress of a Junior High School. It prescribed that the minimum academic qualification for such appointment from that point of time would be regular Honours or any Master's degree in any academic subject in the language, science or social science group which might or might not be relevant to the subject she taught in a Junior High School. It further provided that the government had decided that from that period onwards five years' continuous teaching experience in secondary schools would be an essential qualification for recruitment to the said posts.

9. The petitioner has again relied on the case of Shila Ghosh (Supra) wherein it was specifically held that scrutinizing the criteria mentioned in the enclosure to the circular dated December 20, 1984 and the subsequent circular dated February 24, 1995 regarding the approval of appointment of organizer teachers of the newly recognized 4-Class Junior High School the Division Bench did not find that there was any provision regarding experience in order to approve the appointment of organizer teachers particularly the Headmaster/Headmistress of newly recognized Junior High Schools. It was observed by the Division Bench that "the competent authority of the Government of West Bengal consciously did not provide any condition relating to experience in the aforesaid circulars since

the approval of the appointments are accorded to the organizer teachers in appreciation of their continuous service rendered to the concerned school prior to the date of final inspection made in connection with its recognition." Referring to the facts of the particular case the Division Bench held that the appellant was appointed as the Headmistress of the school by the organizing managing committee in the month of May, 1993 and, therefore, the said appointment of the appellant was required to be approved as such, i.e., as the Headmistress in terms of the provision mentioned in the enclosure to the circular dated December 20, 1984.

10. Further relying on the said case of Shila Ghosh (Supra) the petitioner had argued that it was imperative that the appointment of the petitioner should have been approved as Headmistress of the said school and not as Teacher-in-Charge from the date of recognition.

11. The petitioner has further argued that the staff pattern of a 4-Class Junior High School is prescribed in the Government Order dated September 4, 1989 according to which there should be six teachers in the said school, two each from the language group, science group and social science group. The government order dated February 3, 1992 further prescribed the teaching strength as six according to the break up as provided therein. The post of a Headmaster shall be included within the strength of six for a 4-Class Junior High School and he was also to be included in a group commensurate with a subject studied by him in the degree or post-graduate course. The petitioner holds a post-graduate degree in History and being among the six approved teachers of the school is qualified and deserving to be legitimately appointed as the Headmistress of the school from the date of its recognition instead of being appointed as the assistant teacher.

12. The managing committee of the school had filed an affidavit-in-opposition whereby the said committee supported the case of the petitioner and submitted that the writ petitioner was entitled to be approved as the Headmistress instead of a Teacher-in-Charge of the school. In spite of being given repeated opportunities the state-respondents did not file any affidavit-in-opposition. However, at the hearing of the writ petition the state respondents appeared. According to the learned advocate appearing for the state-respondents the West Bengal Board of Secondary Education designated the school as a high school with effect from May 1, 2005 and the petitioner was not qualified for the post of Headmistress of the said school and her name was also not recommended by the School Service Commission. The petitioner should be selected through the School Service Commission. Mr. Bhattacharya, the learned advocate for the state-respondents has further argued that the said school is an aided High School and in terms of Section 9 of the West Bengal School Service Commission Act all posts of teaching staff including the posts of Head Teacher should be recommended by the School Service Commission and the managing committee has no right of granting any approval or making recommendations for appointment as Headmistress of the school as well as for the higher scales of pay.

13. The state-respondents maintained that the writ petitioner has no claim for the post of Headmistress as she was appointed as an organizing assistant teacher of the school and she had no teaching experience on the date of the recognition of the school and her case was rightly rejected for violating the provision of section 9 of the said Act. The respondents had contended that as the petitioner was appointed as an organizing teacher with effect from May 1, 2000 no organizing staff can claim any approval beyond that date. As such the question of appointment of the petitioner as the Headmistress did not arise. This is all the more so as on the date of granting approval the managing committee appointed the petitioner as the Teacher-in-Charge of the school and there was no sanctioned post for Headmaster or Headmistress of the said school for a considerable period.

14. The sheet-anchor of the petitioner's case is the judgment reported in the case of Shila Ghosh (Supra). There is considerable similarity of facts in both the cases. In the case of Shila Ghosh (Supra) the appellant was appointed as an organizing teacher on May 24, 1983 as the Headmistress of the school. The school was initially granted recognition for three years as a 4-Class Junior High School with effect from May 1, 1997. Thereafter the concerned District Inspector of Schools by the office order, dated March 30, 1998, approved the appointment of the teaching and the non-teaching staff of the school including the appellant therein as a Teacher-in-Charge for two years and subsequently the appointment of the teaching and non-teaching staff of the school including that of the appellant as the Teacher-in-Charge on usual terms and conditions. The Director of School Education in that case as well rejected the claim of the petitioner for appointment to the post of Headmistress. In the appeal the issue before the Court was whether the appointment of the appellant was required to be approved as Headmistress of the concerned school instead of Teacher-in-Charge.

15. Undoubtedly in the present case the petitioner acquired the five years' teaching experience in approved service on May 1, 2005. In the case of Shila Ghosh (Supra) it was sought to be argued that the appellant therein did not have five years' teaching experience as an approved teacher in a recognized Junior High School and it was argued that the appellant acquired five years' teaching experience as an approved teacher of a recognized school in May, 2002 and the West Bengal School Service Commission had come into force with effect from November 1, 1997 and in view of the provisions of the said Act the petitioner's appointment to the post of Headmistress could never be approved by the government.

16. While considering the submissions made by the state-respondents the Division Bench held that if their contentions were accepted an organizer teacher at the time of approval of the initial appointment would never get an opportunity to be appointed to the post of Headmistress for want of requisite period of continuous teaching experience in approved service. A teacher having continuous teaching experience in approved service was not expected to join any organizing

school as an organizer teacher. Their Lordships further held that on the other hand it could be said that an organizer teacher in spite of having requisite academic qualification and continuous teaching experience for more than the requisite period would be denied approval of appointment to the post of Headmaster/Headmistress if the requisite qualifications in terms of the procedure in terms of the notification, dated January 8, 1998, were made applicable while approving the appointment of the school. After considering all aspects Their Lordships had held that the procedure prescribed in the said notification could not be made applicable to the approval of appointment of the organizer teacher including the Headmaster/Headmistress of newly recognized school.

17. The Division Bench had held that the reasons given by the Director of School Education in rejecting the claim of the petitioner cannot be sustained.

18. In view of the specific observations made by the Division Bench in the case of Shila Ghosh (*Supra*) the memo impugned in the present writ petition is liable to be set aside. The decision of the Director of School Education as communicated by the said memo cannot be sustained and the same is, therefore, quashed.

19. The respondents authorities are directed to approve the appointment of the writ petitioner as the Headmistress of the school with effect from May 1, 2000 and to grant all financial benefits as were legally admissible to the post of Headmistress. Appropriate office orders are to be issued in this regard approving the appointment of the petitioner within a period of four weeks from the date of the communication of the order and to calculate the admissible financial benefits of the petitioner within a period of eight weeks from the said date and disburse the same to her within four weeks thereafter.

20. The writ petition is allowed. There shall, however, 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.