
(2018) 05 CAL CK 0088

In the Calcutta High Court

Case No : CAN 8010 of 2017 In M.A.T. 1377 of 2017

Kohirulla Shaikh

APPELLANT

Vs

State Of West Bengal And Ors.

RESPONDENT

Date of Decision : 02-05-2018

Acts Referred:

Management of Recognised Non-Government Institutions (Aided and Unaided) Rules,
1969 — Rule 28
Constitution Of India, 1950 — Article 14, 16

Citation : (2018) 05 CAL CK 0088

Hon'ble Judges : ASHA ARORA, J; DIPANKAR DATTA, J

Bench : Division Bench

Advocate : S.K. Humayun Reza

Final Decision : Dismissed

Judgement

This writ appeal is directed against the judgment and order dated 10th April, 2017 passed by a learned Judge of this Court whereby W.P. 9457(W) of

2017, presented by the appellant, was dismissed in limine. The appellant invoked the writ jurisdiction of this Court voicing a grievance that he had been

discharging the duty of a non-teaching staff in an aided school from 2001 and that he was entitled to have his service approved by the relevant district

inspector of schools (hereafter the D.I.).

The learned Judge was of the view that the appellant had been appointed on contract basis which did not confer on him any right to have his service

approved. Without even accepting the prayer for consideration of the appellant's representation seeking approval of appointment, the learned

Judge being of the view that the writ petition was not maintainable in the absence of any legal right having been infringed dismissed the same.

CAN 8010 of 2017 is an application filed in the appeal. While hearing the application, we have heard Mr. Mohammad, learned advocate for the

appellant on the merits of the appeal. We propose to dispose of the appeal here and now having regard to the short point that arises for our decision.

There is no dispute that the school in question is an aided school recognised by the West Bengal Board of Secondary Education and its managing

committee is governed by the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 (hereafter the Management

Rules). The powers of the managing committee of an aided school are regulated by Rule 28 of the Management Rules, which ordains that whenever a

vacancy, either 2

permanent or temporary, arises on a sanctioned post of a non-teaching staff, the managing committee has the authority to make an appointment but in

accordance with the directions given by the Director of School Education, West Bengal (hereafter the Director). The extant directions issued by the

Director envisaged obtaining of prior permission by the managing committee from the D.I. and thereafter to follow the recruitment process as laid

down therein, meaning thereby, requisitioning names from the local employment exchange as well as publication of notice in the daily newspapers.

Obviously, this is a measure intended to ensure that all candidates aspiring for appointment have equal opportunity in the matter of public employment.

In the present case, we find that the managing committee of the school on its own resolved to appoint the appellant without even seeking the prior

permission of the D.I. Obviously neither any requisition was sent to the employment exchange, nor was the vacancy advertised. The appellant faced

no competition from anyone else and secured an appointment, apparently based on extraneous reasons. It is such an appointment that the appellant

wished the writ court to legalise by issuing an order on the D.I. for grant of approval.

Mr. Mohammad by referring to the decisions of the Supreme Court in Secretary, State of Karnataka and Ors. vs- Umadevi (3) and Ors. [(2006) 4

SCC 1] and Amarendra Kumar Mohapatra and Ors. vs- State of Orissa and Ors. [(2014) 4 SCC 583] contended that since the appellant has put in

more than 10 years of service, he should be considered for regularisation. It is also the contention of Mr. Mohammad that appointment of the appellant

is not an illegal appointment but at best an irregular appointment and, therefore, he deserved the relief claimed in the writ petition.

We are afraid, we cannot agree with Mr. Mohammad. Paragraph 53 of Uma Devi (supra) is the ratio in respect of irregular appointments as

distinguished from illegal appointments. In so far as the latter is concerned, the ratio of the said decision is clear: that to ensure equal opportunity to all

eligible candidates, it is for the employer to follow the rules governing recruitment and to proceed to make appointment of a candidate found suitable in

terms thereof; and any appointment made in contravention of the statutory rules would be in the teeth 3

of Articles 14 and 16 of the Constitution guaranteeing equal opportunity in the matter of public employment. There being statutory rules governing the

field of recruitment which have been observed in the breach by the managing committee, the appellant's appointment has to be classified as an

illegal appointment as distinguished from an irregular appointment.

The decisions cited by Mr. Mohammad, thus, do not lend any assistance to the appellant's case. We are of the considered view that the learned

Judge was perfectly justified in declining relief to the appellant by dismissing his writ petition. The appeal stands dismissed, with the result that the

connected application also stands dismissed. There shall be no order as to costs.