

(1999) 04 CAL CK 0082

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 3431 of 1997

Md. Eliash and 205 Others

APPELLANT

Vs

Hooghly District School Council (Primary) and Others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226
Contempt of Courts Act, 1971 — Section 19

Citation : (1999) 3 CALLT 4

Hon'ble Judges : Satyabrata Sinha, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Mr. Ashok Banerjee and Mr. Suresh Ch. Manna, for the Appellant;Mr. Arun Prakash Sircar and Mr. Subir Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This appeal is directed against a judgment and order dated 1st July. 1997 passed by a learned single Judge of this Court whereby and whereunder an application filed by the appellants herein for recalling of the said court's earlier order dated 27th February was dismissed.

2. The fact of the matter lies in a very narrow compass. The petitioner Nos. 1 to 205 were aspirants for the posts of Assistant Teachers in different Primary Schools. The appellant No. 206 is an Association. The appellants filed a writ application, inter alia, praying for the following reliefs:

"A) A writ in the nature of Mandamus commanding the respondents, their officers and men to show cause as to why the petitioners who are all trained candidates shall not be included in the panel which is to be prepared by the respondents:

B) A writ in the nature of Mandamus directing the respondents to give appointment to the petitioners who are trained candidates from the panel to be prepared as well as by forming a supplementary panel of trained candidates who have duly been enrolled in the Employment Exchange but were not called for

interview as the council did not take the names of the candidates from the Employment Exchanges:

C) Direction upon the respondents to cancel the panel if already made illegally by the council and approved by the authorities to make a fresh panel in accordance with law;

D) A writ in the nature of certiorari calling upon the respondents to produce records in original in connection with the above case before the Registrar, Appellate Side of this Hon''ble Court so that conscionable justice may be done by quashing illegal Acts done by the respondents;

E) Direction upon the respondents to form supplementary panel of the petitioners who are trained candidates duly enrolled in the Employment Exchange some of whom have not been called for the interview but on the other hand Supplementary invited applications by the council direct from the candidates for forming the panel in violation of Notification No. 421-Edn. (P)/5B-2/77 dated 27.3.1978:

F) Rule Nisi in terms of clause (A), (B), (C). (D) and (E) above:

G) Injunction restraining the respondents to issue appointment letters to the untrained teachers in the existing schools and/or to give any effect to such appointment letters if already issued ignoring the petitioners who are trained candidates without forming a panel Including the petitioners;

H) Such other or further writ/order/direction which this Hon''ble Court may think fit and proper;

I) Costs of and Incidents to this application"

3. The claim of the appellants appear to be that in view of various decisions of this court as also the Supreme Court of India they, being trained teachers, their cases ought to have been considered by the Hooghly District (Primary) School Council. An ex-parte order was passed by the learned trial Judge directing the first respondent to consider the cases of the petitioners, whose cases had not been considered at the time of preparation of panel. The first respondent was further directed to prepare a Supplementary panel if the same is permitted in law as panel of Primary teachers in District of Hooghly within the time set out for that purpose.

4. As allegedly, the said order had not been complied with, an application for initiation of the proceeding under the Contempt of Courts Act has been filed. The respondents filed another writ application on 29th November, 1994, inter alia, on the ground that out of 205 (two hundred five) candidates names of 197 (one hundred ninety-seven) candidates were sponsored by the Employment Exchange and it has been found upon verification of records that except petitioner Nos. 94, 106, 140. 153, 155. 157, 169 and 205 all the 197 petitioners had been interviewed.

5. Both the application for contempt and the application for recalling came up for consideration before the learned trial Judge and by an order dated 7th June, 1995 he disposed of the same by recalling the said order dated 29.11.1994 and by dropping the contempt proceeding. The operative portion of the said order is as follows:

"The order passed on 29th November, 1994 is recalled and modified to the extent that in the event of the 197 candidates, whose names were said to have been sponsored and considered, there are some whose names have not been so considered, the Ad hoc Committee, Hooghly District Primary School Council shall consider their cases also for the purpose of preparation of the panel which has been prepared, but has not yet been finalised and wherefrom no appointments have yet been made.

As far as the remaining 8 petitioners, who have been specifically mentioned in paragraph 9 of the said application for recalling the order of 29th November, 1994 are concerned, the concerned Employment Exchange or exchanges shall see whether their names were wrongly omitted when the names of other candidates were not eligible the question of their cases being considered, will not arise. If, however, their names were forwarded then in such event, the Employment Exchange shall forward the names of the 8 candidates for consideration of the council and their cases will also be taken into consideration in accordance with the law. In the event, the cases of the 3 persons are considered and they are found eligible for complainant their inclusion in the panel will be subject to any final order that may be passed by the Supreme Court in the pending leave petition."

6. The appellants herein had filed an application for recalling of the said order.

7. A second contempt application was filed by the appellants herein sometimes in the year 1996 alleging that the cases of eight petitioners had not been considered by the respondents herein. An affidavit had been filed by the Chairman of the respondent saying that all the remaining 8 candidates barring writ petitioner No. 205 have been sponsored and duly interviewed by the Selection Committee. However, it was stated that so far as the writ petitioner No. 205 is concerned, her name was not sponsored by the Employment Exchange as she had not passed the School Final examination. By an order dated 27th February, 1997 a learned Judge declined to continue the contempt proceeding and dropped the same accordingly. No appeal was preferred by the appellant therefrom and nor could the same be preferred by the appellant.

8. In the case of J. Parihar Vs. Ganpat Duggar and others, the apex court held :

"4. The State had filed appeal against these directions. A preliminary objection was taken on the maintainability of the appeal also arguments were advanced. The Division Bench while holding the appeal as not maintainable u/s 19 of the Act. held that the appeal would be maintainable as a letters patent appeal as the direction issued by the learned single Judge would be a judgment within the

meaning of section 18 of the Rajasthan High Court Ordinance. Accordingly the Division Bench set aside the directions issued by the learned single Judge. Thus these appeals by special leave."

9. Thereafter an application for recalling was filed. By reason of an order dated 1st July, 1997 the learned trial Judge observed :

"However, on subsequently being informed that their cases had been considered earlier, this Court thought it fit to drop the contempt proceedings.

Nothing appears to have changed from the position when the order dated 25th July, 1996 was passed, and I am not inclined to agree with Mr. Bhattacharyya's submission that even if the cases of the 8 petitioners had been considered earlier, in terms of the order passed by me, their cases should be considered once again. That was not the intention of the court and the court wanted that the cases of the petitioners whose cases had not been considered to be considered by the authorities.

In that view of the matter, the application for recalling of the order dated 27th February, 1997 is dismissed but without any order as to costs.

The observations made in this order will not prevent the petitioners from seeking any further relief, if they are entitled in law to do so."

10. The instant appeal has been preferred against the said order.

11. Mr. Banerjee, the learned counsel appearing on behalf of the appellants submitted that the cases of the appellants herein had not been considered in accordance with law inasmuch as no mark was allotted in respect of their qualifications to which they were entitled to.

12. Having heard the parties, we are of the opinion that this appeal cannot be entertained for more than one reason. The order dated 7th June 1995, as noticed hereinbefore was not appealable in terms of section 19 of the Contempt of Courts Act. The appellant, in fact, has not preferred any appeal there against but they have chosen to file a second contempt application. Even by an order dated 27th February, 1997 a learned Judge declined to continue the contempt proceeding. No appeal had been preferred against the said order also. The question as to whether there had been due compliance of the order passed by the learned single Judge or not had been subject matter of consideration in two proceedings.

13. It was, therefore, not open to the appellant to file another application for recalling of the said order, the result whereof could have been to revive the contempt proceeding alone. A bare perusal of the impugned order would show that no case has been made out that the respondents while filing the application for recalling of the court's order dated 20.11.1994 either committed any fraud on court or otherwise misrepresented its case.

14. It was also not suggested before the learned trial Judge that there existed an

error apparent on the face of the records.

15. Furthermore, if an appeal was maintainable against the orders dropping the contempt application, the said purpose could not have been achieved indirectly by filing a recalling application which could not be done directly.

16. So far as the submission of Mr. Banerjee to the effect that while considering the cases of the appellants, the first respondent had not complied with the statutory requirements, we are of the opinion that the same could not be a ground for recalling the order passed by the learned trial Judge in exercise of its powers under the contempt jurisdiction. A subsequent event, if any, could not have been be the subject matter of the contempt application as has been held in the case of Mafioob S. Allibhoy [supra]. If such subsequent event could not have been the subject matter of the application for recalling of the order, the question of entertaining the second contempt application dose not arise.

17. In view of our findings aforesaid, it is not necessary to advert to any other question but in order to be fair to Mr. Banerjee, we must place on record that the learned counsel has relied upon a Division Bench decision reported in 1991 Cal LJ 25. The facts and circumstances pertaining to that case are absolutely different and the same has no application in the instant case.

18. Furthermore, in any event, in view of the decision of the apex court in the case of J.S. Parthar (supra) and State of Maharashtra v. M.S.Allibhoy 1996 (4) SCC 418, it is now futile to contend that the appeal would have been entertainable even against the order dated 27th February. 1997. In any event, as the impugned order has not been passed in exercise of the powers under the contempt jurisdiction, we are of the opinion that the said question does not arise in this case at all.

For the reasons aforesaid, the appeal is dismissed.

However, in the facts and circumstances of the case, there will be no order as to costs.

19. Appeal dismissed

K.J. Scngupta, J.

20. I agree.