
(1996) 04 CAL CK 0012
In the Calcutta High Court
Case No : C.O. No. 319 (W) of 1992

Md. Nural Islam

APPELLANT

Vs

The Ad-hoc Committee, Primary School Council and Others

RESPONDENT

Date of Decision : 12-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 CALLT 136 : 100 CWN 736 : 100 CWN 726

Hon'ble Judges : Dipak Prakash Kundu, J

Bench : Single Bench

Advocate : Arun Mukherjee, Golam Mastafa, for the Appellant;

Final Decision : Allowed

Judgement

Dipak Prakash Kundu, J.—In this writ application the Writ Petitioner has prayed for the following reliefs :

"(a) A writ in the nature of a writ of Mandamus commanding the respondents not to give any effect and further effect to the impugned order contained in memo No. 2793 dated 26.7.91 and 4063 dated 26.11.91 issued by the respondents Nos. 1 and 2 and further commanding the said respondents to rescind, withdraw, and/or set aside the said order.

(b) A writ in the nature of a writ of Mandamus commanding the respondents to reconsider his prayer for extension of service and extend the service of the Petitioner on year to year basis till he attains the year of 65 years.

(c) A writ in the nature of a writ of certiorari directing the respondents to certify and to transmit this Hon'ble Court the records of the case within such time as may be fixed including the order contained in memo No. 2793 dated 26.7.91 and memo No. 4063 dated 26. 11. 91 at the time of hearing of the rule so that conscionable justice may be done by quashing them all.

(d) Rule Nisi in terms of prayers (a), (b) and (c) hereinabove.

(e) An ad-interim order of injunction restraining the respondents, their agents, employees or subordinates from giving any effect or further effect to the impugned order contained in memo No. 2793 dated 26.7.91 and memo No. 4063 dated 26.11.91 are being annexure "C" and "D" to this Petitioner and further directing the respondents to allow the Petitioner to continue in service till the disposal of the application.

(f) to issue ad-interim order in terms of prayer (e) hereinabove.

(g) to make to the rule absolute.

(h) to issue any other appropriate writ or writs order or orders as to which the Petitioner is entitled.

(i) Cost or costs."

2. Respondents have not filed any affidavit-in-opposition controverting the averment's made in the Writ Petition.

3. According to the Writ Petition, the Writ Petitioner is a duly qualified person and in 1956 he was appointed as a primary teacher of Charrabiganj South Primary School under Karimpore Circle, District Nadia, by the Secretary, District School Board, Nadia with effect from December 3, 1956. Said appointment was made by an order of appointment dated November 23, 1956. The Writ Petitioner stated that since his appointment in the said school the Petitioner had been working as a primary teacher with honesty, sincerity and integrity to the utmost satisfaction of the authority concerned, as and where he was transferred by the authority concerned. In paragraph 3 of the Writ Petitioner, the Writ Petitioner averred that he passed the school final examination in 1949 from the East Bengal Secondary Education Board, Dacca and in the certificate issued by the said Board the age of the Petitioner was recorded as 18 years 7 months on the 1st March of 1949. The Petitioner averred that he has got the copy of the said Matriculation Certificate, but the said record is an old one and it is damaged and defaced and certain writing in the certificate become illegible and the digit 18 also became illegible. The Writ Petitioner averred in the said paragraph 3, that the Petitioner was not sure whether the digit would be 18 or 17. Thus it is evident from the statement made in paragraph 3 of the Writ Petitioner that the document referred to in the said paragraph 3 has reached a position when it is difficult even for the Writ Petitioner to correctly ascertain the contents therein. In paragraph 6 of the Writ petition the Petitioner stated that taking his date of birth as 1st August, 1930 he was to attend the age of 60 on July 31, 1990 but taking that he was 17 years 7 months old on or about First March, 1949 the Petitioner long before attaining the age of retirement on March 3, 1990 applied before the authority concerned for extension of his service beyond 1.7.1991 to 1.7.1992 for the first time. The Petitioner stated that till April 1991 the Petitioner's prayer for extension of his service was not considered, he stated that again in April 1991 he made a representation before the authorities concerned for extension of his service. According to the Writ Petitioner on May 19, 1991 he was called by the

respondent No. 1. to appear before the said authority with all relevant papers and documents and the Petitioner on 19.5.1991 produced before the respondents all his relevant papers and documents including the school final certificate when from the said certificate it was detected by the concerned authority that the Petitioner was 18 years 7 months on the 1st of March 1949 and not 17 years 7 months.

4. In the last week of July 1991 the Petitioner was served with Memorandum No. 2793 dated 27.7.1991 issued by the respondent No. 2 disclosing therein, inter alia, that his prayer for extension of service cannot be considered favourably and his service beyond 31.7.90 was recorded as unauthorised and he was asked to handover charge to Md. Amanulla, an another assistant teacher of the school. According to the Petitioner, he was in service of the school upto July 30, 1991.

5. From memo No. 2793 dated 27th July, 1991(Annexure "C of the Writ Petition) it appears that while verifying the age-proof certificate of the Writ Petitioner, at the time of interview for extension of his service, it had been detected that the Writ Petitioner had tampered his matric certificate in the column of age. It further appears from the said memo dated 27th July, 1991 that the authorities arrived at a decision that the Writ Petitioner had written in the matric certificate his age as 17 years 7 months on first day of March, 1949 in place of 18 years 7 months on the same date. It appears that according to the authorities this amounted to forgery. From the said memo dated 27th July, 1991 it appears that the authorities arrived at a decision that the date of birth of the Writ Petitioner, as per matric certificate, is first day of August, 1930 and he attained the age of superannuation on 31st July, 1990. It further appears from the memo dated 27th July 1991 that the authorities could not consider favourably the prayer of the Writ Petitioner dated 5.4.1991 for extension of his service. It appears that the concerned authorities arrived at a decision the Writ Petitioner's service beyond 31.7.1991 is regarded as unauthorised service and the Writ Petitioner was requested to handover the charge of the school to Md. Amanullah, assistant teacher of the school on receipt of the said memo dated 27th July, 1991 and not to attend the school any further. It further appears from the said memo dated 27th July, 1991 that the Writ Petitioner was further requested to refund the amount drawn by him in excess for the period beyond 31-7-1991.

6. From the facts and circumstances as discussed hereinabove it is evident that the decisions recorded in the memo dated 27th July, 1991 (Annexure "C" of the Writ Petition) were arrived at by the concerned authority after certain facts were detected at the time of interview of the Writ Petitioner for extension of his service.

7. By Memo No. 4063 dated 26th November, 1991 (Annexure "D" of the writ petition) the writ petitioner was informed that he had overdrawn an amount of Rs. 22,368 and 10 paise only by the way of tampering the date of birth in the matriculation certificate and by serving beyond 31.7.1991 unauthorizedly. The Writ petitioner was further informed to deposit the aforesaid amount to the

Council fund with immediate effect failing which it was made clear, that no terminal benefit could be extended to him.

8. It appears from representation dated 28-12-1991 (Annexure "E" of the Writ petition) that the Writ petitioner stated, inter alia, as follows:-

"..... From the ineligible writing in my damaged Matriculation Certificate I was under the impression that my age was 17 years 7 months on first day of March, 1949. But in fact, it was 18 years 7 months on first day of March, 1949. Under the wrong impression I applied. Later on, on 19-5-1991 you called me for interview for extension and at the first instance I mentioned the mistake and prayed for rectification and prayed for extension for service beyond 31.7.1991. But you did not pay any heed to my words and taking my mistake as a forgery you threatened me to write before you that I would not serve further as a primary teacher under duress I was compelled to do so".

9. In the Writ petition no document was disclosed by which the Writ petitioner agitated the aforesaid points earlier than 28.12.1991. It is difficult to believe that the incident as alleged by the Writ petitioner in Annexure "E" occurred on 19-5-1991, yet the Writ petitioner remained silent for about 7 months and when all on a sudden levelled allegations against the authority. No reasonable person would act in the way the Writ petitioner acted. If the allegations levelled by the Writ petitioner were correct then the Writ petitioner would have certainly raised objection much before 28.12.1991. Under these circumstances this Court is of the view that the allegations made by the Writ petitioner in his representation dated 28.12.1991 are nothing but after thought.

10. In course of interview on 19.5.1991 it was detected by the concerned authority that the Writ petitioner committed forgery in respect of the contents of the Matriculation Certificate and only thereafter the Memorandum dated 27th July, 1991 (Annexure "C" of the Writ petition) was issued. However, the Memorandum No. 4063 dated 26th Nov., 1991 (Annexure "D" of the Writ petition) affects the Writ petitioner financially and therefore the said Memorandum dated 26th November, 1991 (Annexure "D" of the Writ petition) ought to have been issued after an objective consideration and assessment of all relevant facts and circumstances and after giving the writ petitioner full opportunity to make out his own case about the said memo. In this case no opportunity was given to the Writ petitioner to make out his case as to why Rs. twenty-two thousand three hundred sixty-eight and paise ten (Rs. 22,368.10) should not be refunded by him. In B.D. Gupta Vs. State of Haryana, , Hon"ble Supreme Court in paragraph 16 of the Report laid down that if an order affects the employee financially then it must be passed after the objective consideration and assessment of all relevant facts and circumstances and after giving the person concerned full opportunity to make out his own case about that order.

11. In view of the discussions made hereinabove Memorandum dated 26th November, 1991 (Annexure "D" of the Writ petition) had not been issued

following the principles of law laid down by Hon''ble Supreme Court in B.D. Gupta's case (supra) as stated hereinabove and therefore the said Memorandum dated 26th November, 1991 (Annexure "D" of the Writ petition) is illegal and void, and is hereby quashed. The respondents are given liberty to proceed against the Writ petitioner in accordance with law.

The Writ petition is allowed to the extent mentioned hereinabove, however there shall be no order as to costs.