

(1995) 09 CAL CK 0045
In the Calcutta High Court
Case No : C.R. No. 3739 (W) of 1990

Mohd. Abdul Bari

APPELLANT

Vs

District Inspector of Schools Secondary Education,
Murshidabad and Others

RESPONDENT

Date of Decision : 09-09-1995

Acts Referred:

Citation : 100 CWN 1

Hon'ble Judges : N.K. Batabyal, J

Bench : Single Bench

Advocate : Ranabijoy Bhattacharyya and Subhas Chandra Dutta, for the Appellant; Anjali Chowdhury, for the Respondent

Judgement

N.K. Batabyal, J.—The writ-petitioner is a teacher of Raipur Junior High School, Murshidabad working as Head Maulabi. The School was established in 1967 as a Junior High School, the West Bengal Board of Secondary Education granted recognition as per Memo. No. S/244 dated 22.3.84 to Class V and VI from 1.1.84 and to Class VII and VIII w.e.f. 1.1.85. The writ petitioner was appointed in the said school on and from 8th December, 1972. After recognition, the appointment of four of the six teachers working in the school was approved by the Board as they were organizing teachers. The petitioner was also an organizing teacher but he was not approved as a teacher by the Board. By memo No. 4358 dated 23rd July, 1986, the Dist. Inspector of Schools, Murshidabad requested the Directorate of Schools Education of West Bengal to inform whether the case of the petitioner could be considered for approval as a teacher in the said school. A copy of the said memo is annexed with the writ petition marked as letter-A. A certificate granted by the Headmaster of the School showing that the petitioner was working since 8th December. 1972, has also been annexed With the writ petition and marked as letter-B. After a long correspondence, by memo No. 3265-G dated 23-9-88, the Secretary of Raipur Junior High School, Murshidabad, was informed that the services of the writ petitioner had been approved w.e.f. 29-4-88 in the pay-scale of Rs. 260-533. A copy of the said memo is annexed

with the writ-petition and marked as "D". According to the petitioner, the approval of the services of the petitioner w.e.f. 29-4-88 in the pay-scale of Rs. 260-533 is illegal in as much as the petitioner was appointed in the School on 8-12-72 and the same school was given recognition as a Junior High School w.e.f. 1-1-84. The services of the petitioner should have been approved w.e.f. 1-1-84 and the petitioner should have been granted the pay-scale of Rs. 360-815 in accordance with the memo dated 30-7-84 as per Annexure-E. According to the petitioner, the respondents have acted mala fide in denying the petitioner, the approval of his services w.e.f. 1-1-84 in the pay-scale of Rs. 360-815 per month. Hence, he has come before this Court for the following reliefs :-

(a) a Rule calling upon the respondents to show cause why a writ or direction in the nature of mandamus should not issue directing them to grant the approval of appointment of the petitioner w.e.f. 1-1-84 as Asst. Teacher in the school mentioned above in the pay-scale of Rs. 360-815 with all arrear salaries due to him; and other reliefs.

In this case, the id. State Advocate Mrs. Anjali Chowdhury, appeared on behalf of the State at ore stage when the matter was heard by Mahitosh Mazumder. J. since deceased. His Lordship could not sign the judgment which was kept with record due to his sudden and untimely death. Thereafter, the matter came up for a fresh hearing and at this stage, though the Id. State advocate was repeatedly informed, she failed to turn up. Naturally, the matter has been heard ex parte, so to say, in the second phase.

2. It appears from annex-D of the writ-petition that the Dist. Inspector of Schools (S.F.), Murshidabad, wrote to the Secretary, Raipur Junior High School, Murshidabad, conveying the approval of appointment of the writ petitioner, under-qualified Organiser-Classical Teacher w.e.f. 29th April, 1988 in the pay-scale of Rs. 260-533. It appears from annex-E to the writ petition which is a memorandum of the Education Dept., Budget Branch of the Govt. of West Bengal, that on 30th July, 1984, the Governor was pleased to allow the revised scale of Rs. 360-815 to all the Asstt. Teachers having the marginally noted qualifications attached to nongovernment Junior High Schools and High Madrasa w.e.f. 1-4-81. The marginally noted qualifications include Final Madrasa Examination or equivalent Examination. In this case, from Annex.-D, it appears that the writ-petitioner is F.M. Passed which means Final Madrasa passed. It has been admitted by the Id. Advocate for the writ petitioner that the writ petitioner is not a graduate with the Classical" language which he teaches in the school as one of the subjects in graduation course. However, it is clear that the writ petition is entitled to get the revised pay-scale of Rs. 360-815 from the date of his appointment. He is also entitled to get the arrear salaries on account of this.

3. The Id. Advocate for the writ petitioner has drawn the attention of the Court, in connection with the other prayer of the writ petitioner, to Memo. No. 2605(16) Sc/S-dated 20th December, 1984, Directorate of School Education, Govt. of West Bengal to all Dist. Inspector (S.E.) Schools. That Memo reads as follows :

The undersigned sends herewith the following decision regarding the approval of appointment of teachers and non-teaching employee in the newly recognise and upgraded secondary schools, Approval of appointment should be followed strictly in adherence to the principles laid down in these rules. In case of any complications or difficulties in dealing with the cases of relating to the approval of appointment of organizer-cum-teacher, he is requested to refer the matter to this Directorate for final decision.

It should be remembered that the principles laid down are valid for school recognized with effect from 1-1-84. Schools which will be recognised w.e.f. 1985, onwards, current inspection reports will be insisted upon and in no case with claim of teachers not found on inspection be entertained. A special provision made in para 1(iv) will cater to the cases of schools inspected sometime back but recognised w.e.f. 1-3-84. So that genuine teachers in position are not discriminated against. Now all cases relating to the approval of appointment of organising teachers and non-teaching employees of the newly recognised High & Junior Schools should be disposed of as expeditiously as possible. It is again reiterated that previous orders of the Directorate communicated vide this. Directorate memo No. 1036(16) Sc(S) dated 21-4-84 which was valid for schools recognised w.e.f. 1-1-82 and 1-1-83 will not apply to schools recognised w.e.f. 1-1-84 onwards.

4. In the enclosure annexed with the said memo, it has been stated that the services of teachers and non-teaching employees of the newly recognised up graded IV - Class Junior/X - Class High Schools, and newly recognised Junior High Schools should be approved as such w.e.f. the date of recognition/upgradation provided that they possessed prescribed minimum educational qualifications as per requirement of the school, they have the prescribed age on the date of appointment in the school, they were appointed prior to the date of final inspection of the school made in the connection with the recognition etc.

5. It appears from memo No. 401-Edu. (S) dated 10th April, 1984 of the Secondary Branch, Education Department, Govt. of West Bengal written to the Directorate of School Education, Govt. of West Bengal regarding appointment of Asst. Teachers in language group in Secondary Schools that in view of the decision taken by the Department appointment of Asst. Teachers in language group in Secondary Schools could be made only from amongst the candidate who have amongst other-relevant language subjects in their degree course. It appears from annexure-D to the writ petition that the services of the writ petitioner, Md. Abdul Bari, F.M. passed, was approved as a very special case w.e.f. 29-4-84. It is clear on the face of it that the writ petitioner was approved as a teacher in the Secondary Section as a special case. It is useless to mention that the normal rule did not allow his appointment as he was not a graduate with the particular language as one of his subjects in degree course. It is obvious that a discretion was exercised in favour of the writ petitioner by the concerned authority for some reasons with which we are not concerned in writ petition

Certainly the petitioner had no right to claim such relaxation of the normal rules as quoted above. In its discretion, the concerned authority might have approved his appointment from 1-1-84 as claimed by him but if the said authority has not done so, there is no infraction of any statutory obligation on the part of the concerned authority. Moreover, where a discretion has got to be exercised in connection with a matter, the writ court will not compel the concerned authority to exercise that discretion in favour of a particular individual. All that is expected is that the discretion should be exercised in a reasonable manner and as in this case, there is nothing to show that the discretion was exercised in any unreasonable manner, therefore, this court being a writ court does not find any reason to issue a writ mandating the concerned authority to grant approval as prayed for w.e.f. 1-1-84, This part of the claim of the writ petitioner, therefore, fails. In view of the discussions made above, the writ petition succeeds in part. A rule do issue directing the respondents to give the pay-scale of Rs. 360-815 to the writ petitioner w.e.f. 29-4-1988. The arrear amount due to the writ petitioner on account of the new scale is to be paid within six weeks from the date of the communication of this order. The prayer for grant of approval of the appointment of the petitioner w.e.f. 1-1-84 as Assistant Teacher is refused. The writ petition and the rule are accordingly disposed of.

No order is made as to costs.