

(2010) 03 CAL CK 0066
In the Calcutta High Court
Case No : Writ Petition No. 1007 (W) of 2010

Mrinal Kanti Das and Others

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Citation : AIR 2011 Cal 1 : (2011) 5 CHN 420

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Ekramul Bari and Shamim UI Bari, for the Appellant; Saikat Banerjee, P.S. Deb Burman and A. Bose, for Primary Council, for the Respondent

Judgement

Biswanath Somadder, J.—Three hundred ten individuals, claiming to be unemployed youths having registered their names in the concerned Employment Exchange, have joined together to file the instant writ petition praying, inter alia, for the following reliefs:

- a) A writ of or in the nature of Mandamus do issue commanding the Respondents, their agents and servants particularly the District Primary School Council, Malda, being Respondent Nos. 4 and 5 to rescind, cancel and withdraw the entire selection process for the post of Primary School Teacher under the jurisdiction of Malda District Primary School Council forthwith.
- b) A writ of or in the nature of Certiorari do issue calling upon the Respondents and each of them to certify and transmit to this Court the original records of the case before this Hon'ble Court so that conscionable justice may be rendered to the Petitioner by passing an appropriate order.
- c) A writ of or in the nature of Prohibition do issue prohibiting upon the Respondents and each of them either by themselves or through their men, agents, assigns, subordinates from exercising further not warranted under the statute.

2. A preliminary point has been taken by the learned advocate representing the Respondent Nos. 1, 2, 3 and 6 who submits that each writ Petitioner has his own independent cause of action, yet they have joined together to file the instant writ petition, without even paying the necessary court-fees and on this ground alone the instant writ petition is liable to be dismissed. In this regard, he relies on a judgment of the Supreme Court in the case of Mota Singh and Others Vs. State of Haryana and Others,).

3. On the other hand, learned advocate appearing on behalf of the three hundred ten writ Petitioners submits that his clients are extremely poor and unemployed and they are not in a position to pay the deficit court-fees. Moreover, he submits that all the writ Petitioners were sponsored by the concerned Employment Exchange in the year 2006, for the purpose of recruitment to the post of Assistant Teacher in Primary School under the District Primary School Council, Malda. Such being the position, he submits that they have a common cause of action and as such the writ petition is maintainable in its present form.

4. After considering the submissions made by the learned advocates for the parties and upon perusing the instant writ petition, it appears that the writ Petitioners had submitted their documents and testimonials along with the bio-data forms before the concerned District Primary School Council on diverse dates. There exists no jural relationship, inter se, the writ Petitioners. The only common thread for joining as co-Petitioners appears to be their status of being unemployed youths whose names were sponsored by the concerned Employment Exchange for recruitment to the post of Assistant Teacher in Primary Schools under the District Primary School Council, Malda. In my opinion, having regard to the facts and circumstances as stated above, this is not enough for the writ Petitioners to join together as co-Petitioners and instituting the instant writ proceeding in the absence of any jural relationship between them. In the case of Mota Singh (supra), the Supreme Court was considering the question of whether legally payable court-fees could be evaded by truck owners who simply joined as co-Petitioners by stating in their petition that they were plying their trucks for transport of goods and had a liability to pay the tax impugned. The Supreme Court while directing the office to scrutinize afresh each of the cases referred to in the office report and ascertain whether requisite court-fees had been paid in each of them also observed, inter alia, as follows:

... But it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of court-fee simply because they have joined as Petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court-fee on his petition. It would be a travesty of law if one were to hold that as each one uses highway, he has common cause of action with the rest of truck pliers.

In the backdrop of the above observations made by the Supreme Court, the view of this Court, as enumerated above, stands fully justified.

5. At this stage, it may not be out of place to refer to a Division Bench judgment of this Court in the case of Parul Debnath and Others Vs. Union of India (UOI) and Others,).The Court, while considering an appeal preferred by the writ Petitioners who were working as Home Guards in the Andaman and Nicobar Home Guard Organization under the Andaman and Nicobar Administration, on the facts of that case observed, inter alia, that there was no need to direct the one hundred thirty writ Petitioners to pay court-fees for each of them since it had not been held by the learned single Judge that all the writ Petitioners were not entitled to join in one writ petition. The Division Bench judgment, in my view is wholly inapplicable since the learned single Judge in that case had not held that one hundred and thirty persons were not entitled to join in one writ petition, whereas in the facts and circumstances of the instant case there is simply no existence of any jural relationship inter se the writ Petitioners, as observed hereinabove. Moreover, the Division Bench in Parul Debnath's case (supra) did not take into consideration the judgment of the Supreme Court of India in Mota Singh's case (supra), which has been discussed hereinbefore.

6. For reasons stated above, in my view, the writ petition is liable to be dismissed as against writ Petitioner Nos. 2 to 310 and shall survive insofar as writ Petitioner No. 1 is concerned. The writ petition shall now be heard as a petition of the writ Petitioner No. 1.

7. Let this matter appears for further consideration next week under the same heading.