
(2020) 03 CAL CK 0027

In the Calcutta High Court

Case No : C. Appeal From Order (FMA) No. 58 Of 2020, Civil Application (CAN)
No. 717 Of 2020

Mrinal Kanti Kamila

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Citation : (2020) 03 CAL CK 0027

Hon'ble Judges : Saugata Bhattacharyya, J.;Soumen Sen, J

Bench : Divison Bench

Advocate : Kamalesh Bhattacharya, Manoranjan Jana, Joyotosh Majumdar, Kakali Samajpati, Avishek Prasad, Sucharita, Paul

Final Decision : Dismissed

Judgement

The appeal and the application are treated as on dayâ??s list and disposed of by the common order.

Â The appeal is arising out of an order dated 9th August, 2019 whereby the prayer of the appellant to grant notional benefit from the initial date of the appointment of the appellant was turned down by the Learned Single Judge.

Â The fact of the case has chequered history. The Managing Committee of Badalpur N.C. Vidyapith (hereinafter referred to as the â??said

Schoolâ??), by a Resolution dated 29th June, 1994, appointed the appellant as an Assistant Teacher of the said School with effect from July 15, 1994.

Since the appellant was not getting the benefit of approval of appointment on the post of Assistant Teacher in the said School, which prompted the

appellant to file writ petitions one after another and four writ petitions were filed by the appellant seeking approval of the appellant upon regularising his

service. Ultimately, on a writ petition being, WP 20991(W) of 2000, the learned

Single Judge passed an order dated 6th January, 2005 with the following directions:

â??â?|. Having heard the parties and considering the ratio of the judgments reported in 2004(2) WBLR-243 (Cal.) (The Chairman, Ad-hoc

Committee, Calcutta District Primary School Council vs. Smt. Alpana Devi & Ors .a)nd 2004 (2) CHN 298 (Bodhi Ranjan Maity vs. State of

West Bengal & Ors.) and on perusing the order impugned I am of the view that since the order of refusal has been made in accommodating

the petitioner for not having the appropriate vacancy as per the staff pattern in the school the same cannot be said to be a refusal in merit.

Therefore, instead of setting aside the order impugned and sending the matter back, I direct the authority to accommodate the petitioner in

the service as and when the appropriate vacancy as per the staff pattern will be available ignoring the age bar, if any. Thus, the writ

petition stands disposed of. However, no order is passed as to costs.

Let an urgent xeroxed certified copy of this order, if applied for, be given to the learned Advocates for the parties within two weeks from the date of

putting the requisites.

Sd/-

(Amitava Lala, J.)â??

Pursuant to the said order dated 6th January, 2005, the service of the appellant was approved as an Assistant Teacher in the Work Education and

Physical Education Group with effect from 2nd May, 2005 in the scale of Rs.4650/- â?" 10,175/- vide Memo dated 25th October, 2005 issued by the

District Inspector of Schools (S.E/), Purba Medinipur. The order of approval issued in favour of the appellant is quoted below:

â??Ref:- W.P. No. 20991(W) 2000

Mrinal Kanti Kamila â?"vs.- State of West Bengal & Ors.

Honâ??ble Justice Amitava Lala has been pleased to pass an order dt. 06-01-05 to accommodate Mrinal Kanti Kamila, B.Sc., B.P.Ed. in the service

as and when the appropriate vacancy as per staff pattern will be available ignoring the age bar if any as Assistant Teacher of Badalpur, Nabin

Chandra Vidyapith (Jr. High.), Dakshin Badalpur, Dist. Purba Medinipur.

At present the school is running with seven teaching posts, one post is lying

vacant due to death of Dhananjay Kr. Nayak, who was a teacher of Social Science Group and only P.G.B.T. teacher of the school and there is no other P.G.B.T./P.T./Work Edn. Trained teacher in the school.

Accordingly to revised staff pattern in terms of G.O. No. 427-SE(S) dt. 27-03-2001 only one post has been allotted to Social Science Group. So

another post (out of two) which has been lying vacant due to death of Dhananjay Kr. Nayak, is hereby shifted/transferred to Work & Physical Group.

As Sri Mrinal Kanti Kamila has acquired the requisite qualification for the post of A.T. in Work & Physical Edn. Group so pursuant to the solemn

order mentioned above Sri Mrinal Kanti Kamila, B.Sc., B.P. Ed. is hereby accommodated and absorbed as A.T. in the vacancy of Work and Physical

Edn. Group. His service is hereby approved w.e.f. 02-05-2005 in the scale of pay of Rs.4650 â?? 10,175/-.

Sd/-

District Inspector of Schools (S.E.),

Purba Medinipur.â??

At the material point of time when the appellant was approved as an Assistant Teacher in Work Education and Physical Education Group, the said

School was running with seven teaching posts, but upon the demise of one Dhananjay Kumar Nayak, an approved teacher of the Social Science

Group, on June 17, 1996, one post was lying vacant. The said post was designated for a teacher having PG.B.T. qualification and in the said School

there was no such teacher having the qualification. As such, the vacancy continued until the staff pattern was revised in terms of G.O. No. 427-SE(S)

dated March 27, 2001 and one post was allotted to Social Science Group. Thus, the other post which was lying vacant due to the death of Dhananjay

Kumar Nayak was in excess and was converted/shifted to Work & Physical Education Group and the service of the appellant was approved

accordingly by accommodating him in terms of the order dated January 6, 2005.

The appellant laid a claim before the learned Single Judge that considering his initial appointment on 15th July, 1994 an order was passed in 1999 by

the Honâ??ble Court which made him entitled to get approval of service from 1996 due to existence of vacancy or at least from the year 1999. The

next limb of prayer of the appellant was that if the financial benefit from 1996 or 1999 is not possible to be extended in his favour, at least notional

benefit should have been given to the appellant and his pay should be fixed by treating him as approved teacher from 1999.

We are at a loss having considered the relevant facts of the present case as to how the appellant can be granted the notional benefit from the year

1996 or 1999 when pursuant to the order passed by the learned Single Judge, the service of the appellant was approved w.e.f. 2nd May, 2005 vide

Memo dated 25th October, 2005 which was accepted by the appellant at that point of time and he discharged his duties without making any demur. If

the appellant would have been dissatisfied with regard to the Memo dated 25th October, 2005, he should have raised a contemporaneous challenge in

the year 2005, which the appellant did not do. After a period of 11 years the appellant filed the writ petition in the year 2016 which was rightly

dismissed by the learned Single Judge since the appellant did not raise contemporaneous challenge after issuance of approval Memo dated 25th

October, 2005. Failure on the part of the appellant to question the approval Memo which was issued in 2005 goes to show that he accepted the order

relating to his approval and he continued his service as an Assistant Teacher for a period of 11 years.

We are not unmindful of the fact that the initial appointment of the appellant in the year 1994 was neither as an organizing teacher nor he was

appointed following the Recruitment Rules prevalent at that material points of time relating to appointment on the post of an Assistant Teacher.

Moreover, expiry of 11 years from the date of his absorption and/or approval takes away his right to challenge and/or question the approval Memo

which was issued in the year 2005, which prevents the appellant from claiming notional benefit.

We are ad idem with the decision of the learned Single Judge passed on the writ petition.

The appeal and the Stay application both are dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.