
(2021) 11 CAL CK 0075

In the Calcutta High Court

Case No : W.P.A. No. 16910 Of 2019, I.A.No. CAN 1 Of 2020

Munna Mishra & Ors.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Citation : (2021) 11 CAL CK 0075

Hon'ble Judges : Saugata Bhattacharyya, J

Bench : Single Bench

Advocate : Arabinda Chatterjee, Kakali Dutta, Tapan Kumar Mukherjee, Naren Ghosh Dastider

Final Decision : Disposed Of

Judgement

Saugata Bhattacharyya, J

This writ petition is at the instance of initially four writ petitioners claiming arrear financial benefits in view of approval granted by the concerned District Inspector of Schools (SE), South 24-Parganas with effect from 29th November, 2004 pursuant to the order dated 29th November, 2004 passed by a co-ordinate Bench on a writ petition being W.P.No. 15307(W) of 2003. During pendency of this writ petition one Shib Bhagat, the writ petitioner no. 4 died and on allowing the substitution application filed by the heirs of the writ petitioner no. 4, heirs of Shib Bhagat were impleaded as writ petitioners as described in the cause title of the writ petition 4(a) to 4(e).

The writ petition is heard at length in presence of the learned advocates appearing on behalf of the writ petitioners as well as the State respondents. It has been submitted by Mr. Arabinda Chatterjee, learned senior advocate representing the writ petitioners that the writ petitioners were organizing teaching and non-teaching staff of one Janata Vidyamandir (Junior High School), South 24-Parganas (hereinafter referred to as the "said School"). The said school was initially recognized as 4-Class Junior High School with effect from 1st of May,

1996 vide recognition Memo dated 5th June, 1996. On initial recognition of the said school, the right of the writ petitioners to get approval of the appointment in the newly recognized school was considered by the concerned District Inspector of Schools as well as by the Hon'ble High Court on several occasions. Therefore, while adjudicating the issue involved in this writ petition, this Court need not decide on the right of the writ petitioners to get their respective approval of appointments as organizing staff since the issue has already been considered and set at rest by the orders of this Hon'ble Court. Only issue which needs to be decided in the writ petition is from which date the writ petitioners are entitled to get their financial benefits in view of approval granted by the State respondents.

Mr. Chatterjee while arguing on behalf of the writ petitioners had relied upon the order passed by Justice Kalyan Jyoti Sengupta, as His Lordship then was, dated 29th November, 2004 on a writ petition being W.P. No. 15307(W) of 2003. The said writ petition was filed challenging the order of the concerned District Inspector of Schools dated 15th of February 2002 wherein the right of the writ petitioners to get approval of appointment was denied. While adjudicating the said writ petition, Hon'ble Justice Sengupta made specific findings/and direction which runs infra-

"The first thing I shall do to set aside the impugned order of the D.I. and then I shall direct the D.I. to grant approval to the appointment of all the petitioners, as I have found from the records that the conditions mentioned in paragraph (5) of the judgement and order of Justice Bhattacharjee have been fulfilled. This approval shall be given notionally and on and from the date of recognition of the School. Late Justice B. M. Mitra made it clear immediately after the approval is granted, the school authority would be entitled to apply for extension of recognition. For long years, the school has been functioning in a comprehensive manner and there is no closure or dropping out of the students. At least there is no materials to suggest that the school is not functioning. Once the approval is granted, in terms of the judgment and order, then the school authority shall apply for extension, in terms of the judgement and order of Late Justice B. M. Mitra to the West Bengal Board of Secondary Education, who shall take note of all facts and eventualities and grant extension, as a permanent measure. This is a Junior High School and most of the students are falling below 14 years of age. It is the fundamental right of each and every student of this Country, below the age of 14 years, to have education primarily and it is also the obligation of the State and Board, which is a part of the State to grant recognition. The recognition shall not be refused, once the approval is granted by the D.I.

Let this exercise be completed within eight weeks by the D.I. and the Board shall do the needful, within a period of four weeks from the date of receipt of the application for extension and/or regularization".

It appears from the said order dated 29th November, 2004 that there was specific direction by the co-ordinate Bench to the effect that the writ petitioners were entitled to be approved at least notionally with effect from the date of

recognition of school meaning thereby with effect from 1st of May, 1996 being the date on which the said School was recognized provisionally as 4-Class Junior High School. It has been argued on behalf of the writ petitioners that since the right of the writ petitioners to get approval has been crystallized vide order dated 29th November, 2004, therefore, the writ petitioners are also entitled to get the financial benefits as claimed in the present writ petition with effect from 29th November, 2004.

In order to substantiate the claim of the writ petitioners it has further been brought to the notice of the Court, the order of the Division Bench dated 9th February, 2007 whereby intra-court appeal preferred by the respondents questioning order dated 29th November, 2004 was disposed of. The relevant part of the directions as contained in the order of the Division Bench dated 9th February, 2007 is quoted below:-

"Hence, we direct the State to approve the appointment of the following respondents/writ petitioners in respective posts through the District Inspector of Schools:

- 1) Ram Pyare Rai - Science Teacher (Pure)
- 2) Jawharlal Ram - Social Science Teacher(Geography)
- 3) Ashok Kumar Singh - Life Science Teacher
- 4) Munna Mishra - Social Science Teacher(History)
- 5) Paresh Nath Shaw - Clerk
- 6) Shib Bhagat - Group 'D'

With these modifications the order of the learned Single Judge is affirmed".

It has also been submitted on behalf of the writ petitioners that the order of the Division Bench dated 9th February, 2007 was carried in appeal before the Supreme Court being Civil Appeal No(s). 7898-7899 of 2010 which was finally decided by the Apex Court by passing order dated 19th February, 2015, pages 85 to 87 of the writ petition.

By an order dated 19th February, 2015, the Apex Court dismissed the aforementioned civil appeals preferred by the State respondents.

It is the submission on behalf of the writ petitioners that in view of the order of the Division Bench dated 9th February, 2007 which was affirmed by the Supreme Court vide dated 19th February, 2015 there is no impediment in granting arrear financial benefits to the writ petitioners upon approving them as bona fide organizing teaching and non-teaching staff of the school in question.

It appears that after the dismissal of the civil appeals on 19th February, 2015 by the Apex Court, the Secretary, West Bengal Board of Secondary Education extended the recognition of the said Schools as 4-Class Junior High School which

was initially granted with effect from 1st of May, 1996 upto 31st of December, 2017 by issuing Memo dated 22nd April, 2016. It was specifically stipulated in the said Memo dated 22nd April, 2016 by the Secretary of the Board that the said School authority was not required to apply to the Board for further extension of recognition until further order in view of the Board's circular dated 13th January, 2010.

Pursuant to such extension of recognition of the said School granted vide Memo dated 22nd April, 2016, the concerned District Inspector of Schools approved the appointment of teaching and non-teaching organizing staff of the said School, who were the petitioners before this Court, by issuing Memo dated 31st May, 2016 and 4th July, 2016 at pages 92 to 94 of the writ petition. On perusal of such approval Memo dated 31st May, 2016 and 4th July, 2016, it appears that the writ petitioners were approved notionally in their respective teaching and non-teaching posts in the said School with effect from 1st of May, 1996 and actual financial benefits were extended with effect from 22nd April, 2016.

The writ petitioners are aggrieved by issuance of the approval Memo dated 31st May, 2016 and 4th July, 2016 whereby the respondent authorities sanctioned financial benefits with effect from 22nd April, 2016 instead of the date of passing order by the co-ordinate Bench dated 29th of November, 2004 keeping in view of the fact that from the approval Memo itself it appears that such approval of appointment was granted in favour of the writ petitioners in terms of the said order of the co-ordinate Bench dated 29th November, 2004 passed in W.P. No. 15307(W) of 2003. The writ petitioners pray for sanction of financial benefits on and from 29th November, 2004 being the date on which there was a specific direction made by the co-ordinate Bench to approve the appointment of the teaching and non-teaching organizing staff of the said School. In addition thereto it has also been brought to the notice of the Court that the representation were made dated 5th January, 2017 by the teacher-in-charge of the said School as well as on 7th of February, 2017 and 6th of March, 2017 addressed to the concerned District Inspector of Schools for releasing arrear benefits in favour of the writ petitioners and which have not subsequently been responded to by the respondent authorities.

It is also submitted that the writ petitioners preferred contempt petition being CPAN No. 1358 of 2015 in connection with the writ petition being W.P.No. 15307(W) of 2003 which was disposed of by another co-ordinate Bench on 9th August, 2019 thereby granting liberty to the writ petitioners to explore other avenues open to them in law if they are aggrieved by grant of financial benefits with effect from April 22nd, 2016 inspite of the order dated November 29th, 2004.

While summing up after placing the entire gamut of the issue before this Court, Mr. Chatterjee representing the writ petitioners has candidly submitted that though there was specific direction by a co-ordinate Bench given on November 29th, 2004 with regard to accord approval of appointment in favour of the writ

petitioners along with notional benefits from the date of recognition but the said order dated 29th November, 2004 stood modified by a subsequent order passed by the Division Bench on 9th February, 2007.

It is fairly submitted on behalf of the writ petitioners that the order of the co-ordinate Bench dated 29th November, 2004 stood modified to certain extent by the order of the Division Bench dated 9th February, 2007, therefore, at least the writ petitioners are entitled to get the financial benefits if not from 29th November, 2004, from 9th February, 2007 being the date when the right of the writ petitioners to get approval of appointment was crystallized which was not subsequently interfered with by the Hon'ble Supreme Court in the order dated 19th February, 2015.

Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader appears on behalf of the State respondents and brought to the attention of this Court the relevant part of the affidavit-in-opposition filed on behalf of the respondent authorities which was affirmed on 27th February, 2020 as well as the short notes filed on behalf of the respondents during pendency of this writ petition.

The main contention of the State respondents as it appears from the submissions made by Mr. Mukherjee while defending the impugned Memo of the District Inspector of Schools dated 31st May, 2016 and 4th July, 2016 granting financial benefits with effect from 22nd April, 2016 are as follows:-

(i) If the order dated 29th November, 2004 of the co-ordinate Bench is considered according to the reading of Mr. Mukherjee, there was a direction to grant notional benefit in favour of the writ petitioners with effect from the date of recognition i.e. 1st May, 1996 but the said co-ordinate Bench was silent with regard to the date of granting actual financial benefits to the writ petitioners. Therefore, the concerned District Inspector of Schools was free to take a decision in the matter of sanction of financial benefits in favour of the writ petitioners.

(ii) Mr. Mukherjee also has drawn attention of this Court to the first recognition Memo issued by the West Bengal Board of Secondary Education dated 5th June, 1996 which was primarily for a period of one year and extension of recognition was depending upon filling-up the posts in the said School upon observing the recruitment rules prevalent at the material point of time. Since the Board has finally granted extension of recognition of the said School by issuing Memo dated 22nd April, 2016, therefore, the District Inspector of Schools has rightly decided to grant financial benefit to the writ petitioners from 22nd April, 2016 instead of the date of the order of the co-ordinate Bench dated 29th November, 2004. It is further contended that the date of the Memo of the Board relating to the extension of recognition is an appropriate date which was rightly considered by the D.I. while taking decision on granting financial benefits to the writ petitioners.

(iii) In addition thereto, it has also been submitted that the writ petitioners has accepted the memo issued by the Board dated 22nd April, 2016 extending the recognition of the said School as well as the impugned memo dated 31st May,

2016 and 4th July, 2016 issued by the concerned District Inspector of Schools whereby financial benefits were accorded with effect from 22nd April, 2016 and received salary pursuant thereto. Therefore, the writ petitioners subsequently cannot take a different stand upon throwing challenge to the said approval memo dated 31st May, 2016 and 4th July, 2016 as a result the prayer made for extending the benefit with effect from the date of the order of the co-ordinate Bench dated 29th November, 2004 ought not to be accepted.

(iv) Mr. Mukherjee has also relied upon the judgement passed in MAT 1626 of 2017 [The District Inspector of Schools (Secondary Education), Burdwan and Ors. vs. Abdul Barik Shaikh and Ors.] dated 6th July, 2018, paragraphs 4 and 19 and has argued that in view of such decision the writ petitioners do not have any right to claim financial benefit prior to 22nd April, 2016 as sanctioned in favour of them by the concerned District Inspector of Schools.

This Court has thoroughly considered the submissions made on behalf of the writ petitioners as well as the State respondents and also considered the pleadings and relevant documents which are part of the record. It appears that the writ petitioners' right to get the benefit of approval of appointment was crystallised vide order dated 29th November, 2004 passed by a co-ordinate Bench on a writ petition being W.P.No. 15307(W) of 2003 wherein the co-ordinate Bench specifically gave direction upon the concerned respondent authority to grant approval of appointment to the writ petitioners with notional benefit from the date of recognition of the said school i.e. 1st May, 1996. The said order of the co-ordinate Bench dated 29th November, 2004 was assailed in an intra court appeal preferred by the respondent authority being MAT 30 of 2005 which was finally disposed of vide order dated 9th February, 2007 by the Division Bench. In the said order the Hon'ble Division Bench categorically decided who are the teaching and non-teaching staff to get the benefit of approval of appointment and who are not to get such approval in view of the availability of vacancies and inter-se seniority of the organising staff working in the said school at the material point of time and ultimately concluded that some of the teaching and non-teaching staff are entitled to get the benefit of approval of appointment and to that extent there was a specific direction by the Hon'ble Division Bench.

Mere reading of the said order of the Division Bench dated 9th February, 2007 goes to show that the order of the co-ordinate Bench dated 29th November, 2004 was modified to certain extent while giving direction upon the respondent authority to grant approval to some of the organising teaching and non-teaching staff of the school.

In view of the two successive orders one by the co-ordinate Bench and another by the Hon'ble Division Bench dated 29th November, 2004 and 9th February, 2007 clearly go to show that the order of the co-ordinate Bench dated 29th November, 2004 merged with the order of the Division Bench dated 9th February, 2007 and the right of the writ petitioners were finally decided with regard to grant of approval of appointment being bona fide organising teaching and non-

teaching staff as well as to get their financial benefits thereon.

The said order of the Hon'ble Division Bench dated 9th February, 2007 passed in intra court appeal being MAT 30 of 2005 was not interfered with by the Apex Court in the order dated 19th February, 2015 as a result thereof the said order attained finality upon dismissal of the civil appeals by the Apex Court.

Though it has been argued on behalf of the respondents that since the formal recognition of the said school was granted on and from 22nd April, 2016 as a result thereof the financial benefit was also granted from the said date but such submission does not sound logical to this Court in view of the fact that the recognition was granted in favour of the said School with effect from 1st May, 1996 and during several legal proceedings which were run by the writ petitioners and respondents before this Court never any observation was made by the Court with regard to non-existence of recognition which was granted in favour of the said school during the period from 1997 till 2016. The extension of recognition vide Memo dated 22nd April, 2016 was the outcome of the dismissal of the civil appeals which were pending before the Apex Court and after dismissal of the civil appeals by the Apex Court on 19th February, 2015 there was no option left to the Board but to grant extension of recognition to the said school which was initially granted with effect from 1st May, 1996 as a sequel thereto the District Inspector of Schools ought to have approved the teaching and non-teaching staff of the said school with financial benefits with effect from 9th February, 2007 being the date of the order of the Division Bench whereby the order of the co-ordinate Bench dated 29th November, 2004 stood modified.

Though desperate attempt has been made on the part of the respondent authorities to argue before this Court that the writ petitioners had waived their right of getting arrear benefits with effect from the date of the order of the Hon'ble Division Bench since they accepted the impugned approval Memo dated 31st May, 2016 and 4th July, 2016 and received salary thereafter but that does cut no ice in favour of the respondents in view of the fact that the representations were made by the said school for grant of arrear service benefit in favour of the writ petitioners but the respondents remained silent on those representations.

In addition thereto another co-ordinate Bench while disposing of the contempt application being CPAN 1358 of 2015 preferred by the writ petitioners on 9th August, 2019 has specifically granted liberty to the writ petitioners to explore other avenues open to them in law and subsequent thereto the present writ petition has been filed praying the arrear benefits accordingly.

Lastly, though Mr. Mukherjee, has relied upon the judgement of the Hon'ble Division Bench dated 6th July, 2018 The District Inspector of Schools (Supra) wherein on perusal of paragraphs 4 & 19 it appears that the Court was considering the right of the organising teachers to get benefit of approval of appointment in consideration of the previous judgment delivered by this Court.

So far as the present writ petition is concerned the issue is completely different. In terms of the order of the co-ordinate Bench dated 29th November, 2004 the concerned District Inspector of Schools has accorded approval appointment to the writ petitioners but the question remains from which date the financial benefits is to be extended in their favour in terms of the orders passed by the co-ordinate Bench as well as the Division Bench dated 29th November, 2004 and 9th February, 2007 specially when the order of the Division Bench dated 9th February, 2007 was not interfered with by the Apex Court while dismissing the civil appeals on 19th February, 2015.

In above conspectus, this Court directs the respondent authorities specially the District Inspector of Schools (S.E.), South 24 Parganas to modify the approval Memo No.695/Gen dated 31st May, 2016, Memo No. 696/Gen dated 31st May, 2016 and Memo No.914/Gen dated 4th July, 2016, issued in favour of the writ petitioners thereby grant arrear financial benefits in favour of the writ petitioners and substituted heirs of the petitioner no.4 from the date of order of the Hon'ble Division Bench dated 9th February, 2007 within a period of eight weeks from the date of communication of this order and also issue fresh approval Memo in favour of the writ petitioners including writ petitioner no.4 posthumously.

The writ petition is disposed of, however, there shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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