

(1994) 06 CAL CK 0010
In the Calcutta High Court
Case No : C.O. No. 3503 (W) of 1994

Narendranath Palai

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 09-06-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : 99 CWN 440

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : S. Banerjee and S. Bhowmick, for the Appellant; Asit Goswami and Lalit Kumar Maity for State, for the Respondent

Final Decision : Dismissed

Judgement

Satya Brata Sinha, J.—In this application, the petitioner has prayed for a writ of and/or in the nature of Mandamus commanding the respondents to absorb the petitioner permanently in the existing vacancy to the post of Assistant Teacher of Bio-Science and/or Physical Education of Sarta Taraknath Institution, P.S. Sabong, District Midnapore. The facts of the case in a very narrow compass may be stated as follows. The petitioner was appointed in 1982 against a deputation vacancy in place of one Shri Achinta Pari. He continued in the said post till 1984. The petitioner in paragraph 7 of the writ petition stated thus:

That the erstwhile teacher in Bio-Science, Shri Achinta Pari left the service in the year 1982 of the said School for better opportunity and as such there was a vacuum. In absence of the Managing committee the said Head Master appointed your petitioner in the year 1985 in the said post to save the Institution from chaos and also to save the education of the student who were suffering a lot due to the said teacher. As your petitioner was an approved teacher of Bio-Science with all requisite qualification was assured that his service will be regularised and he will be absorbed in the said post within a short time.

2. According to the petitioner, although he continued to serve the said Institution since 1985, his case for absorption in the State Service has not been considered in terms of the purported circular of the State of West Bengal dated 25.3.82 being No. 363(16)GA/3B-60/80.

3. The learned counsel appearing on behalf of the petitioner has raised a short point in support of this application. He has submitted that in terms of the aforementioned Circular Letter and keeping in view the fact that all other persons working in the said School have been absorbed in the State service, the petitioner has to be treated alike and thus a Writ of and/or in the nature of Mandamus should be issued directing the respondents to absorb the petitioner.

4. In support of his aforementioned contentions the learned Counsel has referred to a decision of this Court reported in 1990(1) C.L.J. 17 (Manick Chandra Sardar & Ors vs. State of W.B.) as also an unreported decision of this Court in Ramapada Maity & Ors. vs. State of West Bengal & Ors. (CO. No. 325W of 1993), which is Annexure K" to the writ petition.

5. The petitioner has not disputed, as would be evident from the Statements in Paragraph 7 of the writ petition, as quoted hereinbefore, that prior to his appointment in the School in question the recruitment Rules framed by the State of West Bengal as also the provisions of Article 16 of the Constitution of India were not complied with, inasmuch as, prior thereto neither any advertisement had been issued nor the Employment Exchange was notified. It is now well-settled in terms of Articles 14 and 16 of the Constitution of India that all persons similarly situated are entitled to be considered for appointment and in case, a violation occurs therein, such appointment will be a nullity. Moreover in this case, the petitioner has categorically admitted that he was not appointed by the Managing Committee but was appointed by the Headmaster. The Headmaster of a School is and cannot be an appointing authority of a Teacher. The petitioner's appointment thus, having been made in violation of the provisions of Recruitment Rules and also Article 16 of the Constitution and by an authority not competent there for, was wholly illegal, void ab-initio and nonest in the eye of law.

6. It is now well-settled in view of several decisions of the Supreme Court of India that regularisation does not mean absorption in the State services. Such absorption in the State services by way of regularisation is violative of Article 309 of the Constitution of India. This aspect of the matter has been considered by the Supreme Court in various decisions and reference in this connection may be made to Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, . J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., and State of U.P. and others Vs. U.P. State Law Officers Association and others,

7. This aspect of the matter has also been considered by several Division Benches of the Ratna High Court in some of which I am a Member reported in

Sitaram Thakur Vs. The State of Bihar and Others , Miss Prasanna Kumari Amma M.P. and Another Vs. Bihar State Financial Corporation and Others, and Nand Kumar Prasad and Others Vs. The State of Bihar and Others

8. Keeping in view the fact that in the decisions cited by the learned Counsel for the petitioner the questions considered hereinbefore were neither canvassed nor determined the said decisions in my opinion do not create any binding precedent. For the reasons aforementioned. I do not find any merit in this writ application which is dismissed in limine.

Let a xerox copy of this order be given to be learned Advocate for the petitioner on usual undertaking.