
(2001) 12 CAL CK 0046
In the Calcutta High Court
Case No : Writ Petition No. 11842 (W) of 2001

Prakash Chandra Purkait

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 12-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Recruitment Rules, 1995 — Rule 6

Citation : (2002) 1 CALLT 519

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Tapabrata Chakraborty and Kamal Mishra, for the Appellant; Bibhuti Dhara and Shyama Prasad Purkait, for the Respondent

Judgement

M.H.S. Ansari. J.

1. The petitioner in the Instant writ application has questioned the order dated June 7, 2001 passed by the District Inspector of Schools (SE) being Memo. No. LS-458/I(4) being annexure R-G to the affidavit-in-opposition of private respondent No. 6.
2. By the impugned order passed by the District Inspector of Schools (SE), directions have been issued to the school authorities to issue appointment letter to Shri Basanta Kr. Halder (respondent No. 6) as a Group "D" staff of the school with Immediate effect.
3. It must also be stated here that the impugned order has been passed in compliance with the order of the High Court dated March 23, 2001 passed in W.P. No. 1030 (W) of 2001 (Basanta Kr Halder v. State of West Bengal and Ore.).
4. It must be stated here that in respect of the filling up of the posts of Group "D" staff several writ applications had been filed by the private - respondent No. 6 Basanta Kr. Halder. The last such writ petition being W.P. No. 1030 (W) of 2001 whereby Hon"ble D.P. Kundu, J. Directed the District Inspector of Schools (SE) to

pass a reasoned order treating the writ application being W.P. No. 1080 (W) of 2001 as the representation of the petitioner. In the said order. Lordship Kundu J, also observed that the District Inspector of Schools shall take into consideration annexure P-5 of the writ application.

5. Annexure P-5 is said to be another order passed in W.P. No. 1073 (W) of 1997 dated December 8, 1997 whereby on the said writ application of respondent No. 6 (Basanta Kr. Halder). N. K. Mitra, J (As Lordship then was) set aside the annexure "C" to the writ petition and directed to approve the appointment of the petitioner Basanta Kr. Halder (As Class IV staff in the school) within February 30, 1998. Annexure "C" appears to be the panel prepared by the school authorities based on interview held on October 13, 1996. The contention of the petitioner, Basanta Kr. Halder in that case as can be seen from the cause title of the Judgment dated December 8, 1997 (Annexure R-4) was that the "illegal interview was held on October 13, 1996 to give appointment to the son of the Secretary of the school for the post of Class IV staff."

6. Reference also needs to be made to the writ application being first in the series of writ petitions filed by Basanta Kr. Halder being C.O. No. 13319 (W) of 1996. The said writ petition was disposed of by Nisith Kr. Batabyal J. by his order dated September 8, 1996. In the said writ application, the grievance of the petitioner (Basanta Kr. Halder) was regarding non-consideration of his application by the school authorities in allowing the petitioner Basanta Kr. Halder to join the school in terms of the appointment letter being memo. No. Gen./933/I(3) dated June 2, 1995 issued by the District Inspector of School. The grievance of the petitioner in that writ petition was against the order dated July 3, 1996 passed by the District Inspector of Schools through his memo No, Gen./1173/3/I(3) whereby the appointment of the petitioner Basanta Kr. Halder was withdrawn without giving him prior notice and without assigning any reason whatsoever. Justice Batabyal disposed of the said writ petition by directing the District Inspector of Schools (SE) to treat the writ petition as the representation of the petitioner and to dispose of the same by a speaking order.

7. It appears that pursuant to the aforesaid order passed by Batabyal J, the District Inspector of Schools (SE) disposed of the matter vide memo issued under No. Law/2304 dated December 5, 1997. Therein, it was held that the petitioner Basanta Kr. Halder could not be considered as dependant on his mother's Income and was, therefore, not a dependant of his mother. (See: Page 39 annexure R-6 of affidavit-in-opposition).

8. It is further recorded in the Impugned order that the name of respondent No. 6 herein (Basanta Kr. Halder) had been sponsored from the live register of the wards of approved staff who died in harness and the same was subsequently withdrawn by the District Inspector of School (SE). In other words, the reason for withdrawing the recommendation made by the District Inspector of Schools (SE) in respect of Basanta Kr. Halder by his memo annexure R-1 which was subsequently withdrawn, have been stated in the memo dated December 5, 1997.

9. The case of the petitioner in the Instant case, however, is that he was not a party to any of the aforesaid proceedings Initiated by the respondent No. 6 (Basanta Kr. Halder).

10. Briefly stated the case of the petitioner is that a vacancy arose in the post of Class IV staff in the Institution in question and the DIS. (SE) granted prior permission to fill up the post vide a Memo dated July 3, 1996. The vacancy is reserved for SC candidate. Pursuant thereto, the school authorities requisitioned the names from the employment exchange and the petitioner is one such candidate whose name was sponsored by the employment exchange. The Selection Committee interviewed the candidates and prepared a panel, which was submitted for approval of the DIS (SE). As the said panel had not been approved in terms of Rule 6 (n) of the Recruitment Rules, 1995, a writ petition which was marked as W.P. No. 8405 (W) of 2000 was filed by the petitioner which was disposed of by Amitava Lal J, by his order date July 16, 2001 directing the DIS/(SE) to convey his decision as regards the approval of the panel pursuant to the interview held on October 13, 1996 for the post of Class IV staff. No action was taken thereon by the DIS (SE) but the petitioner came to know that on August 8, 2001 by memo dated June 7, 2001 (Impugned) order passed by the DIS (SE), whereby respondent No. 6 was directed to be appointed in the said post.

11. The petitioner, Prakash Chandra Purkalt, thereupon, filed the instant writ petition and when the same was moved before Court on August 13, 2001, Interim order was granted directing that no appointment should be made in the post of Class IV staff on the basis of the impugned order.

12. Affidavit-in-opposition has been filed on behalf of the respondent No. 6 and affidavit-in-reply has also been filed.

13. None has appeared on behalf of the State respondents nor any affidavit-in-opposition has been filed on their behalf.

14. Mr. Kamal Mishra, learned counsel for the petitioner contended that the order Impugned (passed by DI. of Schools (SE) in the Instant writ application) is illegal and without jurisdiction. It is the submission of Mr. Kamal Mishra that the appointment in the post of Class IV staff accorded to private respondent No. 6 is contrary to law and in violation of the Recruitment Rules, 1995. It was further contended that even if the order Impugned has been passed on the basis of directions Issued by the writ Court, the same is not binding as material facts have not been brought to the notice of Court based whereupon the said orders have been passed behind the back of the petitioner. In any event, relying upon the judgment of the Division Bench of this Court in Srimanta Kumar Mondal and Ors. v. The State of West Bengal and Ors., reported in 1998 (2) CHN 276. It was contended that the petitioner is entitled to agitate the question impugning the order passed by the DIS (SE). It is the submission of Mr. Mishra that the respondent No. 6 could not be appointed in the post of Class IV staff as has been

purported to be done by the impugned order, The question of approval of appointment would arise when the appointment was made in accordance with the law. In the Instant case, it was submitted that the respondent No. 6 has not been appointed by the Managing Committee, which alone has the power in terms of Rule 28(1) of the Management Rules to make appointments. There is, therefore. It was submitted, no question of approving the appointment of the private respondent No. 6 (Basanta Kr. Halder) much less granting him appointment pursuant to the order of DIS (SE) Impugned in the Instant writ application.

15. Mr. Kamal Mishra, learned advocate further submitted that the recommendation of the DIS [SE] dated June 9, 1995, annexure R-I, cannot be construed as an order of appointment as it is merely a recommendation from the live register. Until a selection process as contemplated in the Recruitment Rules is followed, that is to say interview is held by the Selection Committee duly constituted for the said purpose, panel prepared and approved by the Managing Committee and thereafter sent to the DI, for approval, none of the steps having been taken in accordance with the Recruitment Rules, the question of directing the appointment of respondent No. 6 (Basanta Kr. Halder) cannot arise and any such direction, it was contended, would be a nullity being in contravention of the Recruitment Rules.

16. It was further submitted by Mr. Mishra that even the recommendation, annexure R-I dated June 9, 1995 was withdrawn by the DIS and the only direction the Court issued in relation thereto was for consideration of the matter in accordance with the law and disposal thereof by a reasoned order. Whereupon by memo dated December 5, 1997 being memo Issued under No. Law/2304, the DIS passed a reasoned speaking order holding that the respondent No. 6 is not a dependant and, therefore, cannot be recommended for the post in question. That order was not questioned and therefore, the same subsists.

17. Mr. S.P. Purkait, the learned counsel for the respondent No. 6, however, submitted that on the recommendation made by the DIS. annexure R-I, school authorities were required to constitute a Selection Committee and send up the panel for approval of the DIS Instead, the Secretary of the Institution was Interested in the appointment of his son and took no actions thereon and Instead took action for withdrawal of the aforesaid recommendation. The order of withdrawal was set aside by the order dated December 8, 1997 in W.P. No. 10731 (W) of 1997 by N.K. Mitr, J (As Lordship then was) and a direction was also Issued in positive terms to approve the appointment of the petitioner as Class IV staff. Even, thereafter when no action was taken, respondent No. 6 preferred the writ application being W.P. No. 1080 (W) of 2001, whereby directions were Issued to the DIS (SE) to consider the matter in the light of the orders already passed earlier and in compliance therewith, the petitioner was accorded appointment as Group "D" staff of the school. The impugned order passed by the DIS, it was submitted, suffers from no legal infirmity and is in effect one passed

giving effect to the orders already passed by the Court.

18. As regards the case of the writ petitioner is concerned, Mr. Purkait, learned advocate for the respondent No. 6 submitted that the question of issuing prior permission from second stage cannot and does not arise as there was already recommendation made by the DIS (SE) recommending the name under died in harness category. The question of issuing prior permission from second stage would arise only when the candidate from died in harness category is not available and the post cannot be filled up from that category.

19. Under the Management Rules, procedure for appointment has been prescribed. In so far as the appointment in non teaching post is concerned Clauses 3 (a), (b) and 4 (a) and (c) are relevant. For the sake of convenience, they are extracted hereunder;

-3(a) When any vacancy occurs against any sanctioned post in any recognized and abided Schools, Madrasahs or an any set up school/ Madrasah:

The Management of these Institutions shall approach the DIS(SE) for prior permission for taking steps for appointment with relevant papers. DI of Schools (SE) shall sponsor upto three eligible candidates from the Death-in Harness Category. If there are such names in the Register, in order to be counted from the date of registration along with the prior permission. However, in case of vacancy arising in a School where a deceased non-teaching staff had been working prior to his/her death the names of the eligible word of that deceased non-teaching staff if his/ her educational qualifications suit shall be sponsored by the DI of Schools (SE) irrespective of seniority made under the Death-in-Harness Category.

3(b) The management of the School shall consider the candidature of the sponsored Candidatures from Death-in-harness category within 30 days from the receipt of the prior permission as per procedure laid down below and prepare a panel and forward the same to the DI of Schools (SE) within 15 days of the date of interview. A one man panel shall be prepared in case there is only one candidate in the Death-in-Harness Category. If there is no candidate in Death-in-Harness Category, the DI of Schools (SE) shall permit the school to obtain names from the Employment Exchange.

4(a) On receipt of the prior permission from the School stage from the DI of Schools (SE), the School Authorities shall approach the Local Employment Exchange for sponsoring the names of the Employment Exchange candidates.

4[c] All DIS (SE) shall maintain a Roster to record the names of the qualified eligible approved non-teaching staff for the post of Clerk/ Librarian and forward three names of eligible candidates for interview along with the Candidates sponsored by Employment Exchange."

20. P.K. Ray, J has considered this aspect of the matter in Ramapada Somanta v. State of West Bengal and Ors. 2000 (2) CLT 275 and held that first priority is to

be given to candidates listed under died-in-harness category and in the event of non-availability of candidates under the said category, DI of Schools concerned would proceed to accord prior permission to fill up vacancy by directing the school authority to obtain names from local Employment Exchange in terms of Clause 4(a) referred to supra.

21. In the instant case, the name of the respondent No. 6 was sponsored by the DI of Schools (annexure R-1). I am, however, not prepared to hold that annexure R-1 can be construed as an order of appointment. The school authorities were required to consider the candidature of the candidate (Basanta Kr. Halder) which was forwarded under annexure R-1 being candidate from died-in-harness category.

22. The DI of Schools (SE), however, recalled annexure R-1 without assigning any reasons and granted prior permission in terms of Clause 4(a) by his memo dated July 3, 1996. Batabyal, J by his order dated September 8, 1996 in C.O. No. 13319 (W) of 1996 directed the DI of Schools to treat the writ petition as the representation and to dispose of the same by speaking order. The DI of Schools by his order dated December 5, 1997 held that Basanta Kr. Halder could not be considered as dependant of his mother. Thereupon, second writ petition was filed which was disposed of by N.K. Mitra, J (As Lordship then was) by his order dated December 8, 1997 in W.P. No. 1073 (W) of 1997 directing to approve the appointment of the petitioner therein namely, Basanta Kr. Halder. Thereafter, the third writ petition was filed being W.P. No. 1080 (W) over 2001 disposed of by Kundu, J and in compliance whereof, the Impugned order has been passed.

23. A perusal of the Impugned order would show that directions have been issued to the school authorities to issue appointment letter to Shri Basanta Kr. Halder. In terms of Clause 3 (b), the candidature of candidates sponsored by the DI of Schools from the live register alone could have been considered in accordance with the law. A panel (one man panel) could have been prepared, if there was only one candidate in the death-in-harness category if found eligible and suitable for the post. In other words, the candidature of Basanta Kr. Halder was required to be considered in terms of Clause 3 (b), extracted supra. Therefore, to the extent, the impugned order directing issue of letter of appointment, the same cannot be sustained.

I am Inclined to accept the contention advanced on behalf of the petitioner that annexure R-1 has wrongly been understood as an order of appointment when it is only a memo of DIS (SE) sponsoring of candidature under the died-in-harness category. To that extent, the impugned order is liable to be set aside.

24. As regards the question whether the order recalling annexure R-1 can be sustained, it must be observed that the DIS (SE) having sponsored the name from the live register under death-in-harness category, had no Jurisdiction to recall the said order. It is only at the time of entering the name in the live register that DIS (SE) could have considered the question whether Basanta Kr.

Halder was or was not a dependant of his mother. Having entered the name of Basanta Kr Halder in the live register and having sponsored the same under death-in-harness category, the said decision could not have been reviewed by DIS (SE) either unilaterally or suo-moto. There is no such provision under the Rules nor has any such provision been placed before Court conferring such power upon the DIS to review his own orders whereby the name of a candidate entered in the live register and based thereon, it was sponsored to the school authorities could be recalled by him.

25. The question of granting prior permission in terms of Clause 4(a) would arise only when there is no candidate from the death-in-harness category. On the authority of the Judgment in Ramapada Samanta's case, cited supra. It must be held that the grant of prior permission overlooking that aspect of the matter cannot be sustained.

26. The case of the petitioner (Prakash Ch. Purkait) is founded upon such prior permission vide memo dated July 3, 1996 (annexure P). Unless, it is held that the same is valid, petitioner cannot seek approval of the panel which has been submitted to the DIS (SE) based upon the interview dated October 13. 1996.

27. It is true that several orders have been passed on the writ applications filed by Basanta Kr. Halder, referred to supra, to which the petitioner was not a party. However, the State respondents as also the school authorities were parties to the said writ petitions and took no steps whatsoever either to bring correct facts to the notice of the Court when the orders were passed in the respective writ petitions nor even in the instant writ application, any affidavit-in-opposition has been filed either by the school authorities or the State respondents. There can be no dispute with the proposition as laid down by the Supreme Court in Shivdeo Singh and Others Vs. State of Punjab and Others, that a writ petition is maintainable to review the orders passed in earlier writ application at the Instance of a person who was not a party to the said proceedings. It is in the light of the said legal position that this Court has gone into the merits of the contention urged including those that were raised in the earlier writ petitions.

28. In the result, the writ application is allowed in part with directions as under;

(1) That part of the Impugned order passed by the DIS (SE) dated June 7, 2001 in Memo. No.LS-458/1(4) (annexure R-6) whereby directions were Issued to the school authorities to Issue appointment letter to Shri Basanta Kr. Halder be and is hereby quashed and set aside.

(2) Consequently, directions shall Issue to the DIS (SE). South 24-Parganas, respondent No, 3 herein to Issue a fresh prior permission and with directions to the school authorities, respondents No. 4 and 5 to consider the candidature of Basanta Kr. Halder in terms of annexure R-1 as candidate sponsored by the DIS (SE) under death-in-harness category in terms of Clause 3 (a) of the Recruitment Rules. It is, however, clarified. If there are any other candidates in the said category, their names can also be sponsored by DIS (SE) under the

death-in-harness category.

(3) The DIS (SE) shall Issue such prior permission and such directions to the school authorities within 30 days from the date of communication of a copy of this order and the school authorities shall accordingly constitute a Selection Committee and take appropriate steps in accordance with the law for considering the candidature of respondent No. 6 and other such candidates under death-in-harness category as may be sponsored in accordance with the law and submit a panel to the DIS (SE) within a period of 30 days therefrom, Upon receipt of such panel, the DIS (SE) shall act in accordance with the law in the matter of approval of the panel.

(4) The prior permission annexure "P*" shall accordingly remain in abeyance till the candidature of the respondent No. 6, as directed above, has been considered.

(5) in the light of the above and in the event, the appointment of respondent No, 6 is not approved, then the DIS (SE) shall Issue appropriate prior permission afresh for filling up the post in terms of Clause 4 (a) and the school authorities shall thereupon take appropriate steps in accordance with the law with respect to the said prior permission.

The writ application is accordingly disposed of in terms as above. No order as to costs.

Let urgent Xerox certified copy of this Judgment and order be furnished to the appearing parties, if applied for, on priority basis.