
(2020) 06 CAL CK 0090

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 4397 (W) Of 2016

Prasanta Kumar Dawn & Ors.

APPELLANT

Vs

The State Of West Bengal & Ors

RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:

West Bengal School Service Commission Rules, 1997 — Rule 6(2), 6(3)

Citation : (2020) 06 CAL CK 0090

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Ekramul Bari, Tanuja Basak, Siddhartha Sankar Mondal, Santanu Kr. Mitra, Kartik Chandra Kapas, Chaitali Bhattacharya, Sadananda Ganguli

Final Decision : Disposed Of

Judgement

@JUDGMENT-JUDGMENT

Arijit Banerjee, J

(i) The subject matter of challenge in this writ petition is a Memo dated 6 February, 2014, issued by the Secretary, West Bengal Board of Secondary

Education (hereinafter referred to as "the Board"). By the said Memo it was communicated to the petitioners that Haripur Junior High School,

Burdwan hereinafter referred as "the said school") had been granted permanent recognition by the Administrator of the Board with effect from

01.01.2014. The material facts of the case culminating in the present writ petition are as follows.

(ii) The petitioners as organizing teachers and non-teaching staff claim to have set up the said school in the year 1981. By a Memo dated 14

September, 1999, the Board granted provisional recognition to the said school as a "new set up" for class V to class VIII for a period of one

year with effect from 1 May, 1999 with the condition and instruction that the said school shall take immediate steps for appointment of teaching staff

on recommendation of the West Bengal Regional School Service Commission in respect of the region concerned after observing the procedure

defined in Rule 6(2) and Rule 6(3) of the West Bengal School Service Commission Rules, 1997 and in respect of non-teaching staff by obtaining

names from the Employment Exchange as also by observing other procedures in accordance with the existing Recruitment Rules issued by the DSE,

West Bengal.

(iii) Being aggrieved by the recognition granted to the school as a 'new set up', the organizing teacher and non-teaching staff of the said school

challenged the same by filing a writ petition being WP No.18951 (W) of 1999. The writ petition was disposed of by a Learned Single Judge by a

judgment and order dated August 27, 2003. The material portion of the said judgment and order reads as follows:

â??....In fact the concerned District Magistrate recommended for recognition. This process was continuous process from the date of setting up the

Junior High School. However, at the time of giving recognition by the communication of the order of the Board dated 14 September, 1999, the

recognition was given as â??new set upâ?? from class V to class VIII i.e. Junior High School. I have already held by delivering a judgment that the

words â??new set upâ?? are misdemeanour in WP 45(W) of 2000 (Sk. Asgar Ali & Ors. v. State of West Bengal & Ors.) as well as in WP

4684(W) of 1999 (Gobardhan Prodhan & Ors. v. State of West Bengal & Ors.) along with other cases.

.....

The words â??new set upâ?? are unknown to the rule. The â??newly recognized institutionsâ?? or â??newly upgraded institutionsâ?? mean it has

been set up on that very day when the recognition was given. Whenever a school is already existing for years together and on the basis of various

representations the Governmental authorities thought it fit that the Governmental recognition of such institution will be given that cannot be construed

as â??new set upâ?? because it will relate back to the original day of setting up of the same. However, to avoid the financial stringency, normally the

court directs to regularize the service of the organizing staff from the date of recognition or upgradation but that does not necessarily mean the characteristic of the institution will be governed by an unknown nomenclature 'new set up'.

Thus, I hold that the 'new set up' in the order impugned of the Secretary on the basis of the decision of the Board dated 14 September, 1999 is

misdeemeanour. Therefore, the school cannot be construed as 'new set up'. Consequently, recognition of the services of the existing teaching

and non-teaching staff will be considered provided their names are reflected from the District Level Inspection Team's report, as if they are in

services at the time of the existence of the school.

Therefore, I direct the District Inspector of Schools (SE) Burdwan, respondent no.3 herein, to form a District Level Inspection Team within a period

of two weeks from the date of communication of this order and all the members of the District Level Inspection Team will make an inspection of the

School in question and furnish a report within a further period of two weeks thereafter and the concerned District Inspector of Schools after receiving

the report will pass an appropriate order for approval of the organizing teaching and non-teaching staff within a period of one month from the date of

communication of this order....".

(iv) The respondents herein carried the aforesaid judgment and order in appeal but the same was dismissed by the Hon'ble Division Bench. Since the

order of the Learned Single Judge was not implemented, the petitioners filed a contempt application against the District Inspector of Schools (SE)

Burdwan which, after issuance of Rule, was registered as WPCRC No.6224 (W) of 2004. From two orders passed by the Learned Single Judge in

the contempt proceeding two separate appeals were filed being MAT 661 of 2014 and MAT 609 of 2014. On 27 June, 2014, the Division Bench

passed an order, the material portion whereof reads as follows:

'....The Learned Trial Judge made a positive finding that the school concerned cannot be construed as newly set up school. Accordingly, a

conclusion was arrived at by the Learned Single Judge that recognition of the services of the existing teaching and non-teaching staff should be

considered provided their names are reflected in the District Level Inspection Team's report that they were in service at the time of establishment

of the school.

Fact remains that the order which was passed by the Learned Single Judge of this Court attained its finality. As such, implementation of the said order cannot be obstructed by the respondent.

.....

In course of hearing of the said contempt proceeding, the final recognition of the said school which was granted by the West Bengal Board of

Secondary Education recognizing the said school with effect from 1 January, 2014, was submitted before the Learned Single Judge of this Court.

Since Mr. Bari, Learned Advocate appearing for the writ petitioners/respondents expressed his dissatisfaction with regard to the said final recognition

order, liberty was given to his clients for challenging the said final recognition order in accordance with law.

.....

After considering the direction passed by the Learned Single Judge of this Court on 27 August, 2003 in the writ petition being WP No.18951 (W) of

1999, we are of the prima facie view that the concerned respondent viz. the West Bengal Board of Secondary Education did not implement the order

of His Lordship in its true spirit.

The Long delay in approving the service of the petitioners and that too with effect from January 1, 2014, is also not appreciated by this Court.

However, we cannot make any conclusive finding in this regard in the absence of further materials before us and also in the absence of the West

Bengal Board of Secondary Education.

Be that as it may, the District Inspector of Schools (SE), Burdwan, the alleged contemnor cannot avoid payment of one year's salary to the

organizer teachers and non-teaching staff of the said school if it is found that they rendered their services in the said school during the period when

provisional recognition remained valid.

Under such circumstances, we direct the concerned District Inspector of Schools (SE) to verify the concerned records including the report of the

District Level Inspection Team and find out as to whether the petitioners rendered their service in the said school during the period when the

provisional recognition remained valid and in the event it is found that the

petitioners rendered their service during said period, the concerned District Inspector of Schools (SE), will pay them the salary for one year.....

5. On 7 August, 2014, the Hon'ble Division Bench disposed of the said two appeals. The material portion of the said order of the Hon'ble Division

Bench reads as follows:

....Pursuant to the order passed by this court on 27 June, 2014, compliance report has been filed by the District Inspector of Schools (Secondary

Education), Burdwan since retired. It is mentioned in the said report that the writ petitioners rendered their services in the said school for the period

from 1 May, 1999 to 30 April, 2000. Their entitlement to salary for the said period is also accepted by the alleged contemnor....

Accordingly, we dispose of both the appeals by directing the concerned authority to release payment of salary and other financial benefits which are

admissible to the writ petitioners/respondents herein for the period from 1st May, 1999 to 30th April, 2000 within four weeks from date....".

6. Admittedly the petitioners received their salary for the period May 1, 1999 to April 30, 2000. However, salaries for the subsequent period were not paid.

7. As noted above, during the pendency of the contempt proceeding before the Learned Single Judge, final recognition was granted by the Board to

the said school with effect from January 1, 2014. Since the petitioners were aggrieved by this, the Learned Single Judge had granted liberty to the

petitioners to challenge the said order of recognition. Pursuant to such liberty the present writ petition has been filed.

8. The short question that falls for determination is as to from which date the said school should be granted recognition. The issue as regards the date

from which the services of the petitioners shall be deemed to be approved need not detain me since by issuance of a Memo dated 18 March, 2013 the

concerned District Inspector of Schools approved the appointment of the petitioners as staff of the said school with effect from the date of final

recognition by the Board.

9. Appearing for the writ petitioners Mr. Bari, Learned Advocate, submitted that the order dated 22 August, 2003 passed by this Court in WP

No.18951 (W) of 1999 has attained finality. In the said order a clear distinction has been made between the service of a new incumbent in a 'newly

set up' school and organizing teachers who have been rendering service in a previously established school, in connection with regularization of their

services. He submitted that the Learned Single Judge has found a prior existence of the school and there is no justification for granting recognition

only with effect from January 1, 2014. In any event, he submitted, that the petitioners were found to have rendered service between 1 May, 1999 and

30 April, 2000, and they were also paid their salaries for the said period. Hence their services should be regularized with effect from 1 may, 1999. The

school should also be recognized from 1 may, 1999. The school cannot be recognized from its inception with acknowledging the existence of staff.

10. Mr. Bari submitted that in the impugned Memo dated February 6, 2014 the Board granted permanent recognition to the said school with effect

from January 1, 2014. However, existence of the school from its inception has never been denied nor there is any adverse comment about the service

of the petitioners as organizing staff of the said school from the date of inception till January 1, 2014.

11. Mr. Bari finally submitted that the concerned authorities have recognized the services of the petitioners in the said school for the period May 1,

1999 to April 30, 2000 i.e. the period of provisional recognition of the school. However, the authorities have not shed any light with regard to the time

period beyond the provisional recognition period during which the petitioners rendered their services. No specific case has been made out that beyond

April 30, 2000 and till January 1, 2014, the petitioners did not render service in the said school. Giving provisional recognition to the school for a

particular period and then giving final recognition after a lapse of a substantial period cannot negate and wash away the existence and running of the

said school by the petitioners in the interregnum. The final recognition must be accorded with effect from the date when the provisional recognition

lapsed by efflux of time as it cannot be contemplated that in the interregnum the school was functioning in vacuum.

12. Mr. Bari relied on the following decisions:-

Nomita Chowdhury v. The State of West Bengal & Ors.: (2003) 2 CAL LT 63 (HC) & Unreported decision of a learned judge of this court in WP

No.24701 (W) 2018, Md. Rehajul Islam & Ors. v. The State of West Bengal & Ors.

13. Appearing for the Board, Mr. Santanu Mitra, Learned Advocate submitted that

one of the conditions on which provisional recognition was granted was that the said school shall apply for permanent recognition after obtaining clearance certificate from the District Inspector of Schools (SE). The School has shown a lackadaisical approach. The organizing committee of the school did not submit any proposal and/or application seeking extension of the recognition of the said school after provisional recognition of the school stood automatically lapsed with effect from May 1, 2000. He further submitted that the Board acts as per the directions/recommendations made by the State Government, Education Department and in the instant case the provisional recognition was granted on the basis of the recommendation of the State Government. He submitted that nobody is sure as to whether or not the petitioners or any of them served the said school as organizing staff between 1 May, 2000 and 31 December, 2013.

14. Mr. Mitra relied on the following decision:

Manindra Nath Sinha & Ors. vs. State of West Bengal & Ors.: 2006 (4) CHN 513 & Unreported judgment of a Division Bench of this court in MAT 1626 of 2017 (CAN 9381 of 2017 in MAT 1626 of 2017, the District Inspector of Schools (SE) Burdwan & Ors. vs. Abdul Barik & Ors.).

Court's view:

15. I have given my anxious consideration to the rival contentions of the parties. It is pertinent to note that although on diverse dates Learned Counsel appeared for the State, but no affidavit has been filed on behalf of the State controverting the averments in the writ petition. Affidavit-in-opposition has been filed and submission has been made on behalf of the Board only.

16. As noted above, the Learned Judge disposing of WP No.18951 of 1999 (Prasanta Kumar Dawn & Ors. vs. State of West Bengal & Ors.)

directed the concerned District Inspector of Schools to form a District Level Inspection Team within a period of two weeks from the date of

communication of the Learned Judge's order and such team was directed to furnish a report after due inspection of the said school and the concerned

District Inspector of School was directed to pass an appropriate order for approval of the services of the organizing teaching and non-teaching staff of

the said school within a period of one month from the date of communication of the Learned Judge's order, provided their names were reflected in

the District Level Inspection Team's report as if they were in service at the time

of setting up of the said school. This order was challenged in appeal by the respondent authorities. The appeal was dismissed. Hence, the judgment and order dated 27 August, 2003, attained finality. It may be noted that this court held in the case of Nomita Chowdhury vs. State of West Bengal & Ors. (Supra) that it is settled law that once a judgment reaches finality nobody can touch such judgment save and except the Appeal Court. It is also settled law that a judgment of the High Court of a State is binding upon all the administrative bodies, quasi judicial authorities, Tribunals, and Sub-ordinate Courts within that State. In the appeals arising out of the orders passed by the Learned Single Judge in contempt jurisdiction, the Hon'ble Division Bench by its order dated 22 June, 2014, directed the concerned District Inspector of Schools (SE) to verify the concerned records including the reports of the District Level Inspection Team and find out as to whether or not the petitioners rendered service in the said school during the period when the provisional recognition remained valid and in the event it was found that the petitioners rendered service during the said period, the concerned District Inspector of Schools (SE) was directed to pay them salary for one year.

17. Pursuant to such order a compliance report was filed by the concerned District Inspector of Schools (SE), Burdwan, who had by that date retired from service but was deemed to be in service for the purpose of filing the report as directed by the Hon'ble Division Bench. It is mentioned in the said report that the District Inspector verified all relevant documents including District Level Inspection Team reports dated 15 May, 1999 and 6 November, 2003 as also Teachers' Attendance Register for the period 1 May, 1999 to 30 April, 2000 and found the names of the petitioners therein. Obviously the inference is that at least for the period 1 May, 1999 till 6 November, 2003, the petitioners were serving in the said school. The respondents have brought nothing on record to show that the state of affairs changed after 6 November, 2003. It would be reasonable and logical to presume that the petitioners continued to serve the school till 18 March, 2013 when the concerned District Inspector of Schools issued his Memo approving the services of the petitioners. Nothing to the contrary has been pointed out to me by the respondents to rebut such presumption. If that be the case i.e. if the names of the petitioners are reflected in the District Level

Inspection Team's report dated 6 November, 2003, then as per the order of this Court passed on 27 August, 2003, in WP No.18951 (W) of 1999, the concerned authorities were bound to approve the services of the petitioners forthwith. The concerned authorities procrastinated over the matter and only on 18 March, 2013, issued an approval order although such approval order is with effect from the date of final recognition of the said school by the Board.

18. The question is whether the grant of final recognition of the said school by the Board only from 1 January, 2014, is sustainable? In my opinion it is not. The facts of the case and the records indisputably establish that the said school has been running at least from 1 May, 1999. The said school is imparting education in a less developed area of Burdwan to children who are less privileged than others. That must be the reason for the Government to have recommended to the Board to grant provisional recognition to the said school which was done with effect from 1 May, 1999, for a period of one year. It is contended on behalf of the Board that after expiry of the provisional recognition period, the school authorities did not take steps to apply for permanent recognition or extension of provisional recognition. There might have been such a lapse on the part of the school authorities but there is nothing to demonstrate that the school ceased to function upon expiry of the provisional recognition period. On the other hand, as per the records of the respondent authorities the District Level Inspection Team found the school to be running on 6 November, 2003, and the petitioners serving the said school as on that date. The fact remains that the Board, on the recognition of the State Government thought it fit and proper to grant permanent recognition to the school, however with effect from 1 January, 2014. This date appears to me to be completely arbitrary. Had the school not been rendering valuable service to the less privileged children of the locality in question, surely the State Government would not have advised the Board to accord permanent recognition to the said school.

19. Under those circumstances, since indisputably the said school has been functioning at least from 1 May, 1999, in my considered view and in all fairness, the said school deserves permanent recognition with effect from 1 May, 2000, the provisional recognition having lapsed by efflux of time on 30 April, 2000.

20. From the materials on record I am satisfied that the petitioners have been rendering continuous service to the said school at least since 1 May,

1999. Why should then their services be approved/regularized only from 1 January, 2014? This makes no sense. This would be grossly unfair.

Something that is not fair cannot be just. Something that is not just cannot be lawful. If recognition to the school is granted only with effect from 1

January, 2014, necessarily, the services of the petitioners will only be approved with effect from that date. This would have severe adverse

implications for them. It would be unconscionable. The petitioners who have relentlessly served the said school for spreading education amongst the

less fortunate children of the area in question, surely do not deserve such a raw deal. They are engaged in a noble activity and the same should be

encouraged on all accounts. They are in fact helping in discharge of an important fundamental duty of the State.

21. The two decisions relied upon by Mr. Mitra appearing for the Board do not advance the Board's case. The decision in Manindra Nath (Supra) is

distinguishable on facts. What the Hon'ble Division Bench held in that case is that in the West Bengal Board of Secondary Education Act, 1963 and

the Rules framed thereunder, there is no provision for appointment of any Organizing Managing Committee or organizer teacher nor is there any

authority conferred upon such Organizing Managing Committee to appoint a teacher or employee before the recognition of the school and conferment

of the prescribed sanction strength under the Act. In the instant case, approval has already been granted but with effect from 1 May, 2014, i.e., the

date with effect from which permanent recognition has been granted to the said school by the Board. The question is whether the date of recognition

would be 1 January, 2014 or an earlier date? I have recorded my view above that permanent recognition should be granted to the said school with

effect from 1 May, 2000. The question involved in the present case is different from the question that was involved in Manindra Nath Sinha's case.

22 In any event the judgment and order dated 27 August, 2003, passed by this Court in WP No.18951 (W) of 1999, the appeal wherefrom was

dismissed, is binding inter se the parties and the same is to be given full effect.

23 The question in the case of Abdul Barik (Supra) was whether teachers appointed beyond the sanctioned strength in classes IX and X by the

Managing Committee of Junior High Schools could claim approval of appointment. The Hon'ble Division Bench referred to various decisions of this court and answered the question in the negative. This is not the question that is involved in the facts of the present case.

24 For the reasons aforesaid this writ application is allowed. Memo dated 6 February, 2014, issued on behalf of the West Bengal Board of Secondary

Education is quashed. The respondent authorities including the Board are directed to grant permanent recognition to the said school with effect from 1

May, 2000. The respondents are also directed to treat the services of the petitioners to be approved with effect from 1 May, 2000 in terms of the

Memo dated 18 March, 2013 issued by the District Inspector of Schools (SE) Burdwan (Annexure-P5).

25. WP No.4397 (W) of 2016 is accordingly disposed of. There shall be no order as to costs.

Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.

Later:

The Learned Counsel for the respondent no.4 prays for stay of operation of this judgment and order.

Such prayer is considered and refused.