
(2007) 09 CAL CK 0030
In the Calcutta High Court

Case No : Writ Petition No. 5154 (W) of 2006 with W.P. No. 7504 (W) of 2007

Prasanta Kumar Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Citation : (2008) 1 CHN 402

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Lapita Banerjee and Debasish Pukait, in W.P. No. 5154 W/2006 and P.S. Deb Barman, for the Appellant; Sadananda Gangully, Yasin Ali and Mamata Khatun for Respondent No. 5 in W.P. No. 7504 (W)/2007, for the Respondent

Judgement

Biswanath Somadder, J.—Both writ petitions involves a common issue and, therefore, has been heard analogously and is disposed of by the judgment and order that follows.

2. The writ petitioner in W.P. No. 5154(W) of 2006 had applied for the purpose of being appointed as an Assistant Head Master of Kotalpur Madhusudan High School, P.O. Kundarali, District South 24-Parganas, on the basis of a notice dated 3rd January, 2005.

3. The writ petitioner, was an Assistant Teacher in English in the same school, at the point of time he chose to apply for the post of Assistant Headmaster.

4. According to the writ petitioner, three candidates, including the writ petitioner and the private respondent No. 5, were interviewed for the said post of Assistant Headmaster. Incidentally, the private respondent No. 5 was an Assistant Teacher in Physical Education and held a B.Ed, degree in Physical Education. On the other hand, the writ petitioner, it appears is holding a B.Ed. degree.

5. In paragraph 6 of the writ petition, it has been specifically stated that the private respondent No. 5 cannot be considered for the post of Assistant

Headmaster, since he has a B.Ed. degree in Physical Education. It is submitted by the learned Advocate for the writ petitioner that a candidate qualifying with B.Ed. degree in Physical Education cannot be considered for the post of Headmaster or Assistant Headmaster, since the said B.Ed. degree is not a regular one.

6. According to the learned Advocate appearing on behalf of the writ petitioner in W.P. No. 5154 (W) of 2006, her client holds a regular/general B.Ed. degree, apart from Ms other qualifications and therefore fulfils the eligibility criteria for being considered for the post of Assistant Headmaster of the concerned school. It appears that affidavits have been filed on behalf of the State respondents as well as private respondent No. 5, in Writ Petition No. 5154 (W) of 2006.

7. From the affidavit-in-opposition filed on behalf of the Director of School Education, being the respondent No. 2, it appears as follows:

4(a) That as in terms of the Government order and/or circular, and in terms of the Notification No. 151-L dated 25.01.2002 and Notification 811-SE (S) 17.06.2002 published in the Kolkata Gazette published for guidelines for recruitment of Assistant Headmaster/Assistant Headmistress of Recognised Aided Non-Government Secondary Schools, Government Sponsored School and all types of Recognised & Aided Madrasahs, the Director of School Education, Government of West Bengal, Bikash Bhavan, Salt Lake City, Kolkata 700091 issued a notification being No. 1628-GA/OM-18/2001 dated Kolkata, the 10th July, 2002 circulated that the training qualification of an Assistant Headmaster/Assistant Headmistress is regular B.T./B.Ed./P.G.B.T. degree/diploma certificate is essential but in the instant case the respondent No. 5 namely Dilip Kumar Hazra an Assistant Teacher of the Kotalpur High School, Post Office-Kundarali, District South 24-Parganas (hereinafter referred as the said school) having the training qualification of B.Ed. (Physical Education) which is not the required eligible training qualification for appointment of Assistant Headmaster/Assistant Headmistress of the aforesaid school as such the candidature of the said respondent No. 5 cannot be considered for the aforesaid post in question and if the said respondent No. 5 is placed at the top of the panel for the post of Assistant Headmaster in the said school then the same would be liable to be rejected as per the aforesaid Notification.

8. It has also been further stated in the said affidavit, in paragraph 4(b) as follows:

4(b) That in the instant case the respondent No. 5 is not eligible to participate for the post of Assistant Headmaster/Assistant Headmistress of the aforesaid school as such the candidature of the said respondent No. 5 cannot be considered for the aforesaid post in question and if the said respondent No. 5 is placed at the top of the panel for the said post of Assistant Headmaster in the said school then the same would be liable to be rejected as per the aforesaid Notification. It is pertinent to point out herein that the authority concerned have full right to recast the panel by placing the eligible candidate at the panel in question.

9. The private respondent No. 5 in his affidavit has more or less stated whatever has been stated in his writ petition, being W.P. No. 7504(W) of 2007.

10. In W.P. No. 7504(W) of 2007, the writ petitioner, [being the private respondent No. 5 in W.P. No. 5154(W) of 2006] has proceeded to challenge a Memorandum dated 22nd March, 2007, which happens to a communication from the Director of School Education, West Bengal addressed to the learned Advocate for the State in W.P. No. 5154(W) of 2006.

11. I am of the opinion that insofar as the said Memorandum dated 22nd March, 2007, is concerned, it is a privileged communication between a client and his learned Advocate, which cannot be a basis for challenge in a writ proceeding. The communication of the Director of School Education, West Bengal to the learned Advocate for the State, was for the purpose of assisting the learned Advocate with proper instruction in W.P. No. 5154(W) of 2006.

12. Since State has already filed an affidavit-in-opposition in W.P. No. 5154(W) of 2006, there is no need to take any note of the averments in the Writ Petition No. 7504(W) of 2007, based on the privileged communication from the Director of School Education, West Bengal to the learned Advocate appearing on behalf of the State in W. P. No. 5154(W) of 2006 and as such all contentions raised by the writ petitioner in W.P. No. 7504(W) of 2007, which are based on this privileged communication, shall be ignored for the purpose of deciding the issue involved herein. The last four (4) lines of paragraph 24 of W. P. No. 7504(W) of 2007, shall be expunged from the records of this Court.

13. Insofar as the contention of the writ petitioner in W.P. No. 7504(W) of 2007 is concerned, the answer, to my mind, lies in the statements made in the affidavit-in-opposition filed on behalf of the respondent No. 2 in W.P. No. 5154 (W) of 2006, relevant portions whereof are set out hereinbefore.

14. It will be clear from the stand taken by the State respondent No. 2 that there is a clear distinction between a regular B.Ed, degree and a B.Ed. (Physical Education).

15. The Memorandum dated 10th July, 2002, which is sought to be relied on by the learned Advocate appearing on behalf of the State in W.P. No. 5154(W) of 2006 also contains a clause, being Clause 7, which is reproduced hereinbelow:

7. In regard to interpretation/explanation of any term, expression or clause, the decision of Director of School Education, West Bengal, shall be final.

16. It is clear from a plain reading of the said clause that the decision of the Director of School Education, West Bengal shall be final with regard to any interpretation/explanation of any term, expression/clause contained in the Memorandum dated 10th July, 2002.

17. The learned Advocate appearing on behalf of the writ petitioner in W.P. No. 7504(W) of 2007 relies on a decision of the Division Bench of this High Court in

the case of West Bengal Central School Service Commission and Ors. v. Gita Guha (Dasgupta) reported in 2002(2) CHN 531.

18. By relying the aforementioned judgment, the learned Advocate submits that it is for the University to decide as to whether the B.Ed. (Physical Education) course, and the regular B.Ed, course as appearing from the Memorandum dated 10th July, 2002, are equivalent or not.

19. It appears that the Division Bench in the said judgment was considering whether a Post-Graduate Degree in English given by Himachal Pradesh University on the basis of correspondence course could be recognized as valid degree by the State or not. It was in this backdrop that the Division Bench directed the State Government to send the entire matter with relevant records to the University of Calcutta and the University of Calcutta was directed to decide the question of equivalence and give its reasoned findings within the time-frame as specified in the said judgment and order.

20. In the instant case, however, there is no dispute with regard to the validity of the degree, that is, B.Ed. (Physical Education). The only issue that is to be considered is whether the same is considered by the respondent No. 2 in W.P. No. 5154 (W) of 2006, as equivalent to that a regular B.Ed, degree. In my opinion, Clause 7 of the Memorandum dated 10th July, 2002, puts at rest the controversy involved. It allows the Director of School Education, West Bengal to interpret/explain any term, expression or clause appearing in the Memorandum dated 10th July, 2002, which has been relied on by the learned Advocate appearing on behalf of the State in W.P. No. 5154(W) of 2006.

21. The order of the Division Bench, relied by the learned Advocate appearing on behalf of the writ petitioner in W.P. No. 7504(W) of 2007, is therefore not applicable to the facts and circumstances of the instant case for reasons stated above.

22. In the circumstances, the Writ Petition No. 7504(W) of 2007 stands, dismissed. Insofar as W.P. No. 5154(W) of 2006 is concerned, the respondent No. 3 is directed to take immediate steps for the purpose of granting approval of the writ petitioner's name as the Assistant Headmaster of Kotalpur Madhusudan High School. This exercise has to be completed within a period of a fortnight from the date of communication of this order by the concerned authorities who shall act only in terms of the instruction given by the respondent No. 2, being the Director of School Education, Government of West Bengal.

23. The respondent No. 2 is further directed to conduct an internal enquiry in order to find out as to how the District Inspector of Schools (SE), South 24-Parganas went on to grant approval to the panel, which appears from Annexure P-1 at page 22 of the W.P. No. 5154(W) of 2006 notwithstanding the fact that the said authority had approached the respondent No. 2 seeking clarification of the entire matter. This enquiry shall be completed within a period of four weeks from the date of communication of this order and if it is found that the District

Inspector of Schools (SE), South 24-Parganas has flouted any rules/regulations/instructions of the State Government while issuing the approval dated 30.01.2006, being Annexure P-1 at page 22 in W.P. No. 5154(W) of 2006, the respondent No. 2 being the Director of School Education, West Bengal shall take necessary corrective disciplinary steps in the matter immediately thereafter.

24. Urgent xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties as early as possible.

Biswanath Somaddar, J.