
(2015) 06 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition 6034(W) of 2015

Pratima Banerjee and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2015) 06 CAL CK 0014

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Sanghamitra Nandy, for the Appellant

Final Decision : Allowed

Judgement

Ashoke Kumar Dasadhikari, J.

1. The writ petitioners, two primary school teachers, got appointment as primary school teachers in Kalyani University Experimental School, Government sponsored (Primary Section) in 1989 and thereafter some of the petitioners joined as trained graduate teachers and some of them were graduate teachers. Kalyani University started running of experimental high school with a primary section. The school was taken over by the State Government with effect from January 1, 1987 after bifurcation of the same into two separate units, primary section and secondary section. By Government Order No. 506-Edn(T) dated 18th November, 1987 an ad hoc committee was constituted for the purpose of management of Kalyani University Experimental School, Government sponsored, (Primary Section) and it has not been superseded. The Committee approached the Government for sanction of at least ten teachers for primary section. Nine teachers, who were earlier engaged in secondary section for the purpose of running of the primary section in a way of stopgap arrangement, did not choose to continue as such, the then ad hoc committee appointed the writ petitioners who were highly qualified for the post, in which they were accommodated. The petitioners along with other primary school teachers were working continuously

in the said Kalyani University Experimental School, Government Sponsored, (Primary Section) since 1989 onwards. Petitioners did not get approval.

2. The present petitioners along with others were compelled to file a writ application being W.P. 19939(W) of 1998 for a direction upon the authorities of Education Department, (Primary), for their permanent absorption in the primary school. The matter came up for final hearing before the learned Single Judge on 22nd May, 2001. The writ petition was disposed of by the learned Single Judge holding that the petitioners, who were appointed on different occasions, have much higher qualification than what is required for the post of primary school teacher. It was also recorded that they have rendered their services for more than two years in the primary school. In view of the Government order dated 26th November, 1981 they were entitled to be regularised and approved in their respective teaching and non-teaching posts of the said primary school and they are to be paid their regular salaries at par with all other primary teachers in the State.

3. Accordingly, the Director of School Education (Primary) was given direction to recognise the service of the petitioners as teaching and non-teaching staff under Kalyani University Experimental School, Government sponsored (Primary Section), and to approve their services and further to make necessary arrangement in payment of their salaries and other dues at par with other primary school teachers in the State expeditiously.

4. Against the judgment and order dated 22nd May, 2001 in W.P. No. 19939(W) of 1998 the State Government preferred an appeal being M.A.T. 2966 of 2002. The appeal came up for hearing before the Hon''ble Division Bench on 16th June, 2005 and the Hon''ble Division Bench was pleased to dismiss the appeal. State of West Bengal being aggrieved by the order of the Hon''ble Division Bench, preferred a Special Leave to Appeal being No. 4443 of 2006 before the Hon''ble Apex Court against the judgment dated 16th June, 2006. The Hon''ble Apex Court was pleased to dismiss the said Special Leave Petition on 8th May, 2013.

5. After dismissal of Special Leave Petition the Commissioner of School Education, West Bengal by his memo dated 14th August, 2013 informed the Chairman, District Primary School Council, Nadia that the Directorate had already issued memo No. 90/1(5)-Law(Pry) dated 11th April, 2003 and requested the Chairman to take over Kalyani University Experimental School, Government sponsored (Primary Section) and also to take certain other steps. The concerned authorities implemented the instruction given in the aforementioned memo. Subsequently, the school was renamed as Kalyani University Experimental School Primary Section and it was taken over by Nadia District Primary School Council and office memo was also issued on 3rd January, 2014. The Chairman, Nadia District Primary School Council thereafter by different memo numbers dated 3rd January, 2014 issued appointment letters in favour of the writ petitioners in the post of assistant teachers of Kalyani University Experimental School, Primary Section. Having received the appointment letters the petitioners joined the

school on 17th January, 2014 and they are working in the post as assistant teachers. Now the teachers have filed this writ petition with a prayer for direction upon the respondents to give effect of fixation of scale of pay to the petitioners as assistant teachers after giving approval of their services with effect from their respective dates of joining i.e. 26.6.1990, and 9.8.1991 respectively and they have made a further prayer for arrear salaries with effect from the date of their joining the school along with interest.

6. Ms. Nandy, learned Counsel appearing for the petitioners submits that the writ petitioners failing to get approval from the appropriate authority moved this Hon''ble Court and this Hon''ble Court considering the entire matter disposed of the earlier writ petition being W.P. No. 19939(W) of 1998 on 22nd May, 2001 directing the Director of School Education to recognise the service of the petitioners as teaching and non-teaching staff respectively in the aforementioned primary school and Government sponsored institution and also to approve their service as such and to make arrangement for payment of their salaries and other dues at par with other primary teachers in the State expeditiously.

7. Ms. Nandy submitted that the order of the learned Single Judge was challenged before the Hon''ble Division Bench and the Hon''ble Division Bench dismissed the appeal. Thereafter Special Leave Petition was preferred by the Government and that was also dismissed. Therefore, the concerned authorities are obliged to give effect of the order passed by the learned Single Judge dated 22nd May, 2001. But unfortunately, the appointment letter issued by the Council stipulates that petitioners are giving employment on temporary basis on the terms and conditions as laid down under the Rules in the substantive posts and their pay was fixed at the minimum of Pay Band-2 of Rs. 5,400-25,200/- plus Grade Pay of Rs. 2,300/- plus usual allowances as admissible under Rules from time to time from the date of joining and the petitioners will join the post within 2nd February, 2014 failing which their appointment letters shall be treated as cancelled and their joining would be accepted after verification of their respective original mark-sheet, certificates and other testimonials.

8. Ms. Nandy submitted that the impugned letter of temporary appointment is contrary to the order of the learned Single Judge. It was submitted by Ms. Nandy that the writ petitioners are entitled to get employment on and from the date of their joining as directed by this Hon''ble Court which was affirmed upto Hon''ble Apex Court and they are also entitled for their pay fixed as per Government Regulation.

9. Ms. Nandy submitted that under no circumstances the appointment could be temporary or the writ petitioners could be given the lesser pay or their pay could be fixed at the minimum of Pay Band-2. She submitted that the writ petitioners who were serving the school since 1989 onwards are entitled to get all service benefits and at least they should be treated as primary school teachers from the date of their appointment.

10. Ms. Nandy submitted that in the instant case the Chairman of the Nadia District Primary School Council did not act in consonance with the order of the learned Single Judge dated 22nd May, 2001. She submits that the writ petition be allowed and the order has become final and binding upon the Council also.

11. Ms. Nandy submitted that the State Governments took time to file affidavit-in-opposition but did not file any affidavit-in-opposition. She submitted that the State authorities in fact have nothing to say that they have lost upto the Hon''ble Apex Court.

12. Learned Counsel appearing for the Nadia District Primary School Council submitted that the petitioners were given employment and they have joined. They have made some representations. He submitted that the District Primary School Council, Nadia, is not willing to file affidavit-in-opposition.

13. At the time of hearing nobody is present on behalf of State authorities nor any accommodation is prayed on behalf of the State.

14. I have considered the facts and circumstances of this case, the materials available on record, the order of the Learned Single Judge and the Hon''ble Division Bench as well as the Hon''ble Apex Court. It is undisputed that the writ petitioners were appointed as primary school teachers since 1990 and 1991, respectively. They were rendering service uninterruptedly and the concerned authorities have accepted their service. They were not given approval by the authorities concerned. They had to come up before this Court and this Court after hearing the parties passed the following order:

"

In view of the aforesaid observations by the Supreme Court, the petitioners are also entitled to the application of the aforesaid Government Order in their cases.

In this particular case the Primary Section, a Government sponsored Institution all along functioned with nine teaching and one non-teaching staff since after its separation from Secondary Section. The stop gap arrangement made by the respondent authority as above for running of the Primary Section soon after its separation from Secondary Section further established the sanctioned strength of nine teachers in the Primary Section. One non-teaching staff for running of the school is a must. These nine teachers and one non-teaching staff namely the petitioners herein were duly appointed by the ad-hoc committee of management of the school so constituted by the State Government. Such appointments were made by the said committee in exercise of its power of management of the institution which necessarily included the power of appoint. The State Government did never dispute such exercise of power by the ad-hoc committee of management of the said school nor questioned the appointment of the petitioners as teaching and non-teaching staff of the said school. They were so appointed in the year, 1989, 1990, 1991, 1992 and 1994 respectively and as stated hereinabove they have much higher qualifications than are required for

the post of a primary school teacher. They having rendered their services for more than 2 years in the above primary school, in view of the above Government Order dated 26th November, 1981, they are also entitled to be regularised and/or approved in their respective teaching and non-teaching posts of the said Primary School and paid their regular salaries at par with all other Primary School teachers in the State.

In all these views this writ petition is disposed of by directing the Director of School Education (Primary) to recognise the services of the petitioners as teaching and non-teaching staff respectively of the Kalyani University Experimental (primary Section), a Government Sponsored Institution and also to approve their services as such and to make necessary arrangements for payment of their salaries and other dues at par with other Primary School teachers in the State expeditiously. It is however made clear that if the Director of School Education in future upon consideration of teacher pupil ratio or the existing class units forms an opinion that the said sanctioned strength of nine teaching and one non-teaching staff is required to be increased or reduced as per the Government norms or the Scheme then it will have the liberty to do so in compliance with the provisions of law. With these observations, this writ petition shall stand disposed of."

15. State of West Bengal being aggrieved by the order impugned passed by the learned Single Judge preferred an appeal and the Hon''ble Appeal Court dismissed the appeal. The observation made by the Hon''ble Appeal Court is quoted hereunder:--

"It appears that in pursuance of the directions and orders passed on 22.05.2001, which are under challenge, the State authorities have issued necessary orders as far back as on 17.03.2003. According to learned Counsel appearing for the appellants, such order in the way of compliance had to be issued under threat of contempt. We fail to appreciate this approach. It rather reflects strange inaction and belated response on the part of the authorities. After all, contempt power is exercised to uphold the majesty of the law and of the administration of justice. The expression "threat of contempt" thus does not seem to be proper in the facts of the present case. In our view, the concerned Government authorities in complying with the directions given by the Learned Judge in the impugned judgment got an opportunity to undo a wrong."

16. Thereafter State authorities preferred Special Leave Petition and the Hon''ble Apex Court dismissed the Special Leave Petition. Order passed by the Hon''ble Apex Court reads as follows:--

"This petition is directed against judgment dated 16.6.2005 passed by the Division Bench of the Calcutta High Court in M.A.T. No. 296 of 2002, whereby the appeal preferred by the petitioners against the order of the learned Single Judge in the matter of regularization of the services of the private respondents was dismissed.

We have heard learned counsel for the parties and carefully perused the record.

In our considered view, the judgment under challenge does not suffer from any legal infirmity requiring interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed."

17. Therefore, the fate of the writ petitioners is decided before this Hon''ble Court wherein the learned Single Judge of this Hon''ble Court directed the Director of School Education to recognise the services of the petitioners as teaching staff of Kalyani University Experimental School, Primary Section, Government sponsored institute and also to approve their services as such and to make necessary arrangement for payment of their salaries and other dues at par with other primary school teachers in the State expeditiously.

18. Accordingly, the Chairman, Nadia District Primary School Council was under obligation to give approval to the petitioners from the respective dates of their joining. There is no question of giving any temporary appointment. The State authorities or the Chairman, Nadia District Primary School Council is not entitled to take any different stand, having failed before all forums. The order of the learned Single Judge dated 22nd May, 2001 has reached its finality. The Chairman of the Nadia District Primary School Council as well as the State authorities have no other alternative but to accept the appointment of the writ petitioners from the respective dates of their joining and they are obliged to give proper pay fixation and arrear salary specially when the writ petitioners are in continuous service in the primary school.

19. Accordingly, this writ petition is allowed. The Chairman, Nadia District Primary School Council is directed to correct their appointment letters. The concerned Chairman is further directed to give approval on and from the initial date of joining of the petitioners. The writ petitioners be paid all arrear salaries from the date of their initial joining. The writ petitioners be given pay fixation as per norms prevailing taking note of their initial joining dates in the primary school. The Chairman and/or other authorities are directed to act accordingly.

20. The concerned District Inspector of Schools as well as Director of School Education is directed to give pay fixation from the initial date of the joining of the petitioners and they are further directed to make payment. The concerned Director is also directed to grant approval to the petitioners from the date of their initial joining in the said school.

21. The entire exercise should be completed within a period of six weeks from the date of communication of this order.

22. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on usual undertakings.