
(2002) 04 CAL CK 0043
In the Calcutta High Court
Case No : Writ Petition No. 9409 (W) of 1997

Purnima Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 CALLT 273

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : M.Q. Kabir and Lutful Haque, for the Appellant; Asoke Maity, for the Respondent

Judgement

P.K. Ray, J.—In the writ application, the petitioner has prayed the following reliefs :

"(a) A writ in the nature of Mandamus commanding the respondents to recall, rescind, cancel or withdraw the impugned order being annexure "K" to this petition in so far as the denial of approval to the appointment of the ward of the petitioner and to forbear from giving effect to the same;

(b) A writ in the nature of Certiorari directing the respondents to produce the records of the case in this Hon"ble Court so that on perusal of the same conscionable justice may be administered by quashing and/or setting aside the impugned order being annexure "K" to this petition in so far as the denial of opportunity of approval to the appointment of the ward of the petitioner is concerned or to give any other direction as may be seemed fit and proper."

2. By the impugned order in this writ application, which is nothing but a communication by the chairman, Ad-hoc Committee, Midnapore District Primary School Council communicating the decision of the director of school Education, West Bengal, whereby vide his Memo No. 397SC/P dated 12th March, 1997 rejected the approval of appointment of ward of the petitioner only on the

ground that the petitioner was declared unfit after 58 years of age. The fact leading to the writ application in brief as follows:-

3. The petitioner while working in the post of Assistant Teacher of the concerned Primary School due to an accident became permanently disabled and/or incapacitated with effect from 3rd August, 1993 when she was aged about 56 years and 11 months. The petitioner's case was referred to for examination by the Medical Board for necessary declaration that the petitioner became incapacitated to continue in service. The Medical Board for consideration of the matter examined the petitioner thrice on diverse dates during the periods 1995-96 and ultimately by their decision dated 26th July, 1996 declared the petitioner unfit to work further. From the medical report it appears that cause and/or disease which prompted the Medical Board to declare the petitioner as incapacitated to work remains the same when the petitioner filed an application for such declaration due to the accident as happened when admittedly the petitioner was below 58 years of age. In the impugned order the Director of School Education relied upon a notification No. 768-Edn, (P) dated 22nd September, 1991, to reject the prayer of the petitioner by holding that since the petitioner admittedly crossed 58 years of age when medical board declared him unfit to work, there was no provision to accord approval of appointment of the ward of the petitioner. The relevant Rule being Rule 14(b) in terms of the said Notification reads as follows :-

"14. Appointment on compassionate ground - The council may appoint primary teachers with the approval of the Director on compassionate ground in the following cases where in the opinion of the council, the cases deserve compassionate consideration :--

(b) when a primary teacher is declared permanently incapacitated by the competent medical board set up according to the procedure laid down in the Government order and he has been allowed to retire at least two years before he attains the age of superannuation and his family is in extreme economic hardship after such retirement, (1) the unemployed wife, or (2) the unemployed son, or (3) the unemployed unmarried daughter, of the incapacitated and prematurely retired primary teacher possessing the required Educational qualifications as laid down in Sub-rules (a) and (b) of Rule 6 and found eligible to teach, may make within two years from the date of such retirement, a prayer in writing to the Council for appointment as Primary teacher on compassionate ground;

Provided that only one member of the family of the incapacitated and prematurely retired primary teacher possessing the required educational qualifications and found eligible to teach, may be appointed on compassionate ground."

4. On bare perusal of the said provision it appears that the purpose of providing job to one member of the family of the incapacitated and prematurely retired primary teacher got a social object. In the instant case, admittedly the petitioner

became incapacitated due to the accident as happened when the petitioner was below 58 years of age. Had there been immediate examination by the Medical Board before crossing of 58 years of age by the petitioner, there could have been no embargo to recommend the case of one of the family members of the petitioner for being appointed in the post of Assistant Teacher. Hence it appears that as the Medical Board examined the petitioner long after the accident and declared the petitioner unfit, the fact of such declaration, which has been considered by the Director of School Education, West Bengal as prospective, in all fairness and reasonableness and on applying the rules for interpretation of statutory provision, would be considered as retrospective otherwise the statutory provision granting benefit in such type of cases would be nullified due to holding of Medical Board at belated stage and citizen will suffer without any fault on their part. This point has been considered by the Division Bench presided over by Samanesh Banerjee, J. in the unreported case Anil Chandra Majhi v. State of West Bengal being F.M.A. No. 178 of 1999, which was subsequently been relied upon by another Division Bench presided over by Ashok Kumar Mathur, the Hon'ble The Chief Justice.

5. In that view of the matter, it is declared that the decision of the Medical Board as passed declaring the petitioner as permanently incapacitated to work would be given effect to retrospectively when the petitioner suffered the accident that is on 3rd August, 1993 when admittedly the petitioner was aged 56 years and 11 months.

6. In that view of the matter, the impugned decision passed by the Director of School Education, West Bengal under memo No. 397/SC/P dated 12th March, 1997 rejecting the proposal for appointment of the petitioner's son under the provision 14(b) of the aforesaid notification (hereinafter referred to as the Recruitment and Leave Rule 1991) is hereby set aside and quashed as a consequence thereof, the impugned order allowing the petitioner's voluntary retirement on the ground of physical incapacity which was effected from 26th July, 1996 issued by the Chairman, Ad-hoc Committee, Midnapore District Primary School Council and the prayer for leave with effect from 3rd August, 1993 to 29th January, 1994 as half pay leave and from 30th January, 1992 to 26 July, 1996 as leave without pay, as granted by the Chairman, Ad-hoc Committee aforesaid are hereby set aside and quashed.

7. Since the petitioner applied on 23rd December, 1993 seeking voluntary retirement on the ground that she became incapacitated to work due to fatal accident and taking into account the Medical Board's decision, such voluntary retirement would be given effect to from 23rd December, 1993 in respect of the petitioner's service and the authorities concerned are directed to grant leave and other statutory reliefs in favour of the petitioner considering her date of retirement on 23rd December, 1993. The respondent, the Director of School Education, West Bengal is directed to pass appropriate decision in terms of Rule 14 (b) as referred to, on consideration of the recommendation of appointment of

the son of the petitioner as already been forwarded by the concerned Primary School Education and on the basis of this judgment within two months from the date of communication of the order. A reasoned decision to be passed and be communicated to the petitioner.

The writ application is accordingly disposed of. There will be no order as to costs.

Let urgent xerox certified copy of this order, if applied for, be given to the learned advocates for the parties expeditiously.