
(2002) 06 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 14607 (W) of 2000

Rabiul Islam Laskar

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Constitution of India, 1950 — Article 16, 21, 226

Citation : (2003) 1 CALLT 428

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : S. Dhar and Md. H. Zaman, for the Appellant; T.P. Halder, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Ray, J.—Heard learned Advocates for the parties.

In the writ application, the petitioner has prayed for the following reliefs:

"a) Writ or writs in the nature of Mandamus commanding the concerned respondents to act in terms of the order dated 22.11.90 passed by this Hon'ble Court and also to take immediate steps in accordance with the Memo No. 176-Edn(P) dated 22nd April, 1988 and/or any subsequent such memo issued by the concerned respondents and/or any subsequent such memo issued by the concerned respondents and/ or in terms of the West Bengal Primary Education Act and the Rules framed thereunder forthwith and to act in accordance with the law.

b) A writ in the nature of Certiorari directing the respondents to transmit and produce the relevant records and documents before this Hon'ble Court, so that conscionable justice may be administered."

2. The case of the petitioner is that the father of the petitioner while he was working in the post of Primary School Teacher in the concerned school suffered

seriously from hypertension, loss of memory and bronchial asthma which prompted his father to file an application on 8. 6, 90 praying voluntary retirement on the ground of physical incapacitation and thereby appointment of the petitioner as a Primary School Teacher in terms of the Government circular providing such benefit. Since no medical board was set up, the petitioner's father moved a writ application before this Court registered as C. O. No. 14443 (W) of 1990, wherein K.M. Yusuf, J, (as His Lordship then was) by the order dated 22.11.90 disposed of the writ application in the following terms :

"In the circumstances I direct the respondents to send the petitioner for examination by the Medical Board within 15 days from date and on the report of the Board to act in accordance with law. In case it is found that the petitioner is permanently disabled and incapacitated to discharge his duties as Teacher then the respondents shall allow voluntary retirement and the case of his son Md. Rabiul Islam Laskar shall be considered on compassionate ground in accordance with Memo dated 22nd April 1988 issued by the Education Department (Primary Branch)."

3. A medical board was set up ultimately and the said board declared the petitioner's father as physically incapacitated to work when already petitioner's father crossed 60 years of age. This certificate is dated 28.12.90, whereas petitioner's father reached 60 years of age on 30.9.90. The petitioner's father made several representations to implement the judgment passed by K.M. Yusuf, J, as referred to above on issue of appointment of his son. However, in the meantime, petitioner's father breathed last on 23.7.93. Since no response was received from the concerned Primary School Council, this writ application has been filed.

4. This writ application has been opposed by the District School Board, South 24 Parganas, subsequently named as District Primary School Council, by filing affidavit. In the affidavit, it has been contended in paragraph 8 that the petitioner's father worked till his retirement, that is 30.9.90 in the school in question, and his last date of service in the school was 25.9.90, and thereafter since Puja Vacation started, the petitioner's father automatically retired with effect from 30.9.90 during the Puja Vacation. It has been further contended by annexing a document at page 11 of the affidavit in opposition, which is a certificate issued by the Sub-Inspector of Schools, Joynagar (North) Circle dated 22.8.2001 that the petitioner's father had drawn salary till September 1990, that is upto the age of 60 years. An affidavit in reply has been filed where no denial has been made about the service of the petitioner's father till 60 years of age and drawal of salary, allowance and service benefits. Learned Advocate for the District Primary School Council has produced document, namely, attendance register of the school for the period January 1988 to August 1992. Such attendance register has been inspected by the learned Advocate of the petitioner. From the attendance register it appears that the petitioner's father even after filing his application on 8.6.90 praying for voluntary retirement due to suffering

from different ailments, continued to function as Primary School Teacher by signing the daily attendance register. From the attendance register it appears that due to summer vacation the school was closed with effect from 1.6.90 to 10.6.90 and the petitioner's father joined on 12.6.90 and signed the attendance register, that is on the reopening day of the school and continued to work till 16.6.90. Thereafter, he enjoyed commuted leave for the rest of the said month. In the month of July 1990, the petitioner's father enjoyed commuted leave till 24.7.90, and thereafter attended the school and worked as Teacher in Charge of the concerned primary school for the period 26.7.90 to 30.7.90. From 31.7.90 Rainy vacation of the school started and it continued till 11.8.90. 12.8.90 was a Sunday and 13.8.90 was a holiday due to Janmastami. Petitioner's father resumed his duty with effect from 14.8.90 and continued to work till 22.8.90. For the rest period of the month, commuted leave was enjoyed by him. In September, upto 23.9.90, such commuted leave was enjoyed and the petitioner's father resumed duty on 24.9.90 and worked till 25.9.90. An endorsement was made by petitioner's father in the attendance register to this effect: "Today, 25.9.90 is my last working day of my school life." Since with effect from 26.9.90 Puja Vacation started and it continued till 17.10.90, the petitioner's father retired on 30.9.90 during the said vacation. From the certificate of the Sub-Inspector of Schools, it appears that the petitioner's father enjoyed full salary till September 1990. From the records, as placed by the Primary School Council, it further appears that the case of the petitioner was considered and was rejected on the ground that the petitioner's father worked till 60 years of age and medical board declared him physically incapacitated when already petitioner's father crossed 60 years of age. It is submitted by the learned Advocate for the Primary School Council that the order of K.M. Yusuf, J, was fully complied with. It has been submitted that no communication, however, was made to the petitioner while rejecting the application of the petitioner on the ground as stated in the order sheet. In the affidavit in reply though there was no challenged about the contention of the Primary School Council that the petitioner's father worked till 60 years of age and enjoyed salary, allowance and service benefit, in the writ application also there is no whisper by the petitioner that his father worked till 60 years of age and enjoyed the salary. It is a clear case of suppression of material facts before this Court. It is true that K.M. Yusuf, J, (as His Lordship then was) passed an order 22.9.90 directing to set up a medical board for examination of the petitioner's father and thereafter consideration of the case of the petitioner for appointment under specific circular letter. On the material date when the judgment was delivered by this Court, the fact remained that the petitioner's father upon working for the full period of 60 years and upon receiving the salary, already retired from service. Had these facts been placed before K.M. Yusuf, J, surely there would have been no necessity of direction by this Court for setting up of medical board. However, since those papers were not placed an order was passed directing to set up a medical board and to consider the application of the present petitioner praying for appointment in terms of the memo dated 22.4.88. issued by the Education Department

(Primary Branch). Once a judgment was delivered by K.M. Yusuf, J, upon hearing all the parties, the same became binding upon all the parties. This Court cannot reopen such judgment nor can analyse the said judgment. The binding force of a High Court's order remains effective until and unless such order is cancelled and/or modified or quashed by the appellate Court. Hence, even if the petitioner's father worked upto 60 years and after enjoyment of the salary was declared by the Medical Board as physically incapacitated, that too when his father already crossed 60 years of age, the same was required to be considered in terms of the direction given by K.M. Yusuf, J, in the order as referred to. In this writ application, hence the point is to be considered whether the Primary School Council has dealt with the matter in terms of the circular letter dated 22.4.88 which was directed to be followed by K.M. Yusuf, J. Circular letter No. 176-Edn. (P) dated 22.4.88 is a circular letter providing scope for employment on compassionate ground of a ward of a Primary School Teacher who is permanently disabled or incapacitated for continuing in service. Procedure to be followed in disposing of such cases has been prescribed. The condition precedent as stipulated in such circular letter for consideration by way of terms and conditions, reads as follows :

"(i) The ward shall possess the requisite qualification for such appointment;

(ii) The benefit shall be restricted to those primary school teachers who have not attained the age of sixty years; and

(iii) The benefit shall not be claimed as a matter of right."

5. K.M. Yusuf, J, (as his Lordship then was) by the earlier order directed that the Primary School Council would consider the prayer for appointment of the present petitioner in terms of the aforesaid memo dated 22.4.88. In that memo, a condition under condition No. (i) has been stipulated which provides that benefit for such appointment would be restricted in respect of those primary school teachers who did not attain the age of 60 years. Hence, it is clear that though His Lordship directed setting up of a medical board and consideration of the prayer for appointment of the present petitioner, but such order was contoured and/or limited by further direction that the same would be in terms of memo dated 22.4.88. Hence it is clear that Primary School Council was required to follow the memo dated 22.4.88 in terms of the judgment of K.M. Yusuf, J. From the records it appears that the ground of rejection of the prayer of the present petitioner for his appointment has been stated in terms and condition No. (ii) as already noted, with reference to memo dated 22.4.88. Hence from the records it appears that Primary School council has followed the order K.M. Yusuf, J. The decision rejection the prayer on the ground that the petitioner's father crossed the 60 years of age is a valid ground in terms of memo dated 22.4.88. In that view of the matter, no relief can be granted in favour of the petitioner. Furthermore, from the records as already discussed, it has been proved that the petitioner's father worked till 60 years of age and enjoyed salary. Once a person enjoyed salary and worked till 60 years of age, there is no question of granting any relief in terms of

the said circular dated 22.4.88 and there was no scope for declaring a person as retired voluntarily. The petitioner did not contend anything about his father's enjoyment of salary till 60 years of age, before this Court. The petitioner very purposely avoided to answer the positive averment as made by the Primary School Council that petitioner's father worked till 60 years of age and enjoyed the salary, allowance and service benefits. In that view of the matter, the petitioner is required to suffer a cost.

Having regard to the material documents as placed and the legal position, this writ application stands dismissed with cost of 200 G.M.s which is to be paid by the petitioner to Primary School Council within a month from this date.