
(2013) 08 CAL CK 0002
In the Calcutta High Court
Case No : Writ Petition No. 19811 (W) of 2011

Rakhal Chandra Das and Others	Vs	APPELLANT
The State of West Bengal and Others		RESPONDENT

Date of Decision : 20-08-2013

Acts Referred:

West Bengal School Service Commission Act, 1997 — Section 9

Citation : (2013) 4 CALLT 330

Hon'ble Judges : Indra Prasanna Mukerji, J

Bench : Single Bench

Advocate : Ekramul Bari and Mr. T. Basak, for the Appellant; Biswarup Biswas for the School Authority, Mr. Jaytosh Majumder and Mr. Sulagna Bhattacharya for the State, for the Respondent

Judgement

Indra Prasanna Mukerji, J.—This is a writ concerning Mobarakpur Chhiramati Junior High School, Mobarakpur, P.O. - Kanaipur, District - Dakshin Dinajpur. This school was established on 22nd December, 1980 as Mobarakpur Scheduled Caste Junior High School. It is said to have been functioning from 15th January, 1981. It was a private school unaided and without government recognition. The petitioners along with local people claimed to have set it up. With effect from 1st May, 2001 this school got provisional recognition from the West Bengal Board of Secondary Education, under the name of Mobarakpur Chhiramati Junior High School.

2. The petitioners claim that they were the teaching and non-teaching staff of this school, at the time of its creation and recognition. Thereafter, the petitioners, it seems, in 2001 filed a writ application in this Court (W.P. No. 11279 (W) of 2001) Rakhal Chandra Das & Ors. v. State of W.B. & Ors.). Amitava Lala J. disposed of it on 15th October, 2001. His lordship directed that the District Inspector of Schools (SE) Dakshin Dinajpur should form a district level inspection team within a period of four weeks from the date of communication of the order. They would inspect the school and furnish a report to the District Inspector of

Schools so that it took a decision regarding approval of appointment of its teaching and non-teaching staff.

3. On 4th July, 2002 the District Inspector of Schools (SE) submitted a report before the Director of school education. The report denied that there was any change in the name of the school and that the petitioners had served as organizing teachers and non-teaching staff.

4. On 19th March, 2003 in another writ application (W.P. 14494 (W) of 2002) this Court passed an order appointing a Special Officer to inspect the school and file a report as to whether the two names of the school mentioned above related to the change of name of one school or whether they were separate and whether they existed in one compound. The Special Officer reported that Mobarakpur Scheduled Caste Junior High School had been renamed as Mobarakpur Chhiramati Junior High School; they were the one and same school. Furthermore, the petitioners were found to be the organizing teachers and staff from the inception of the school.

5. On 21st July, 2003, Lala J. passed another order directed the authorities to take every possible step for the purpose of approval of the service of teaching and non-teaching staff of the school as regular staff, after recognition of the school.

6. An appeal was preferred from the said order before a Division Bench of this Court which on 27th November, 2004 directed by way of an interim order that only provisional appointments be given to the organizing teaching and non-teaching staff.

7. Against this order a SLP was filed before the Supreme Court by the State which by its order dated 27th February, 2006 requested the Division Bench of this Court to dispose of the matter.

8. The appeal was finally disposed of by a judgment and order made on 16th August, 2007. The order of the Appeal Court is inserted below:

However, if the application submitted by the authorities of the Mobarakpur Chiramati Junior High School for grant of permanent recognition has not yet been finally disposed of by the competent authority as submitted by the learned Counsel of the said school, then the concerned authority will immediately consider and dispose of the said application after taking note of the fact that the Mobarakpur Scheduled Caste Junior High School has been renamed subsequently as Mobarakpur Chiramati Junior High School as held by the learned Single Judge on the basis of the report of the Special Officer.

We also make it clear that the claim for granting the recognition to the concerned school should be decided by the competent authority strictly in accordance with law and in the light of the earlier orders passed by this Hon"ble Court.

Needless to mention that if the Mobarakpur Chiramati Junior High School is

ultimately recognised by the competent authority in future then the services rendered by the respondents/writ petitioners as teaching and non-teaching staff should not altogether be ignored and the concerned authority will take appropriate decisions regarding approval of the respondents/writ petitioners in the employment of the recognised school strictly in accordance with law.

In view of the aforesaid observations and directions, the judgment and order under appeal passed by the learned Single Judge stands modified and the appeal as well as the Cross Objection filed in relation to the said appeal stand disposed of.

There will, however, be no order as to costs.

Let Xerox plain copies of this order, duly countersigned by the Assistant Registrar (Court), be given to the parties on usual undertaking.

9. The District Inspector of Schools considered the matter and made his decision on 5th July, 2011. This decision is under challenge in this writ.

10. To put it in short the District Inspector of Schools was of the opinion that posts in a school had to be sanctioned after its recognition. In its recognized state the institution did not have any sanctioned post. Therefore, the teachers and non-teaching staff engaged in the unrecognised period of the school were not working in any real post. Posts in the school had to be sanctioned and then filled up under the public recruitment scheme envisaged by the West Bengal School Service Commission Act, 1997. Recruitment could only be made by way of an open competition and selection on merits.

11. The question for consideration is very short. Suppose a body of persons establishes and runs a private school, say from Classes V to VIII. This body comprises of some teaching and some non-teaching staff. Assume there is no dispute whatsoever that this body was genuinely instrumental in setting up, running and managing the school from its inception. Now, also assume that this body applies to the Board and to the State government for recognition and for aid. Their request is granted by these authorities. The school is recognised and is also aided.

12. Now, the question is: Would this body of persons be thrown out of employment of the school, just because they have sought recognition and aid for the school? Would the school after recognition and receiving aid be run by an entire different body, recognised by the authorities? If that is the law, would the body founding the school be better off by not asking for aid and recognition than by asking for it? Because in that event their employment would have remained undisturbed. Is this body of teaching and non-teaching staff to be regularised and made the permanent employees of the school?

13. The recognition was initially provisional, of Classes V to VIII for a period of one year on the condition that teaching and non-teaching staff were to be appointed on the recommendation of the West Bengal Regional School Service

Commission. Until formal recognition was granted by the Board the school could not admit students. Formal recognition was granted on 24th September, 2009 with retrospective from 1st May, 2002 up to 31st December, 2012.

14. Indeed the ratio of the cases on the subject is complex. It is difficult to understand the line of reasoning in several cases cited.

15. Let me first come to the case of Manindra Nath Sinha and Others Vs. State of West Bengal and Others, . In paragraph 16 of the judgment their lordships opined that under the West Bengal Board of Secondary Education Act, 1963 and the rules framed thereunder, there was no provision for appointment of any managing committee or organizer teachers. Neither was there any power in the managing committee, to appoint any teacher or employee before the recognition of the school and grant of sanctioned strength. It went on to add that if the initial appointment of the so called organising managing committee or organiser teachers was wrong, their appointment could not be regularised by issuance of administrative notifications by the Joint Secretary of the government. Hence, there was no justification for the invocation of the principle of promissory estoppel. The Court disbelieved the writ petitioners that they had been acting as organising staff. Hence, they could not be regularized.

16. A similar view was taken by another Division Bench of our Court in the case of State of West Bengal and Others Vs. Smritikana Maity and Others, In this case the writ petitioners were organizing staff of Classes IX to X before their recognition by the West Bengal Board of Secondary Education. Such recognition was given on 29th November, 2000. The Division Bench held that there was no validly constituted managing committee when the appointments were made. Therefore, the appointment of teaching and non-teaching staff of the unrecognised portion of the school (IX to X) was impermissible.

17. The Division Bench also held the following:

24. An argument was advanced before us that Government of West Bengal, School Education Department and Directorate of School Education time to time, from 1982 to 2003, issued various circulars with an object to regularize the appointments of organizer teachers. At the time of hearing, a bunch of circulars were produced before us by the learned Advocate of the writ petitioners/respondents. It was submitted before us that these circulars are executive instructions and those were issued for the benefit of organizer teachers, who had sacrificed the best part of their lives for such institutions. It was further argued before us that such long and uninterrupted service given by these organizer teachers has created a "legitimate expectation" that their services would be regularized in future. But such argument cannot be accepted by us in view to the judgment of the Hon Tale Apex Court in the case of Ram Pravesh Singh & Ors. (supra), which we have already discussed earlier. In the case of Uma Devi (supra) also the Hon'ble Apex Court observed as follows in Paragraph-47 of the judgment:-

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

25. It is true that the State had recognized a number of people who were appointed by the Managing Committee for unrecognized classes, although such appointments were illegal and in clear violation of the Rules, but such recognition/regularization being contrary to law cannot be treated as precedent.

26. We are also of the view that inclusion of names of such organizer teachers in the report of the DLIT (District Level Inspection Team) can never be taken into consideration until and unless it is shown that such appointment is given by a validly constituted Managing Committee of a recognized aided institution within the sanctioned strength and that such appointment is given according to the provisions of the relevant Rules.

28. In view of the discussions made above, we find sufficient merit in the submission of Mr. Banerjee, learned Advocate of the appellant. We are of the view that when the initial appointments of the writ petitioners/respondents were not in accordance with the Rules, any executive order or instruction issued by the State Government cannot confer any right upon such organizer teachers to claim absorption or regularization of their service.

18. Then came the judgment in the case of Headmistress, Garifa Arati Academy for Girls v. Smt. Gita Banik & Ors., another Division Bench judgment of our Court reported in (2008) 1 CLJ (Cal) 453. It held that after coming into force of the West Bengal School Service Commission Act, 1997, no teacher could be appointed into any school without being recommended by the West Bengal School Service Commission, which had incidentally been also held in the case of Manindra Nath Sinha & Ors. Vs. The State of West Bengal & Ors. (Supra) and State of West Bengal & Ors. Vs. Smritikana Maity & Ors. (Supra). After coming into force of that Act, the Division Bench held, the Court could not recognise any organizing managing committee or organising teacher. There was no question of recognizing them.

19. The judgment in the case of Manindra Nath Sinha & Ors. v. The State of West

Bengal & Ors. (supra) has to be analyzed in this way. The West Bengal Board of Secondary Act, 1963 and the rules framed thereunder did not provide for appointment of any organising managing committee or organiser teacher before recognition of the school. They were not being recognised for the purpose of recognition and regularization. They could be called the illegally appointed staff of the school. In case of such illegal appointments the doctrine of promissory estoppels could not help the claim. The most important part of the judgment is that the claim of the organizing staff that they took part in the organisation of the school was held to be untenable.

20. In the case of Headmistress, Garifa Arati Academy for Girls v. Smt. Gita Banik & Ors. the view taken was that after coming into force of the West Bengal School Service Commission Act no teacher could be appointed in any aided school without being recommended by the West Bengal School Service Commission. Vacant posts are liable to be filled up through the School Service Commission in terms of the said Act.

21. State of West Bengal & Ors. v. Smritikana Maity & Ors. (supra) laid down that the managing committee of the recognised part of the school being the Junior High School (Classes V to VIII) had given appointments to teaching and non-teaching staff of the unrecognised part of the school (Classes IX to X). Such appointments were held to be illegal. The doctrine of legitimate expectation did not apply. The ratio in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, was applied to hold that these persons were illegally appointed employees and had no right to seek.

22. In my opinion the problem in this particular case is completely different.

23. The writ petitioners started and built the school. They constituted the teaching and non-teaching staff of the school. The school was a private school. It was from Classes V to VIII. The report of the Special Officer appointed by this Court, as confirmed by this Court said that the writ petitioners were an integral part of the school right from the time of its inception. They had taken every possible step to help the school to grow, so that ultimately it got recognition. It got recognition with effect from 1st May, 2001. When these persons were part and parcel of the school, when it was private and unrecognised, and found to be so by the Court, they could by no stretch of imagination be called organising members who had been illegally inducted. In fact they constituted the management of the unrecognized school.

24. In my opinion, what section 9 of the West Bengal School Service Commission Act, 1997 stipulates is that if there is any vacancy in any recognised school, the managing committee could only appoint a teacher on the recommendation of the School Service Commission.

25. Could it be said that after recognition of a private school the posts of teaching and non-teaching staff became vacated immediately? This would mean and imply that the existing teaching and non-teaching staff of the school are

immediately thrown out of employment upon recognition of the school and their vacancy is to be filled up by appointees of the managing committee as are recommended by the school commission.

26. In my opinion, when the managing committee and the teachers and other staff who genuinely organise a private school, are properly appointed and held to be so by a Court of law and they have acted bona fide in transforming the school from a private to a government recognised school, they are the staff of the school which await recognition by the government, on recognition of the school. This kind of staff is not to be equated with an illegally appointed managing committee and staff, as refused to be recognised by this Court in the cases of Manindra Nath and Smritikana Maity (supra). If this staff is immediately thrown out on the recognition of the school, there would be violation of laws (e.g. Labour laws, Contract laws etc.) and the result unjust which the legislature did not intend, while enacting the West Bengal School Service Commission Act, 1997.

27. Hence, when the organising staff is genuine there is no vacancy in the post of teaching and non-teaching staff, when the school is recognised, as understood in the West Bengal School Service Commission Act, 1997. That is why the Division Bench presided over by Pranab Kumar Chattopadhyay, J. in the case of State of West Bengal & Ors. v. Md. Hassan & Ors., an unreported judgment delivered on 30th August, 2012 observed as follows:

In any event, there is no dispute that the organised section of the said High Madrasah in respect of Class IX and X had been functioning before grant of formal recognition and upon being satisfied about the proper functioning of the said organised section, ultimately 4-Class

Junior High Madrasah was upgraded in the year 1999 as High Madrasah by the West Bengal Madrasah Education Board.

In absence of teaching and non-teaching staff, the aforesaid section could not function properly.

No one has claimed before the Competent Authority save and except the respondents/writ petitioners for approval of the appointment as teaching and non-teaching staff of the upgraded section of the High Madrasah.

Therefore, there is no scope to express any doubt that the respondents/writ petitioners herein did not serve in the High Madrasah as organised teaching and non-teaching staff as otherwise the said upgraded section of the High Madrasah could not function properly. Ultimately being satisfied, the competent authority upgraded the 4-Class Junior Madrasah to a High Madrasah with effect from 1st May, 1999.

The District Inspector of Schools concerned also in clear violation of the Memo No. 705 dated 13th January, 1999 issued by the West Bengal Board of Madrasah Education recommended for appointment of teaching staff through School Service Commission and non-teaching staff through Employment Exchange since

it has been specifically mentioned in the aforesaid Memo dated 13th January, 1999 that the appointments of organiser teachers and non-teaching staff of the Madrasah cannot be treated as fresh appointment after recognition and, therefore, question for recommending the matter for appointment of teaching staff through School Service Commission cannot and does not arise.

For the aforementioned reasons, we are satisfied that the claims of the writ petitioners for approval of their appointments as organising teaching and non-teaching staff of the upgraded section have been rejected by the District Inspector of Schools (SE) Hooghly without any valid reason and appropriate grounds.

The District Inspector of Schools (SE), Hooghly should have approved the appointments of the writ petitioners as organising teaching and non-teaching staff of the upgraded section of the High Madrasah since the said writ petitioners fulfilled the required conditions in accordance with law.

We find that the learned Single Judge has considered the issues raised in the writ petition in an appropriate manner and strictly in accordance with law. We find no scope to interfere with the findings of the learned Single Judge.

In the aforesaid circumstances, we affirm the impugned judgment and order under appeal passed by the Learned Single Judge and dismiss this appeal without awarding any order as to costs.

Since a considerable time has already passed, we direct the authorities concerned to take necessary steps in compliance with the order passed by the learned Single Judge without any further delay but positively within a period of four weeks from the date of communication of this order.

28. The scheme of the above Act however, makes it explicit that not only the school, its staff is also to be recognised by the government. Such staff should be recommended by the School Service Commission.

29. In my opinion, upon recognition of the above school, its bona fide organizing staff including the managing committee should also be recognised by the government. The School Service Commission should recommend the petitioning teaching and non teaching staff of the school. The respondent authorities should also simultaneously sanction the posts in the school, accordingly, to accommodate the writ petitioners. Thereafter, the government should make the formal appointments. This procedure would meet the purpose and requirements of the above Act. For all the aforesaid reasons this writ application is allowed by passing an order directing the first, second and third respondents to approve the existing managing committee of the school and sanction the teaching and non teaching posts therein to accommodate the writ petitioners, by 7th October, 2013 and the School Service Commission to recommend, within the aforesaid time limit the writ petitioners in terms of this order. Order also in terms of prayer (a) of the writ petition. Full compliance is to be effected within three months from

the date of communication of this order.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.