

(1998) 06 CAL CK 0034
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, C.R. No. 2998 (W) of 1982

Ram Prosad Majhi and Another

APPELLANT

Vs

District Inspector of School (SE), 24-Parganas

RESPONDENT

Date of Decision : 30-06-1998

Acts Referred:

Constitution of India, 1950 — Article 39

Citation : (1998) 3 CALLT 46

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mr. Mukul Prokash Banerjee and Mr. Montu Maity, for the Appellant; Mr. Debasish Kar Gupta, for the Respondent

Judgement

B. Panigrahi, J.—In this case, the petitioners have challenged the legality, propriety and validity of the order passed by the District inspector of School (SE), 24 Parganas issued in memo No. 29(4) dated 13th January 1982 and the impugned notice dated 16th January 1982 whereby and whereunder he had directed all students reading in class-V and class-VI to be admitted in some other schools other than Kamalamoyee Balika Vidyamandir. The petitioners who are the teachers as well as members of the erstwhile Managing Committee, have stated inter alia that for expansion of education of the girls in rural areas, the villagers have organised and set up the Sonaria Kamalamoyee Balika Vidyamandir, a Junior High School at Sonaria. District South 24 Parganas. At the first instance, they had received recognition from the President, West Bengal Board of Secondary Education as two class junior high school with effect from 1.1.74 vide memo No. 10378/3 dated 8.11.74 for two years. But subsequently, the said recognition was extended from time to time and lastly, it was extended until further orders per general circular No. S/688/ER/OC dated 17th September 1979.

2. The petitioners' main grievance is that the respondent No. 3 who was ex-headmistress made several attempts to bring a chaos in the administration of the school by defying the order of the Managing Committee. Since she was a

supporter of the political party, somehow or other she managed to exert considerable influence upon the respondent 1. District inspector of Schools (SE) and got appointed a drawing and disbursing officer for the said school by ignoring the rights of the then Managing Committee. The petitioners, therefore, filed a writ petition in this court and an interim order was passed thereto by stating the operation of the impugned order was stayed till the completion of enquiry in accordance with law. The District inspector of Schools (SE) was, however, directed to disburse the salary to the teaching and non-teaching staff of the said school in accordance with law.

3. It appears that on 18.1.82 the respondent No. 1 directed all female teachers to join in other school as per memo No. 29(4) dated 13th January 1982 and the guardians were equally requested for taking transfer certificate of the students for admission in some other co-education school. Some of the girl students were issued compulsory transfer certificate enabling them to take admission in some other co-education school. Lady teachers who were transferred by virtue of the order dated 13.1.82 had, however, joined under the threat of action by the District inspector of Schools (SE). After those teachers left the institution, gradually students strength diminished and (hereafter, the District inspector of Schools (SE) directed the Managing Committee to allow other students who were prosecuting their studies for leaving the school. It has been submitted that since the school is situated in the rural area, the people of the locality had founded the institution for propagation of education, the order of transfer was passed by the District inspector of Schools (SE) for abolition or closure of the school, with illegal, motivated and mala fide intention. The respondent No. 1 in collusion with the respondent No. 3 has passed such colourable order. Therefore, the writ petitioners filed this case for quashing of the said order.

4. During the pendency of the case, the 3rd party petitioner filed an application for being impleaded as co-petitioners along with other petitioners who were already on record. The respondent Nos. 1 and 2 had filed affidavit-in-opposition claiming inter alia that the writ petition is not maintainable. The newly added petitioners have no locus standi since they were appointed illegally by the Managing Committee. The school in question did not have sufficient number of students in class V and class VI. Therefore, the District inspector of Schools (SE) was constrained to pass an order directing the students to take admission in some other schools as well as transferred lady teachers who were working in the said school. Therefore, in such circumstances, the order of transfer cannot be characterised as illegal, mala fide and motivated. It has been further claimed by the respondent No. 1 that since the lady teachers have already joined in some other schools, the writ petition does not deserve in consideration as it does not survive any cause of action.

5. During the pendency of the suit, a report was called for from the District inspector of Schools (SE). In course of time it is stated that during the year 1995-96 class-wise students' strength was 185. In para 9 it further revealed in

class 4 recognised Junior High School--eight teaching staff, one clerk and one class iV were still working. Another report was also submitted earlier on 30.6.97. But that report was somehow misplaced. Therefore, the District inspector of Schools (SE) submitted a copy of the said report. From the report it appears that the students have been proceeding in their studies in class iV and class V. There was original recognition accorded to the said school by the District inspector of Schools (SE). Therefore, without further materials or a chance of hearing to the petitioners or the members of the Managing Committee, the District inspector of Schools (SE). 24 Parganas could not have passed such order by transferring the teachers who were working in the said school nor directed the managing committee to issue transfer certificate to the girls students who were then prosecuting their studies. This court at the time of filing of the case, recorded the interim order restraining the respondent Nos. 1 to 3 from proceeding any further on the basis of the order dated 13th January 1982. But however, it appears that the teachers who had been transferred to different schools under the threat of action, did not comply with the said order. In the interlocutory order it was indicated that the members of the teaching and non-teaching staff appointed by the then Managing Committee shall continue and no order can be passed by the respondent without permission from the court.

6. Mr. Mukul Prokash Banerjee, learned advocate appearing for the petitioners has strongly urged that the District inspector of Schools (SE) could not have passed an order of transfer by issuing the impugned order directing the lady teachers working in the said school to other schools, without any legal authority. The management rule does not also provide any power to the District inspector of Schools (SE). It is true that this court passed an order of stay for not giving any effect to the impugned order. But Mr. Banerjee has, however, admitted that even though such order was passed, the teachers working in the said school under fear of action by the respondent No. 1 were constrained to leave the said school. Therefore, the Managing Committee was forced to appoint four new teachers in place of those transferred teachers. The question shall arise now whether the transfer of those teachers is valid or not. It is true that the management rule does not authorise the District inspector of Schools (SE) for such transfer. But in certain exceptional and extreme situation, if the administrative exigency so demand, the District inspector of Schools (SE) can issue such an order. In the instant case, the District inspector of Schools without providing any opportunity to the Managing Committee or to the teachers should not have passed the order on 13.1.82. No order could have been passed directing the students to join elsewhere without hearing the grievance of the guardians. Therefore, in such situation I am not bound to quash the order passed by the District inspector of Schools (SE) which had been assailed in this case vide memo No. 29(4) dated 13th January 1982 and the notice dated 16th January 1982.

7. Mr. Debasish Kar Gupta, learned Advocate appearing for the respondents has, however raised serious objection to the maintainability of the case on the sole

ground that since the erstwhile Managing Committee members are not in the picture, the other petitioners cannot maintain the case. I fail to appreciate the contention of Mr. Kar Gupta that the rights of other petitioners who have been subsequently impleaded in this case, cannot be whittled merely on the ground of changing of membership of the Managing Committee. Therefore, such objection raised by Mr. Kar Gupta has no valid reason.

8. Since the transferred teachers have already joined in their respective schools after that impugned order was passed by the District inspector of Schools, even assuming the said order is legally untenable, the position cannot be brought back to the stage as on the date of writ case. Mr. Banerjee, learned Advocate for the petitioners has fervently pleaded that since the other petitioners who have been working in the said schools against sanctioned post and the teachers who have gone on transfer, their service should, accordingly, be regularised. I am unable to accept the contention by Mr. Banerjee on the ground that the teachers who were appointed by the Managing Committee, are admittedly not selected in accordance with the recruitment rules. Therefore, since their appointment was *dehors*, the recruitment rules cannot, however, be regularised. It is now to be found out as to the number of vacancy of assistant teachers, which can be filled up after obtaining necessary permission from the District inspector of Schools. Since the School Service Commission has already been set up, if any vacancy has arisen, such vacancy could be filled up only after obtaining panel of candidates from the School Service Commission. Therefore, in this background, I direct the Managing Committee/ Administrator to seek permission from the District inspector of Schools (SEJ) as regards the number of vacancies of assistant teachers by taking into consideration about the students' strength. After such permission being obtained, those post could be filled up.

9. Mr. Banerjee, learned Advocate appearing for the petitioners has advanced a serious contention by stating that since the petitioners have been working in the said school, although their appointment was not sanctioned, yet they should be given a chance to appear for the post of said teachers, whenever such vacancy shall be filled up. I find that there is some substantial force in the aforesaid contention. The other petitioners are working as assistant teachers in the said school. Since their appointment could not be regularised, they should be given an opportunity to appear as candidates for the post of assistant teachers along with other eligible candidates as and when such vacancy of the said school shall be filled up. In case they are found over age into consideration of the authority may condone by taking their past experience as assistant teachers, save and except the above observation, their appointment cannot be held valid. Accordingly, no direction could be issued to the respondent No. 1 for regularisation of their service.

10. In the above context. I allow the writ petition in part, but in the circumstance without cost.

11. Petition allowed in part