

(2001) 12 CAL CK 0027
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 15787 (W) of 2001

Ranjit Kumar Sen

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226
School Service Commission Rules, 1997 — Rule 7

Citation : (2002) 3 CALLT 460

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Jayanta Biswas and Ekramul Bari, for the Appellant; G.S. De and Lalit Mohan Mahanta for the Respondent No. 6, Subir Bhattacharjee, for the Respondent No. 7 and Sima Sengupta, for the School Service Commission, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Ray, J.—In this writ petition the petitioner, a candidate recommended by the School Service Commission for appointment to the post of Headmaster of Maru Masina Bansa Jr. High School, has challenged the action of Managing Committee who refused to appoint him in the said post. The petitioner is qualified with M.A. in History and he is still working as Assistant Teacher in Social Science Group in another school. The Managing Committee of the school has not issued any appointment letter in favour of the petitioner despite recommendation of the petitioner's name for such post of Headmaster in the said school by the West Bengal Regional School Service Commission, Western Region, Bankura. The petitioner has come up in this writ petition challenging the action of the Managing Committee. As per direction the respective parties have filed opposition and reply.

2. The writ application has been opposed by the Managing Committee of the school by filing affidavit upon contending, inter alia, that the petitioner being

qualified with M.A. in History was not allowed to join in the school as Headmaster since in terms of the Managing Committee's resolution relating to such vacancy of Headmaster, the school wanted a candidate of Language Group being qualified with M.A. in English to hold the post of Headmaster. It is further contended that the School Authority in terms of the Rule referred to such resolution relating to the post of Headmaster to the District Inspector of Schools concerned who in turn did not modify the same but upon confirming the same had referred it to the School Service Commission for necessary recommendation. It is further contended that the School Service Commission was bound to follow the requisition of the school relating to the vacancy prescribing qualification and the group which was confirmed by the District Inspector of Schools concerned. It is further contended that the School Service Commission being a statutory authority must act within the domain of the statute and it being the recommending authority had no power to decide the qualification of the candidate as would be necessary in the particular school i.e. to decide the nature of vacancy itself. It is contended by the School Authority that the school prepared a staff pattern including a post of Assistant Teacher marked for a candidate who would teach History and a candidate have already been appointed by the recommendation of the School Service Commission prior to the recommendation of petitioner in terms of staff pattern. So at the present moment there is no scope to appoint any other candidate qualified with History subject in the post of Headmaster as same would foul the staff pattern as already approved by District Inspector of Schools and accepted by School Service Commission.

3. The School Service Commission supports the writ application by contending, inter alia, that they have acted within their power and the Managing Committee was bound to appoint the recommended candidate. The learned Advocate for the petitioner argued that the Managing Committee being a creature of the statute was required to follow the recommendation as made by the School Service Commission. Reliance has been placed to the judgment passed by the Division Bench of this Court in M.A.T. 1331 of 2000.

4. Considering the respective contentions of the parties the only point for adjudication in this writ application is whether the action of the Managing Committee was justified refusing to appoint the present petitioner in the post of Headmaster in the school in question. The relevant law in this field is required to be considered to have an answer on that point. The West Bengal School Service Commission Rule 1997 provides the procedure by which a vacancy to be notified to the recommending authority i.e. the School Service Commission. The relevant provision as laid down in Rule 7 is quoted in extenso for effective adjudication of the matter :-

"7. (1) The State Government in the School Education Department shall lay down the procedure for recruitment of teacher, Headmaster and Headmistress, including inter alia, the essential and/or desirable educational and other

qualifications, age, experience and other requirements.

(2) Every school shall report the vacancies as on the date of report and as will arise upto the second day of next January to the Regional Commission with a copy to the District Inspector of Schools (Secondary Education) who shall scrutinize the same and forward it to the Regional Commission with or without modifications, as may be necessary, within a month of receipt thereof. In case of delay in respect of the recommendation of the District Inspector of Schools (Secondary Education), the Commission may take final decision on the basis of the guidelines of the Government without consulting the requisition of the school or the recommendations of the District Inspector of Schools.

(3) In reporting the vacancies as aforesaid, the school shall follow the 100-point roster as prescribed for direct recruitment by the Department of Scheduled Castes and Tribes Welfare of the State Government and shall indicate the position of each vacancy in the said 100-point roster."

5. In terms of the said rule it appears that it is the school authority who would report the vacancy to the Regional Commission with a copy to the District Inspector of Schools (S.E.). Further it appears that the concerned District Inspector of Schools has power and jurisdiction to scrutinize the same and to make necessary modification if any and to forward it to the Regional Commission for the purpose of recommendation of a qualified candidate as per requisition, by the said authority. Further under Clause 3 of the said Rule 7, it is mandatory that the school while recommending vacancy must follow 100-point roster as prescribed by another statute namely Reservation Rule for S.C. and S.T. candidates. The word "shall" has been used therein which is a mandatory provision. Under the staff pattern of the Junior High School as applicable in respect of this vacancy is concerned, the Government Circular No. 670-SE(S) dated 4th September, 1998 is applicable, wherein it is provided that in the Junior High School, the teaching staff would be of different subjects qualified to be appointed in different subjects of groups viz. Language, Science and Mathematics and Social Science. Further it is provided that in each group where there would be two posts, amongst these two, one will be qualified with pass degree. It further appears from this circular letter that the post of Headmaster/ Headmistress was not considered as separate post but the same is included in the teaching post under any one of the groups with all rigours of roster rule under 100-point roster. The Circular letter No. 670-SE(S) dated 4th September, 1998 is set out hereinbelow :-

For Jr. High School :

- a) Language Group. Two posts (one pass degree and one Hons./Master degree).
- b) Science & Mathematics--Two posts (one pass degree and one Hons. / Master degree).
- c) Social Science group. Two posts (one pass degree and one Hons./ Master

degree)

d) Headmaster/Headmistress will be in any one of the groups. He/ she must be having qualifications mentioned in the procedure 14-SE(S) dated 8.1.98.

6. Such circular letter, however, was modified by a further Memo No. 427-SE(S)/4A-8/2001 dated 27th March, 2001 whereby and whereunder the number of posts in Language group and Science group have been kept intact but the teaching post in Social Science group has been reduced to one and a new post of Headmaster/Headmistress was created. However, this circular letter has been made effective from 1st January, 2001. The said circular letter is quoted hereinabove in extenso:-

"In partial modification of this Deptt's G.O. No. 670-Edn.(S) dated the 4th September, 1998, the undersigned is directed to say that in order to avoid confusion over the appointment of Headmaster/ Headmistress in 4-Class Jr. High Schools, the Governor has been pleased to direct that with effect from 1.1.2001 the number of teaching posts admissible to a Jr. High School having 4-Classes with only one section in each class shall be as follows :-

4-Class Jr. High School. Language group

... 2

(Including 3rd Language) Science group

... 2

(1 pure science and one Bio-science) Special Science group

... 1

(for History and Geography) Headmaster/Headmistress

... 1

Total

6

All concerned may be informed accordingly.

Sd/- D. Basu Special Secretary

7. In the instant case since the teaching posts were created in terms of the recommendation of the school as a new set up school under Memo No. S/ Recog/2000/927 dated 18th September, 2000, issued by the Secretary, West Bengal Board of Secondary Education, the school got six posts as sanctioned post. Hence, such posts would be controlled by Government Circular No. 670-SE(S) dated 4th September, 1998. The school authority by their resolution dated 23rd October, 2000 prepared a staff pattern of the school by fixing necessary qualifications of the respective teachers as would be necessary for the school in

question whereby the Headmaster post was included in the Language group upon fixing qualification M.A. in English with B.T./B.Ed. and teaching experience of 5 years. So far as the other five posts are concerned the school fixed different qualifications and also fixed the respective post under different categories following the reservation Rule to that effect being authorized to do such in terms of Clause (3) of Rule 7 of the West Bengal School Service Commission Rule 1997. In terms of the said rule by a resolution of the Managing Committee, in the Social Science Group one post in History was marked fixing qualification of Post Graduate degree on reserving the post under Scheduled Tribe Community. This resolution dated 23rd October, 2000 was referred to by the School Authority to the School Service Commission as well as to the District Inspector of Schools (S.E.), Purulia who in turn by Memo No. 2407 dated 3rd November, 2000 forwarded the requisition for the post of Headmaster, School Service Commission upon mentioning the qualification as Hons./M.A. Degree in English with B.T./P.G./B.Ed. and 5 years teaching experience. The date of vacancy was notified as 1st May, 2000 and said school resolution was referred to on 25th October, 2000. Reserved status was made/shown as general and the sex of teaching staff as notified was male. On the basis of this requisition of the District Inspector of Schools, the School Service Commission, however, recommended the name of the present petitioner in the present school, which is to be revealed from the recommendation letter itself wherein the School Service Commission has referred the Memo No. 2407 dated 3rd November, 2000 of the District Inspector of Schools concerned as well as referred the letter No. nil dated 25th October, 2000 of the school in question. Hence, it is clear that the recommendation as made in favour of the petitioner who is qualified with M.A. in History and not M.A. in English was allegedly outcome of the requisition as made by the District Inspector of Schools concerned. The relevant portion of recommendation letter of School Service Commission recommending name of petitioner is quoted hereinbelow :-

"I am directed to refer to your letter No. nil dated 25.10.2000 and D.I. Schools (S.E.), Purulia No. 2407 dated 3.11.2000 on the subject mentioned above and state that on the basis of results of academic score, teaching experience and interview (P.T.) RI ST-HM etc. 2001, the commission recommends the name of the candidates mentioned below for appointment against the regular vacancy in the post of Headmaster/ Headmistress/Superintendent of Senior Madrasah in your school/ Madrasah on usual terms and conditions and pay scale as admissible as per qualifications mentioned."

8. Prima facie from the documents accordingly it is clear that the Regional School Service Commission, did not comply with the requisition made by the School Authority by letter dated 25th October, 2000 as well as the requisition made by the District Inspector of Schools concerned under Memo No. 2407 dated 3rd November, 2000. In the requisition of the School Authority, the school wanted teacher qualified with M.A. in English to hold the post of Headmaster and the District Inspector of Schools concerned also recommended the same but

unfortunately the School Service Commission acted otherwise by recommending the name of a candidate qualified with M.A. in History though it is an admitted position that the school in question has already appointed a teacher having qualification in History in terms of the recommendation of School Service Commission long before reference of present recommendation in favour of petitioner, in terms of the requisition of the school and District Inspector of Schools concerned. Furthermore, it is admitted position that in the Junior High School, there cannot be two teachers qualified with History in terms of the staff pattern. Only one teacher qualified with History subject either Honours/M.A. i.e. post graduate degree will be entitled to remain. Hence, in the instant case it is clear that there is no scope even to accept the petitioner as a teaching staff as per staff pattern of the school in question as well Government Circular on such staff pattern. The school cannot accommodate two History teachers which is contrary to the staff pattern of the school. Under the staff pattern Headmaster must be within one of the group.

10. It is strongly submitted by the learned Advocate for the petitioner that the School Service Commission determined the qualification of Headmaster as would be fixed for a particular school and in view of the matter the action of the School Service Commission by not paying any heed to the staff pattern of the school and requisition of the School Authority as recommended by the District Inspector of Schools concerned, was justified. I am afraid to accept this contention made by the learned Advocate for the petitioner. If such contention is accepted then a serious situation would be cropped up. Since, the School Service Commission not being the appointing authority and the same is vested upon the Managing Committee who is the original authority to fix up the qualification of teaching staff following roster rule and staff pattern and District Inspector of Schools concerned being the approving authority of staff pattern and the qualification of the teaching and non-teaching staff including the Headmaster, School Service Commission cannot change the decision of Managing Committee as confirmed by District Inspector of Schools. From the use of language in the statute it means that School Service Commission only can recommend the candidates in terms of the vacancy and qualification of a teacher, which is requisitioned by the School Authority through District Inspector of Schools. The School Service Commission by any stretch of imagination cannot fix the qualification of a candidate. Even in a Government vacancy which is being dealt with by the Public Service Commission, the qualification and vacancy are declared and notified by the concerned employer in the Government Department as per necessity of the particular department and the Service Commission acts accordingly by holding examination being a recommendatory body. In the instant case, the statute is very much clear which evident from the language itself. Under Clause (2) of Rule 7 of the said rule, it is mentioned that the school shall report the vacancy. Here the vacancy is meant not only the staff pattern but also the qualifications and other particulars of the school in question. Furthermore, under Clause (3) the school has been empowered to report the vacancy on the basis of the 100-point

roster which also has empowered the School Authority to determine the nature and character of the post. The School Managing Committee authorized in terms of the staff pattern to determine the qualification of the candidates concerned. From the Government Circular dated 4th September, 1998, it appears that six posts have been mentioned by mentioning qualification as of Post Graduate Degree/Honours Degree and/or Pass Degree in each group. Hence, under the staff pattern, it is the Managing Committee of the School who will determine the qualification of a particular post in question whether it to be filled up by a Post Graduate or Honours or Pass Degree holder is specific subject and thereby the District Inspector of Schools concerned has been given power to determine such qualification as well as vacancy and also to check up the staff pattern and the roster rule. Since the School is to impart education and the Managing Committee has to manage the affairs of the school, it is the Managing Committee who is the best Judge to determine the qualification of the candidates who are to be appointed. The District Inspector of Schools concerned has been placed as supervising authority who, under Clause (2) of Rule 7, is legally entitled to modify such qualifications and vacancy by changing qualifications and others. In the present school in question the same thing has happened in respect of other posts, namely, in the post of Language Group in which the School requisitioned for Master Degree in Bengali subject but the District Inspector of Schools concerned has modified the same by changing it as Pass Graduate. The District Inspector of Schools further recommended the School's requisition for appointment of the teacher in History for Social Science Group and accordingly School Service Commission recommended the name of the candidate, who has already working in the school. Hence, it is clear that it is the School Authority who determine the qualifications. It is not possible for the School Service Commission to determine the qualifications of the candidates concerned by taking note of representation of the schools in terms of the concerned vacancy. The learned Advocate for the petitioner argued that it is the School Service Commission who will determine the qualifications for the post of teaching staff upon referring the following clause :-"

"Under Sub-Rule (2) of Rule 7 the Regional School Service Commission has got the power only in the event of delay of having any requisition from the District Inspector of Schools concerned as well as the School Authority to recommend the name of the candidates as per their choice."

10. Rule 7 Sub-Rule (2) is clear on that point that it is the School Authority and District Inspector of Schools who determine the vacancy, the qualification and status of vacancy, said rule is quoted hereinbelow :-

"Every school shall report the vacancies as on the date of report and as will arise upto the second day of next January to the Regional Commission with a copy to the District Inspector of Schools (S.E.), who shall scrutinize the same and forward it to the Regional Commission with or without modifications, as may be necessary, within a month of receipt of the recommendation of the District

Inspector of Schools (S.E.) the Commission may take final decision on the basis of the guidelines of the Government without consulting the requisition of the school or the recommendations of the District Inspector of Schools."

11. From the above it is clear that the Regional Commission was never empowered to determine the qualification and vacancy of the candidates. Such power was available to them only when there would be delay in scrutiny requisition by school as well the recommendation of District Inspector of Schools. In the instant case, there is no such delay in recommendation by the District Inspector of Schools concerned. It is admitted by the petitioner that the School Service Commission acted on receipt of the requisition of the District Inspector of Schools concerned. It is a settled legal position that the statutory body has its limitation in the matter of exercising their power. An individual can do whatever he likes save and except as are not prohibited under a law, but a statutory body is required to act and/or exercise power in terms of the statute. In the event of exercise of the power beyond the power and jurisdiction vested under a statute, such exercise of the power becomes a nullity and the decision as reached is liable to be set aside and quashed. The aforesaid School Service Commission Rule is a statutory provision, wherein under Rule 7 School Service Commission has been vested with limited power to deal with any vacancy of a school as per its choice only in the contingency when there would be no requisition sent by the School Authority and no recommendation by the District Inspector of Schools concerned in such requisition. Limitation of statutory power has been considered by the Apex Court as well as this Court in several judgments. Reliance may be placed to the judgment in the case *Maniruddin Bepari v. The Chairman of the Municipal Commissioners, Dacca*, reported in 40 CWN 17 corresponding AIR 1949 Cal 20, the judgment of the Apex Court passed in the case *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, judgment passed in the case *S.R. Tewari Vs. District Board Agra and Another*, . There are other judgments of this High Court on the same angle as passed in the cases *Thakkar Estate & Finance Co. Pvt. Ltd. and Anr. v. The Calcutta Municipal Corporation and Ors.*, reported in 1995(2) CLJ 270, *Panchanan Mondal and others Vs. West Bengal Board of Secondary Education and others*, , a Division Bench Judgment in the case *Scott (P) Ltd. 7 Ors. v. Corporation of Calcutta and Ors.*, reported in *Scotts (P) Ltd. and Others Vs. Corporation of Calcutta and Others*, and the case *Sasanka Sekhar Panda Vs. State of West Bengal and Others*, . Besides, from the Crawford Statutory Interpretation, the following passage at page 334 and 335 is profitable, which is quoted in extenso:

"195. Express Mention and implied Exclusion (*Expressio Unius Est Exclusio Alterius*).--If a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. If the statute directs that certain acts shall be done in a specified manner, or by certain person, their performance in any other manner than that specified, or by any other person than one of those named, is impliedly prohibited."

12. Hence taking into account of the aforesaid legal position, the action of the School Service Commission is clearly de-hors of the statutory provision as made under Rule 7 Sub-rule (2) of the West Bengal School Service Rules, 1977. Hence, the reference of the name of the petitioner for the post of the Headmaster in violation of the said statutory rule is nothing but exercise of the power and jurisdiction not vested under a statute to them. Hence, such recommendation itself is a nullity and accordingly the letter recommending the name of the petitioner as appearing at page 12 of the writ petition being under Memo No. 4522 dated 25th September, 2001 is hereby set aside and quashed. As a consequence of such, the refusal of the Managing Committee of the school to issue appointment letter in favour of the petitioner was justified. In that view of the matter it is held that Managing Committee did not act arbitrarily and in mala fide way as would be a cause of action for interference by this High Court exercising the power of judicial review. Furthermore, since the recommendation is contrary to the requisition sent by the District Inspector of Schools concerned and the requisition made by the School Authority, the same is accordingly null and void and the same is hereby set aside and quashed. Accordingly, considering the necessity of the school in question the School Service Commission is hereby directed to send candidate with master's degree in English having B.T./B.Ed. in terms of requisition sent by the School Authority and the recommendation of District Inspector of Schools.

13. The learned advocate for the School Service Commission further submits that since no affidavit in opposition has been filed, the contentions as made in the writ petition are to be deemed as denied. I am sorry to accept such contention of the learned advocate. Direction to file affidavit in opposition was given and despite such direction, no affidavit has been filed. Such direction was given on 27th November, 2001 in the following term "Affidavit-in-opposition within 1 week, reply, if any, be filed within 3 weeks thereafter." This Court has not accepted the contentions of the learned advocate of the School Service Commission. It is on record that the contentions of the Managing Committee by affidavit has not been controverted. Furthermore, the School Service Commission has produced the papers and documents to this Court and on perused those it is clear that the School Service Commission did not act in terms of the requisition of the school and the recommendation of District Inspector of Schools but acted contrary to the qualification as prescribed by the school and recommended by the District Inspector of Schools concerned.

In view of my aforesaid view and findings, the writ application thus fails and it is dismissed without any order as to costs.