
(1991) 05 CAL CK 0001
In the Calcutta High Court
Case No : C.O. No. 748 (W) of 1985

Sankar Prasad Sinha Mahapatra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-05-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (1992) 1 CALLT 365

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Jamini Kumar Banerjee and Subrata Dutta, for the Appellant; P. Bose, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—The writ petitioner has challenged the impugned Memo No. 2199-GA dated 18th December, 1984 and Memo No. 5/GA dated 2nd/ 4th January, 1985 issued by the Deputy Director of Secondary Education, West Bengal and the District Inspector of Schools (Secondary Education), Bankura being the respondent Nos. 3 and 4 respectively and the copies of the orders are Annexure "D" to the writ petition. The petitioner has prayed for an appropriate writ of Mandamus commanding the respondents not to interfere with the duties performed by the petitioner as Headmaster of Putiadaha High School, District-Bankura and not to withhold the payment of salary to the petitioner as the Headmaster of the said School since the month of December, 1984 and other consequential reliefs. It is stated in detail that the petitioner was appointed as Headmaster of Kantore Mahadev High School, District-Midnapore with effect from 1st January, 1982 and his appointment as Headmaster of that School was approved and he was permitted to draw initial of the time scale without increment as recommended by the Managing Committee of the said School by the Inspector of Schools (SE), Midnapore as per Memo No. 142-S dated 7th January, 1975. It is stated further that he had rendered his service to the entire

satisfaction of the School Authorities and thereafter he had joined the present School viz. Putiadaha High School in the District of Bankura with effect from 1st April, 1970. After the revision of pay scale being introduced as per G.O. No. 372-Edn(B) dated July 31, 1981 issued by the Government of West Bengal, the initial pay scale of the petitioner was also fixed as per the option exercised by him and the date from which the petitioner elected to come under the revised scale of pay in the substantive post being the 3rd April, 1981. The petitioner was, however, surprised to find all on a sudden that the Deputy Director of School Education (GA), West Bengal, the respondent No. 3 to the present writ petition by his Memo No. 2199-GA dated the 18th December, 1984 informed the District Inspector of Schools (SE), Bankura that the petitioner did not fulfil any of the conditions as laid down in G.O. No. 386-Edn(S) dated 12th of March, 1974 for time scale of pay prescribed for the post of Headmaster. It is alleged that the approval as granted by the District Inspector of Schools as far back as in the year 1975 was extended upto 11th of March, 1977 and not furthermore and the petitioner has been asked to be immediately replaced by a duly qualified candidate. According to the petitioner the respondent No. 3 had no jurisdiction to recall the approval of the appointment of the petitioner by the District Inspector of Schools (Secondary Education), Bankura and that such approval of appointment has been treated to be valid upto the 11th of March, 1977 and thereby the respondent No. 3 has most illegally curtailed the vested right of the petitioner for the post of the Headmaster of the said School. The petitioner claims that he has been working in the instant school for the period of 14 years and thereafter without giving any opportunity of hearing, the petitioner's right cannot be curtailed and there is no scope of review for the earlier order of the transfer of the appointment made by the appropriate authority viz. the District Inspector of Schools (Secondary Education), Bankura as would be evident from the Annexure "B" to the petition. It is highlighted that the impugned order as in Annexure "D" has been passed by the respondent No. 3 causing serious loss of pay of the petitioner and such an order is prejudicial to the interest of the petitioner and it cannot be sustained in law. It is emphasized that there is erroneous interpretation of G.O. No. 386-Edn(S) dated 12th March, 1974 inasmuch as two other Finance (Audit) Department's Memo No. 666-F dated the 1st March, 1971 and G.O. No. 1332-Edn(S) dated 24th December, 1976 have not been looked into.

2. The writ petition is seriously contested by the State respondents and the entire records have been produced before this Court.

3. Mr. Jaimini Kumar Banerjee, learned Advocate appearing for the petitioner has argued inter alia that the paragraph No. 3(d) of G.O. No. 386-Edn(S) dated 12th March, 1974 does not apply to the petitioner inasmuch as long before the 24th December, 1966 the petitioner was appointed and further his appointment as Headmaster of Kantore Mahadev High School, Midnapore with effect from 1st January, 1962 as in Annexure "A" hereof is relevant, and in that view of the matter, the impugned order is irregular and illegal.

4. The attention of this Court has been drawn to G.A. No. 152 (24) dated 9th April/29th June 1970 as regards approval of appointment of teaching and non-teaching of upgrading Higher Secondary Sections and Non-Government Secondary Schools including extension of service of such staff. There is further reference of 3225(24) GA dated 19th April, 1988 as regards removal and subsequent reinstatement of teaching and non-teaching staff of aided Non-Government Secondary Schools. There is specific reference that the authorities of the aided Non-Government Secondary Schools should not appoint any substitute in the vacancies caused by the discharge or termination of service of any teaching staff (including Headmaster/Headmistress) and Non-Teaching Staff of the Schools without prior approval of the Education Directorate until the time for disposal of an appeal by the Appeal Committee of the West Bengal Board of Secondary Education (or any other competent authority) expires. Mr. Banerjee has referred to a case reported in 1985 (2) CHN, Page 326 (Manindra Chandra Nandi v. State of West Bengal and Ors.).

5. Considering all the facts and circumstances of the said case Paritosh Kumar Mookherjee J. was pleased to hold that having allowed the petitioner to continue in the post of confirmed Upper Division Clerk in the Health Directorate, Government of West Bengal, after more than 5 years, should not be allowed to pass the order of de-confirmation in the garb of correction of mistake. In another decision reported in The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, it was found that the Registrar acquiesced in the appointment and allowed the incumbent to work for thirteen years and it was not open to him to set aside the appointment of the incumbent.

6. Mr. P. Bose, learned Advocate has taken this Court to the averments made in the affidavit-in-opposition that the Secretary of Putiadhaha High School as per his letter dated 5.9.1985 sent a certificate dated 12.8.85 issued by the Headmaster of Kantore, Mahadeb High School that the petitioner worked upto 19.5.65 and that he was discharged from his post dated 20.5.65. The certificate as Annexure "A" to the writ petition was based on the old resolution book and it transpires therefrom that the petitioner did not continue to function as Headmaster of the said School in time after 19.5.65 and there was a clear break of continuity of his service. The appointment of the petitioner as Headmaster was approved by the then District Inspector of Schools, Secondary Education, Bankura without taking into consideration of the Government Order No. 386-Edn(S) dated 12.3.74 copies whereof has been annexed to the writ petition as Annexure "B". Besides, the petitioner had not in his credit 3 years continuity in service as Headmaster of a High School during the period between 20.5.65 and 30.8.69 as indicated herein-above as provided in Rule (3), Clause (e) which runs as follows :-

"Headmasters and Headmistresses who do not have the prescribed minimum qualification and who had less than 3 years continuous in service to their credit on 1st April, 1970 may be admitted to the prescribed scale of pay on improvement of their qualifications within a period of 3 years."

7. It is placed on record that the petitioner did not improve his qualification within the stipulated period and/or-till now. In view of such circumstances, the petitioner, on the date of his appointment in the School in question, was underqualified and having not fulfilled the conditions as laid down in the said Government Order for the time scale of pay prescribed for the post of Headmaster, the Deputy Director of Secondary Education by Memo dated 18.12.84 has rightly directed that approval of the appointment of the petitioner would be extended upto 11.3.77 and not further more and he did not fulfil the condition as mentioned in paragraph 3(d) of the said Government Order dated 12.3.76. Apart from the said Government Order, the West Bengal Board of Secondary Education as per Memo dated 13.1.71 placed on record that in the case of upgradation of School from Junior High School to Class X High School, the present Headmaster, if under qualified, should improve his qualification. Mr. Bose submits that the petitioner is admittedly underqualified and who failed to improve his qualification within the extended time should not be allowed to continue in the post of Headmaster of the School in question. The entire record of the case has been produced.

8. Having heard Mr. Banerjee, learned Advocate for the petitioner and Mr. Bose, learned Advocate for the State respondents and upon perusal of the materials on record and in particular the records produced by the respondents, this Court finds that admittedly the circular to provide grace period permitting the Headmaster of a Junior High School to improve his qualification while the School is upgraded is not disputed. In the present case, the petitioner is admittedly underqualified. He does not fulfil the conditions to receive the revised pay in the post of approved Headmaster. There cannot be any estoppel against law nor there can be any acquiescence. Regard being had to the materials on record, this Court finds that the petitioner had ample opportunities to improve his qualification within the time and he cannot claim any equity before this Court without fulfilling the terms or conditions and without being eligible to revise scale of pay. Regard being had to the materials on record and upon scrutiny, this Court does not find that there is any irregularity and illegality in the impugned order before this Court. All the challenges made by the petitioner, are without merit.

9. For the aforesaid reasons, the writ petition fails and the same is rejected. There will be no order as to costs.