
(2019) 08 CAL CK 0103

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 16617 (W) Of 2011

Satyendra Narain Singh

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0103

Hon'ble Judges : Md. Nizamuddin, J

Bench : Single Bench

Advocate : Pradip Kr. Roy, Shraboni Sarkar, Jahar Lal De, Smita Das De

Final Decision : Disposed Of

Judgement

Md. Nizamuddin, J

Heard learned counsel for the petitioner and the State Respondents No. 1 to 5.

The instant Writ Petition has been filed by the petitioner against the impugned order dated 31st May, 2011 passed by the Director of School Education, West Bengal, making prayer for direction upon him to grant approval to his appointment as Assistant Teacher for teaching Science (Mathematics) with effect from 01/01/1986 in Jalpaiguri Marwari Balika Vidyalaya Hindi High School (Hindi Medium) and for release of arrear service benefit. The said school was upgraded as 4-class Junior School in the year 1978 and having six sanctioned post out of which there was one post for B.Sc (Bio Science) and another post for B.Sc (Pure Science) Assistant Teacher and school was upgraded as High School (Madhyamik) with effect from 01/01/1986 and petitioner being a Science Graduate having requisite qualification was appointed on 21/12/1985 as such he was an Organizer Teacher as claimed by him.

For proper adjudication of this case, relevant facts as appear on perusal of record is narrated hereunder.

Facts of this case is a bit peculiar and exceptional and not an ordinary case of

simple regularization or permanent absorption of a person working for some time on temporary basis in a post. In this case, it appears that the petitioner is rendering his service since December, 1985 as Assistant Science Teacher in the aforesaid school which is the only linguistic minority institution (Hindi Medium School) in Jalpaiguri and he has served the said school for more than 33 years and teaching Science subject- Mathematics. Peculiar facts of this case is that school concerned is only Hindi Medium School in the said locality and adjacent locality and no Hindi knowing qualified Science Graduate female teacher was available to teach Mathematics in the region where school is located and in spite of best effort by the school authorities by observing formalities to appoint a Hindi knowing Science Graduate female teacher which is a sanctioned post by requesting the Employment Exchange twice for sponsoring names of female candidates for the said post which expressed its inability and issued non availability certificate in response to the request for Hindi knowing female science graduate teacher for the said local school. The School authority also published advertisements in newspapers from time to time and on getting not a single response from any female candidate for this post; to protect the interest of the school and career of the students allowed the petitioner who was appointed by the Managing Committee of the school by a resolution dated 21.12.1985 finding him having requisite qualification to continue to teach Mathematics. It also appears from record which is a part of the annexure to the writ petition that the District Inspector of School himself and the school authority from time to time brought to the notice of the Director of School Education, West Bengal, the aforesaid affairs and difficulties school was facing and requested him to consider for approval and regularization of service of the petitioner to protect the career of the students in view of such peculiar and exceptional circumstances of no possibility of getting any Hindi knowing female qualified Science Graduate teacher for teaching Mathematics in the school in spite of their best effort as stated above. It also appears from record that this is the third writ petition by the petitioner. In earlier two writ petitions being W.P. No. 6758 (W) of 1997 and W.P. No. 4894 (W) of 2000, orders were passed by this Court to consider the case of the petitioner, but the Director of School Education, West Bengal had refused to consider and grant approval to the appointment of the writ petitioner showing his inability by citing several circulars which are the part of the annexure to the present writ petition and refused to consider the factor of non availability of female teacher for teaching Mathematics in spite of best possible effort by the school authority by observing compliance of the necessary formalities in this regard.

Mr. Pradip Kumar Roy, learned Advocate appearing for the petitioner has drawn my attention to the documents being Annexure P-10 to the writ petition from which it appears that in past, authorities have allowed and approved appointment of male teachers in Girls' School in many cases where posts were reserved for female teachers.

Mr. Roy, Learned Advocate appearing for the petitioner in support of his

contention in the writ petition, has relied on the following decisions:

- (i) Secretary, State of Karnataka & Ors. -Vs- Uma Devi-(2006) 4 SCC 1-Paragraph 53
- (ii) Narendra Kumar Tiwari & ors. -Vs- The State of Jharkhand & Ors. - AIR 2018 SC 589
- (iii) Unreported decision dated 3rd August, 2010 in case of State of Karnataka & Ors. -Vs- M.L. Kesari & Ors. in SLP
- (c) No. 15777/2016
- (iv) Dhananjay Karmakar -Vs- State of West Bengal & Ors. - 2016 CLJ (SC) 63
- (v) Sheo Narain Nagar -Vs- State of Uttar Pradesh - AIR 2018 SC 233

Mrs. Smita Das De, Learned Advocate appearing for the State Respondents opposed the writ petition and relief of regularization and approval to the petitioner's service mainly on the ground that petitioner's initial appointment was illegal and the post in question is reserved for female teacher and submitted that the petitioner should not be granted any relief and writ petition should be dismissed and in support of her contention she relied on the decision in the case of Uma Devi (Supra) and on the decision in the case of State of Rajasthan -Vs- Dayalal & Ors. - (2011) 2 SCC 429 and the case of General Manager (PA), Allahabad Bank -Vs- Shib Shankar Mukherjee - 2010 (1) CHN 721. It appears to me that the facts in those cases are totally different from the peculiar facts involve in the present case.

Considering the submission of the parties and judgments relied upon by them and in view of peculiar facts and circumstances involving in the instant case as narrated above, I am of the view that this case deserves consideration for regularization and approval. Selection of candidates by advertisement through newspaper and examination and interview of the candidate to give equal opportunity to candidates to compete could not be made possible in this case due to non availability of a single female candidate for the post in question in spite of several request to Employment Exchange and in response to advertisements published in the news papers from time to time. It appears that formalities in this regard were observed by the school authorities and all possible steps were taken in the present case as stated above and the fact that the school authority and the then District Inspector of School tried their level best and took all possible steps for appointment of Hindi knowing Science Graduate female teacher for the said post and having failed in their effort; to protect the career of students, appointment of the writ petitioner having requisite qualification was made and allowed him to continue and who is rendering service uninterruptedly in the school for the last 34 years in the sanctioned post against vacancy to the satisfaction of the school authority and guardians. There is no complaint against him by the school authority or any guardian about his performance and conduct. Another aspect which should not be ignored in this matter is that the petitioner is

duly qualified and has served the school for about 34 years and he is still working in a duly sanctioned post. The District Inspector of schools concerned and Director of School Education had knowledge of the appointment of the petitioner and allowed him to continue rendering service as an Assistant Science teacher for Mathematics. At this fag end of his career having no place to go and no means to survive after devoting major part of his life i.e. about 34 years of his life in building career of thousands of students during these period will have to beg for survival if he is removed.

Considering the submission of the parties and the above peculiar facts involved in this case I am of the view that this case can't be called a back door entry and taking into consideration that the petitioner has requisite qualification, working in a sanctioned post not under any interim order of any Court and has worked for about 34 years i.e. much more than 10 years, petitioner's service should be regularized and approval should be granted by the Authority concerned as a one-time measure.

In my view the decision in the case of Secretary, State of Karnataka and Ors. Vs Uma Devi (3) and Ors. reported in 2006 (4) SCC 1 paragraph 53 which is quoted hereunder is applicable to this case for regularization and approval of the petitioner's service:

".....One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question or regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being no employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub-judice, need not be reopened based on this judgment, but here should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme"

There are serveral other decisions on similar proposition after the case of Uma Devi (Supra) upon which petitioner has relied are Narendra Kumar Tiwari & Ors. - Vs- The State of Jharkhand & Ors. reported in AIR 2018 SC 589, unreported decision dated 3rd August, 2010 in the case of State of Karnataka & Ors.-Vs-

M.L. Kesari & ors. (SLP (c) No. 157774/06), Dhananjay Karmakar -Vs- state of West Bengal & Ors. reported in 2016 (1) CLJ (SC) 63 and in the case of Sheo Narain Nagar -Vs- State of Uttar Pradesh reported in AIR 2018 SC 233.

The judgments relied upon by respondents have no similarity to the peculiar facts and circumstances involve in the instant case as narrated above.

Considering the facts narrated above the impugned Memo No. 287/1-(4LSC) dated 31/5/2011 passed by the Director of School Education, Government of West Bengal, respondent no. 4 is quashed. I direct the respondent no. 4 to approve the appointment of the petitioner as an Assistant Teacher in Mathematics as a one-time measure and regularize his service with effect from 01/01/1986 on notional basis and this period should be taken into account only for the purpose of pension and other legitimate retirement benefit. The petitioner will be entitled to get salary in parity with the permanent employees of the school working in the similar post from the month of August, 2019. The whole exercise in carrying out this order should be completed by the respondent no. 4 and all other respondents concerned within 4 months from the date of communication of this order.

W.P. No. 16617 (W) of 2011 is disposed of by allowing the same accordingly.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.