
(2008) 08 CAL CK 0080

In the Calcutta High Court

Case No : M.A.T. No"s. 172 and 193 of 2008

Secretary, Managing Committee, Madhu T.E. High School

APPELLANT

Vs

Ashis Bhattacharjee and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007 — Rule 16(5), 17(6)

Citation : (2008) 3 CALLT 523 : (2008) 4 CHN 464 : (2009) 1 SLR 120

Hon'ble Judges : Subhro Kamal Mukherjee, J; Partha Sakha Datta, J

Bench : Division Bench

Advocate : Gouri Sankar De and Rudranil De, for MAT No. 193 of 2008, Sukhdeb Chatterjee, for MAT No. 172 of 2008 and Ekramul Bari, for the Appellant; Partha Sarathi Bhattacharjee, for Regional School Service Commission (Northern Region), Goutam Shome, for State and Gouri Sankar De, for MAT No. 172 of 2008, for the Respondent

Final Decision : Dismissed

Judgement

Partha Sakha Datta, JJ.—The respondent No. 1 In this appeal had filed a writ petition under Article 226 of the Constitution of India being W.P. No. 13947(W)/07 against the State of West Bengal, Director of School Education, Regional School Service Commission and the present appellant ie. the Secretary of the Managing Committee of Madhu T.E. High School alleging inaction on the part of the respondents therein in the matter of according necessary approval to the appointment of the said respondent No. 1/writ petitioner as Headmaster of the said school. While serving as an Assistant Teacher of Purba Dhantala Junior High School in the district of Jalpaiguri he responded to an advertisement for the post of Headmaster in Junior High School and the West Bengal Regional School Service Commission (Northern Region) (for short the Commission) upon selection recommended his candidature to the post of Headmaster of Madhu T.E. Junior High School by a Memo dated 16th May, 2007. Meanwhile, by a communication

dated 28th May 2007 the said Madhu T.E. Junior High School was upgraded to High School with retrospective effect from 1st of May 2007.

2. In the backdrop of such upgradation of the school to the status of the High School the Managing Committee of the said school who is the appellant in M.A.T. No. 193 of 2008 declined to permit the respondent No. 1/writ petitioner to join as Headmaster of the High School on the ground that the respondent/writ petitioner lacked the eligibility criteria of becoming the Headmaster of a High School. It was the contention of the respondent No. 1 in the writ Court that on the basis of the memo No. 1577-GA/OM-7/1955 dated 17th July, 2006 issued by the Commissioner of School Education, the school authority was obligated upon to permit him to join the school even if he was not in possession of requisite qualification for the post of Headmaster of the High School; and so long as he would not be completing 10 years of teaching experience, which is one of the essential requirements of selection to the post of Headmaster of a High School, he was eligible to act as Teacher-in-Charge of the school concerned and the status of Headmaster of the High School would be an automatic process for him after he would acquire the requisite number of years of teaching experience.

3. The learned Trial judge by the order dated 12th December 2007 directed the school authorities, who did not appear despite service, to act in accordance with law more particularly the Government Order of July 17, 2006 and give the respondent/writ petitioner appointment in the school.

4. Being aggrieved against the order of the learned Trial judge dated 12th December 2007 the Secretary of the Managing Committee of Madhu T.E. High School preferred this appeal being M.A.T. No. 193/08 challenging the order impugned to be illegal.

5. Ten members of the Managing Committee of the said school also preferred a separate appeal being M.A.T. No. 172/08 against the order impugned on the common ground that for the post of Headmaster in an aided recognized non Government High School 10 years" of continuous teaching experience in a substantive post in a school recognized by the West Bengal Board of Secondary Education is one of the essential requirements which the writ petitioner did not possess, and as such he was ineligible to the post and the learned Trial judge was accordingly erroneous in directing the school authority to act upon the Government Order of July 17, 2006. It has been contended that the eligibility criteria cannot be relaxed, far less circumventing the statutory laws by executive instructions which in the instant case has no legal sanction.

6. Mr. De, learned Advocate appearing for the appellant In MAT. No. 193/08 submitted that the West Bengal School Service Commission Act, 1997 and the rules framed thereunder postulate that the eligibility criteria for the post of Headmaster of a Junior High School is master"s/honours degree together with degree in bachelor of teaching or bachelor in education or post graduate basic training from a recognized university, while so far as professional experience is

concerned it is five years continuous teaching experience in a recognized High School or Junior High School that will qualify a person for the post of Headmaster of Junior High School. As against this, the requirement of the Post of a Headmaster of a High School is master's/honours degree with degree in bachelor of training or bachelor in education from a recognized university together with continuous teaching experience of 10 years in approved High School. By a subsequent Government Order of 8th January 1998, it is submitted, the academic qualification for the post of Headmaster of a High School is a master's degree with good academic records instead of honours degree. Similarly, for the post of Headmaster of a junior High School a master's degree is also essential and the only difference between the two is that in a case of junior High School 5 years' continuous teaching experience is a must, while in the case of the High School the requirement is of 10 years continuous teaching experience. When the law is such as is found above, argument runs, the executive instruction banked upon by the respondent/writ petitioner of July 17, 2006 issued by the Commissioner of School Education, West Bengal must not prevail. The petitioner having not possessed the requisite teaching experience on the date of recommendation by the Regional School Service Commission (Northern Region), the school authority cannot be found to permit the respondent to join the post of Headmaster of the High School which came to be upgraded as such with effect from 1st of May 2007.

7. Mr. De's second branch of argument is that when the junior High School was upgraded to the status of a High School the post of Headmaster of the Junior High School ceased to exist consequent upon which the appointment of the writ petitioner-respondent to the post of Headmaster of the erstwhile junior High School becomes dysfunctional, as such the petitioner loses his legal right to join as Headmaster in the High School since upgraded at that. To buttress his point, Mr. De has taken us to Sub-rule (5) of Rule 16 of the West Bengal School Service Commission (selection of persons for appointment to the Post of Teachers) Rules 2006. The said Sub-Rule provides that if a candidate, whose name has been recommended by the Regional Commission for appointment, cannot be appointed to the vacancy, for which he/she was recommended for the reason that such vacancy ceased to exist, the appropriate authority shall send an information in this regard to the concerned Regional Commission and such Commission may on receipt of such information recommend his name for any other appropriate vacancy in the post of Assistant Teacher. Thus, according to Mr. De, in the conspectus of the situation the Regional Commission may consider appointment of the respondent writ petitioner to the post of Assistant Teacher in any other school. Mr. De further has referred to Sub-rule (6) of Rule 17 of the West Bengal School Service Commission (selection of persons for appointment to the Post of Teachers) Rules 2007 which in fact amended the Rules, 2006. The said Sub-rule (6) of Rule 17 of the Rules 2007 is in essence reproduction of Sub-rule (5) of Rule 16 of the Rules 2006 and it is not necessary to reproduce the same again. Therefore, Mr. De argues that since there is no vacancy in the post of

Headmaster of the junior High School because of the school being upgraded to the status of the High School the respondent-writ petitioner can be placed somewhere else but not in the concerned school and his only remedy is to approach the Commission for his suitable appointment in any suitable school. Accordingly, it is submitted that the learned trial judge did not consider the legal aspect of the situation and in consequences thereof the order impugned is liable to be interfered with.

8. Mr. Sukdev Chatterjee, learned advocate for the appellants in MAT No. 172 of 2008 adopts the arguments of Mr. Gouri Sankar Dey, learned advocate appearing for the appellant in MAT No. 293 of 2008.

9. Mr. Ekramul Bari, learned advocate appearing for the respondent No. 1 submits that while the first branch of argument of Mr. De in so far as the eligibility of the respondent No. 1 to the appointment to the post of Headmaster of a High School is concerned is correct, the other branch of argument advanced with the support of the relevant provisions of the Rules 2006 and Rules 2007 is wholly misplaced and is not tenable. According to Mr. Ekramul Bari, the law in this respect has been made clear by series of Government Orders none of which really contravenes any of the provisions of the statutory Rules. It is submitted that the Government Order No. 302-SE (5) dated 05.03.2001, the Government Order NO. 1218/SE (5) dated 21-09-2005, the Government Order No. 1577/GA/OM/7/1995(Pt) dated 17-07-2006 and the Government Order No. 427/JS-II/IS/29-2005 dated 10-05-2007 have made the position clear to the effect that when after issuance of letter of appointment by the District Inspector of Schools in favour of a person in the post of Headmaster of a junior High School pursuant to his selection to that post through the Regional School Service Commission the school is upgraded to the status of a High School then such a person in possession of a letter of appointment will take charge of the upgraded High School and act as Teacher-in-Charge, and will continue to act as such till he acquires the requisite qualification or professional experience for appointment to the post of Headmaster of the upgraded High School. It is submitted that appointment to the post of Headmaster of such Teacher-in-Charge in the upgraded High School is an automatic process and what is required is ratification by the West Bengal School Service Commission with no further requirement of any fresh appointment order. It is submitted further that the respondent is in possession of requisite academic qualification but falls short of teaching experience by only three years and during the said period of three years the respondent will have to act as Teacher-in-Charge, but in no case can he be denied to join the school concerned on the ground of lack of teaching experience.

10. Mr. Partha Sarathi Bhattacharya and Mr. Goutam Shome, learned advocates appearing for the Regional School Service Commission (Northern Region) and the State of West Bengal respectively conceded virtually to the submission of Mr. Ekramul Bari. They have submitted that when the respondent was appointed to the post of Headmaster in the school it was a Junior High School and his

appointment was strictly in accordance with the Rules but because of the school having been upgraded to the status of a High School with retrospective effect from 1st May, 2007 his appointment does not come to be nullified and pursuant to the Government Orders referred to by Mr. Ekramul Bari the respondent-petitioner would have to serve the concerned school as Teacher-in- Charge but not as Headmaster of such upgraded High School.

11. Upon hearing the learned advocates for the parties and on perusal of the relevant Rules and Government Orders and other materials it is plain that doubtlessly the writ petitioner-respondent No. 1 was not qualified for being appointed to the post of Headmaster of a High School inasmuch as though he had requisite academic qualification he lacked adequate teaching experience. The matter of the fact is that when the post of Headmaster of the junior High School fell vacant the Managing Committee of the school sent requisition for appointment of a qualified person for that post. The writ petitioner had applied for the post of Headmaster of a Junior High School on the strength of his qualification and experience and pursuant to his selection to such post the School Service Commission recommended his name for the post of Headmaster in the Junior High School on 16th May, 2007. Now, subsequently by a Government Order dated 28th May, 2007 the said school was upgraded to the status of a High School but with retrospective effect from 1st of May, 2007. Evidently, after, such upgradation of the school the writ petitioner could not become eligible for appointment to the post of Headmaster of such upgraded High School. These situations were confronted with by the Education Department of the Government of West Bengal in a number of cases which were not dealt with in the statutory Rules. The first Government Order is one dated 5th of March, 2001 wherein it has been stipulated that where there is a qualified Headmaster in a junior High School and such school is upgraded to the status of a High School then subject to academic qualification and experience the Headmaster of such junior High School would be appointed to the post of Headmaster of the High School but where such Headmaster of the Junior High School lacks eligibility criteria under the Rules, then he would be acting as Teacher-in-Charge and as soon as he fulfils the eligibility criteria he would be elevated to the post of Headmaster of the High School. The Government Order dated 21st September, 2005 reiterates the same thing in almost the same language. The Government Order dated 17th July, 2006 issued by the School Education Directorate of the Government of West Bengal relates to approval of appointment of newly appointed Headmaster in Junior High School against upgraded High School and it has been categorically stated inter alia as follows:

1. The incumbent sponsored by concerned Regional School Service Commission will join the school irrespective of the question whether he/she is qualified or not as Headmaster of High School. He/She, will, however, act as Teacher-in-Charge if he is not qualified as Headmaster of High School and as Headmaster if qualified.
2. As it is an autonomous process, i.e., the Headmaster/Headmistress of Junior

High School will automatically become the Headmaster of the school at the time of upgradation of the school on acquiring the minimum qualification of Headmaster of High School in terms of No. 302 SE (5) on 5.3.2001 as amended by G.O. No. 1218/SE(5) on 21-09-2005, there should be no problem to accord approval as Headmaster if the incumbent is qualified.

12. The question arose as to whether any fresh appointment order is necessary enabling the Teacher-in-Charge of such upgraded High School for being appointed to the post of Headmaster of such upgraded school and this position has been made clear by the Government Order dated 10th May, 2007. Here it has been made clear that "these appointments, according to the West Bengal School Service Commission Act and Rules, need to be ratified by the said Commission. No fresh appointment order be issued by District Inspector of Schools on the strength of aforesaid Government Order". Therefore, the legal position has been crystallized in the four Government Orders as stated "above and in fact there cannot be any lis. The Sub-rule (5) of Rule 16 of the West Bengal School Service Commission (selection of persons for appointment to the Post of Teachers) Rules, 2006 or Sub-rule (6) of Rule 17 of the amended Rules 2007 as is sought to be relied upon by Mr. Dey and Mr. Chatterjee in support of their respective appeals are to our mind wholly misplaced and are inapplicable to the given situation. The argument of Mr. De that with the upgradation of the junior High School to the status of a High School the vacancy in the post of the Headmaster of the Junior High School ceased to exist and in consequence thereof the appointment of the respondent-writ petitioner to the post of Headmaster of the Junior High School became infructuous and inconsequential cannot be accepted. It is not a case of cessation of vacancy of the post of Headmaster. When the requisition was made and the letter of appointment was issued there was lawful vacancy to the post of Headmaster of junior High School. The school came to be upgraded to the status of a High School only after issuance of appointment letter in favour of the writ petitioner but with retrospective effect. It is a situation where it cannot be said that there "ceased to be a vacancy" to the post of Headmaster. Upgradation of a junior High School to the status of a High School does not amount to "cessation of the vacancy" in the post of Headmaster of the school. The words "cessation of vacancy" have to be given literal meaning, and cannot be extended to the present situation which is not indicative of absence of vacancy. Moreover, when the Government Order of 10th May, 2007 clearly spells out that save ratification no further appointment order need be issued it demolishes the theory of cessation of vacancy. The said Sub-rule (5) of Rule 16 of the Rules 2006 or Sub-rule (6) of Rule 17 of the Rules 2007 does not take care of the present situation and as a remedial measure the Government Orders which are not unreasonable or discriminatory or contrary to the statute or the rules framed thereunder came to be issued from time to time to clarify the position so as to ameliorate the hurdle or the difficulty which a waiting Teacher-in-Charge is beset with.

Accordingly, we do not find any merit in the appeal.

13. We thus dismiss the appeals and confirm the Judgment and order of the learned Trial Judge dated 12th December 2007 passed in W. P. No. 13947 (W) of 2007.

All the connected applications also stand disposed of.

I agree.