
(1998) 07 CAL CK 0034

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, C.O. No. 13098 (W) of 1993

Shyama Prosad Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Primary Education Act, 1973 — Section 105(4)
Primary Education Rules, 1980 — Rule 14, 3A, 3B, 3C, 3D
West Bengal Primary Education Act, 1973 — Section 106, 106(1)

Citation : (1998) 3 CALLT 434

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mr. N.K. Das, Mr. Subir Sanyal and Mr. A. Roy, for the Appellant; Mr. Ashoke Kr. Maity, for the Respondent

Judgement

B. Panigrahi, J.—In this writ petition, the petitioner, whose father had worked as an Assistant Teacher in Bhaturia Primary School under P.S. Nandigram, District - Midnapore died on 13th November, 1990. has filed an application for being absorbed as an Assistant Teacher in stead of his father under "died-in-harness" category. The facts leading to the present writ petition are as follows:--

2. That the petitioner's father Satyendra Kumar Roy was an Assistant Teacher in Bhaturia Primary School- During the tenure of his service there was no adverse remark and/or disciplinary proceeding against him. Petitioner's father was given extension after completion of his service at the age of sixty years while during extension from 1st April. 1990 to 31st March, 1991, the Managing Committee recommended for fourth term extension and accordingly, the Chairman, Ad-hoc Committee of the Midnapore District Primary School Council approved the same. But unfortunately, petitioner's father died-In-harness on 30th November, 1990 and in support of his death, the petitioner has enclosed a copy of death certificate, marked as Annexure -"B" to the writ petition.

3. The petitioner has, inter alia, prayed that as per the circular of the Government of West Bengal under Primary Department if a teacher dies in harness then any one of the wards of the said teacher is entitled to be absorbed as teacher/any other post after taking into consideration of his eligibility and suitability. The petitioner's other members of the family i.e. mother, brother and sister submitted an application to the respondent No.2 stating thereby that they had no objection if the petitioner was suitably adjusted in place and stead of the petitioner's father. The petitioner, thereafter, appears to have submitted application to the respondent No.2 by way of a proforma on 10th May, 1991 which is quite within the time-frame. The Sub-Inspector of Schools sent the case record with recommendation for appointing the petitioner on "died-in-harness" category. It further appears that the School Board, Midnapore in Memo No. 3123 dated 18th July, 1991 sent the necessary papers to the Director of School Education (Primary) for appropriate direction. The petitioner was subsequently, asked by the District School Board to furnish an Income Certificate from the local Panchayat. Accordingly, he attended all the queries made by the District School Board. The petitioner complained that the circular issued in the year 1992 has no application at all in the District of Midnapore as the said circular was followed more in breach than observance. Tirthabasi Sahoo, an Assistant Teacher who was working in Khadambari Primary School died-in-harness on 14th October, 1990. During his 2nd turn of extension of service his ward Sanjoy Kr. Sahoo got letter of appointment on 2-7-1992 in Memo No.2678/3/ES. Therefore, it is not understood why the petitioner has been meted with discriminatory treatment by not getting the appointment after the death of his father. The letter of appointment of Sanjoy Kr. Sahoo is annexed as "G" to the writ petition. Petitioner has, however, claimed that after the demise of his father, economic condition of the family was totally shattered and to save the family of the petitioner from economic vagaries, the authority should sympathetically, appoint the petitioner in a suitable post. Since the respondent No. 2 observed total silence in the matter and had taken a non-challenge attitude. It compels the petitioner to knock the doors of the court.

4. The respondent No.2 has filed an affidavit-in-opposition by stating inter alia that since the petitioner's father, died during extension of service, the petitioner therefore, cannot claim to be entitled to the post of an Assistant Teacher under "died-in-harness" category. The West Bengal Primary Education Act came into force on 1st July, 1990 and the rules have been framed under sub-section (1) of section 106 of the Act. Under the said rule 14 the appointment of Primary Teacher on Compassionate Ground in "died-in-harness" category provides that when a teacher dies in harness before the date of his superannuation leaving his other family members which in the opinion of the Council shall be in extreme hardship, then only one of the members of the family possessing educational qualification found otherwise eligible could be appointed in the above mentioned category. Since this rule does not provide any scope for considering the appointment of the writ petitioner, the Council is not obliged to issue an order

thereof.

5. The main contention of the respondent No.2 is however, that since the petitioner's father died during 4th extension, he cannot claim service under the "died-in-harness" category.

6. Mr. Sanyal, the learned advocate appearing for the writ petitioner has strongly urged that the Director of School Education with whom the letter of approval of appointment of the petitioner is pending has significantly failed to file affidavit-in-opposition controverting petitioner's allegations. The letter was communicated as far back as on 25th May, 1992. Petitioner has claimed appointment under amended Rule 3D substituted by notification dated 11th September, 1980 of the rules framed under Bangal (Rural) Primary Education Act, 1930 (hereinafter referred to as "the Act of 1930").

7. Since the Council has accepted the case of Sanjay Kumar Sahoo and appointed him in terms of the provisions in amended Rule 3D of the Rules framed under the Act of 1930, it is not understood why the same principle is not stretched to the petitioner's case. From the submissions of Mr. Sanyal, it further appears that the process of recruitment should be governed by the Recruitment Rules then prevailing at the time when the process of recruitment was initiated. In the instant case, the petitioner's father died on 13th November, 1990 and application was submitted to the Council on 10th May, 1991. Therefore, he contended that the amended Rule 3D framed under the Act of 1930 was in force on 10th May, 1991. i.e., the date of filing of the application by the petitioner.

8. For appreciation of the contention of the petitioner, it is necessary to quote the amended provision of Rule 3D of the Rules framed under 1930 Act.

Notwithstanding contained in Rule 3, Rule 3A or Rule 3B but subject to the provision of Rule 3C. a ward of primary teacher who dies in harness may be appointed with the approval of the Director of Public Instruction of West Bangal. as an Assistant Teacher against regular vacancy irrespective of whether the available vacancy is to reserve for trained or untrained candidates provided that he/she fulfils minimum qualification for such appointment.

9. In the case of Subrala Sekhar Samanla v State of West Bangal in C.O.No. 9628(W) of 1983. this court has also taken a view that a teacher who died during the period of extension in harness is any one of the dependants if found qualified and eligible could be given appointment. The above referred case also had arisen from Midnapore District. From Rule 4A of the Rules framed under the Act of 1930 runs as follows :--

"A teacher appointed by the Board may be retained in service upto the age of 60 years, but the Board may, if it thinks fit, grant thereafter, extension of service of a teacher on a year to year basis upto the age of 65 years, provided the teacher continues to be physically fit and mentally alert.

Explanation--The continuous period of service extended beyond the age of 60

years of the teacher will count towards increment in the scale of pay, terminal benefits and other benefits with the approval of the Government."

10. On a careful reading of Rule 4A. it is gathered that the Board after found a teacher fit for service can direct him extension for a further period of one year and thereafter extend year to year till he completed 65 years provided he is found physically fit and mentally alert. The explanation is explicitly clear without any ambiguity that the teacher who had been serving on extension shall get other service benefit with the approval of the Government. The grammatical meaning of the word "extension" is that by which something is extended; prolonged therefore, there could be hardly any doubt that the expression of "extension" is nothing but a continuation of service. The explanation has also made further clear that the teacher working during the period of extension shall get all those benefits as that is available to a teacher who has yet to complete 60 years.

11. Mr. Maity, the learned advocate appearing for the respondent No. 2 has laid great stress on a reported decision in 1994 Labour and Industrial Cases page 1361. On a careful reading of the judgment, it appears that Clause 9 of the Government Order specifically precludes authorities from passing an order that such extended period or re-employment can however, be treated as continuous service. But by making provision in Rule 4A, the legislature has given benefit to the teachers who got extension after 60 years of service that they would also be entitled to other service benefit. In that view of the matter, I am not in a position to agree with the contention of Mr. Maity that the petitioner shall not be entitled to get the benefit of seeking employment under "dying-in-harness category".

12. It has to be now considered whether the provisions of the Primary Education Act. 1973 vis-a-vis Rule 14 of the Recruitment Rules framed under the West Bengal Primary Education Act would be applicable or not. Admittedly, Rule 14 was not enacted at the time of death of the petitioner's father. Amended new Rule 3A under 1930 Act was in force on 10th May. 1991. Therefore, the petitioner is governed by the new Rule 3D of the Rules framed under 1930 Act.

13. In this connection, the Judgment of this court reported in 1996 (1) CLJ 231 In the case of Basudev Bag v. Bhaskar Chandra Kar is relied on. Mr. Sanyal. the learned advocate appearing for the petitioner has relied on a decision reported in 1997 (1) CLJ 165 where it is stated that the Rules framed under the Act 1973 came into force only on December, 24, 1996 and not before. Mr. Maity has placed reliance that since there is no provision in the Act of 1973, amended Rule under the Act of 1930 should not be stretched as it is inconsistent to the provisions of the Act of 1973. I fail to appreciate the contentions of Mr. Maity inasmuch as Rule 3D of 1930 Act is in no way inconsistent nor contrary to the provisions of Act 1973. I fail to appreciate the contentions of Mr. Maity inasmuch as Rule 3D of 1930 Act is in no way inconsistent nor contrary to the provisions of Act 1973. In view of the provisions of section 105(4) of the 1973 Act any Rules, Orders and Notifications made or issued from time to time under 1930 Act shall be applicable and shall continue to be in force till they are repealed or amended.

14. It has already been held that the Recruitment Rules 1991 came into force from December, 1996. Therefore, the provisions of Rule 3D of 1930 Act read with amended provisions of 4A were applicable on the date of application made by the petitioner for appointment as teacher under "dying-in-harness category1.

15. it is further noticed that the Midnapore District Primary School Council has already given appointment to one Sanjoy Kumar Sahoo. I fail to appreciate as to why the respondent No.2 has not considered the case of the petitioner in the light of above precedent case. Furthermore, after sending recommendation to the Director of School Education who has not filed affidavit-in-opposition, the respondent No.2 shall have no further say in the matter.

16. Taking the totality of the facts and circumstances of the case, after careful cogitation of the respective contentions of the parties I hereby direct the respondent No.3 to treat the petitioner's case for employment as an Assistant Teacher under "died-in-harness category" and issue necessary direction to the Midnapore District Primary School Council for appointment as such within a period of three months from the date of communication of the order.

17. With the above direction the writ petition is allowed but in the special circumstances, there shall be no order as to costs.

18. Petition allowed