
(2015) 03 CAL CK 0058
In the Calcutta High Court
Case No : Writ Petition No. 4560(W) of 2006

Shyamal Majumdar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) LabIC 2358

Hon'ble Judges : Ranjit Kumar Bag, J.

Bench : Single Bench

Advocate : Ekramul Bari, Siddhartha Sankar Mandal and Tanuja Basak, for the Appellant; Naren Ghosh Dastidar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ranjit Kumar Bag, J.—By filing this writ application, the petitioner has prayed for direction on the respondent no. 3, the District Inspector of Schools (S.E.), Malda, for approval of the appointment of the petitioner in the post of assistant teacher in the Language Group of Kushida High School in the District of Malda and for other consequential reliefs.

2. The petitioner was appointed as a teacher of Kushida High School by the Secretary of the Managing Committee of the said school on 18th April, 1997. The respondent no. 3 did not give approval of the said appointment to the petitioner as a language teacher of the said school in spite of repeated requests. The petitioner is qualified as M.A. in Bengali with B.Ed. The petitioner has been working as a teacher of the said school from the date of appointment till today. By passing an interim order on 22nd March, 2006 the Hon'ble Single Judge of this Court restrained the respondents from filling up the post of assistant teacher in Language Group of Kushida High School in the District of Malda until further order and gave protection to the petitioner under Section 10 of the West Bengal School Service Commission Act, 1997.

3. Mr. Ekramul Bari, learned Counsel, appearing on behalf of the petitioner,

submits that the West Bengal School Service Commission Act, 1997, came into force on 1st November, 1997 and under the terms and conditions of service, all the teachers appointed in the school, prior to coming into force of the West Bengal School Service Commission Act, 1997, are protected under Section 10 of the said Act. Mr. Bari has referred to the procedure for recruitment of teaching and non-teaching staff of secondary schools including Madrasah, issued by the Director of School Education, West Bengal, vide Memorandum No. 2066-G.A., dated 27th October, 1995, and submits that appointment of the petitioner will be guided by the said procedure which came into force on 1st December, 1995. It is not disputed that the petitioner was appointed on 18th April, 1997 i.e. before coming into force of the West Bengal School Service Commission Act, 1997. Mr. Bari, learned Counsel, contends that the candidature of the petitioner was not sponsored by the Employment Exchange and the petitioner was not selected for the post of assistant teacher of the school by following the mode of selection laid down in Clause (v) of the Guidelines dated 27th October, 1995, issued by the Director of School Education, West Bengal. According to Mr. Bari, the violation of the guidelines for selection to fill up the post of the teacher of the school, cannot negate the appointment of the petitioner in the said school. He has cited the Full Bench decision of our High Court in the case of "Rabindra Nath Mahata vs. State of West Bengal and Ors." reported in 2005 (3) CHN 337, in support of his above contention. It is laid down in paragraph 17 of the said Full Bench decision of our High Court that the procedure for recruitment of teaching and non-teaching staff of secondary schools, issued by the Director of School Education, West Bengal, on 27th October, 1995, does not enjoy the status of the statutory rules by which the Managing Committee is bound to act and the same are held as directory in nature and any deviation therefrom by the Managing Committee cannot be held to be an illegal action. In view of the above proposition of law, laid down by the Full Bench of our High Court, the deviation of the procedure laid down in the guidelines by the Director of School Education, West Bengal, on 27th October, 1995, for the purpose of appointment of the petitioner as assistant teacher of the school cannot make said appointment illegal.

4. Relying on the decision of our High Court in the case of "State of West Bengal and Ors. vs. Husna Banu and Ors." reported in 2010(4) CHN (Cal) 438, learned Counsel for the petitioner submits that the claim of regularisation of the petitioner in the service cannot be turned down due to long lapse of time when the petitioner is still continuing in service. On scrutiny of the decision reported in 2010 (4) CHN (Cal) 438 (supra), I find that the Hon"ble Division Bench of this Court upheld the appointment of the petitioner on the ground that the petitioner could not be discriminated arbitrarily in the matter of regularisation of service. However, the ratio of the decision of the said case with regard to the regularisation without discrimination is not applicable in the facts of the present case.

5. Mr. Naren Ghosh Dastidar, Learned Counsel appearing on behalf of the State, has referred to the letter of appointment of the petitioner as annexure "P1" to

the writ application and submits that the petitioner was appointed as teacher of Kushida High School by the Secretary of the Managing Committee of the said school on 18th April, 1997, temporarily on payment of consolidated salary of Rs. 1000/- to be paid from the school fund without having any vacant post in the said school.

6. It is not disputed by the learned Counsel representing the respective parties that the additional post of teacher in a school can be created not only on the basis of strength of the students in the school, but also by release of the quota by the Director of School Education with the concurrence of the Financial Department of the State. There is nothing on record to indicate the number of vacant posts available in the said school either at the relevant point of time or today for appointment of the petitioner in the said school as a teacher. Since the petitioner is qualified to be appointed as assistant teacher in the Language Group of the school and since the petitioner has been working as teacher of the said school from the date of his appointment, on 18th April, 1997, and the said appointment has not been vitiated by deviation of the procedure for selection to fill up the post of teacher of the school, the respondent no. 3 is directed to give approval of the appointment of the petitioner as assistant teacher of the said school, subject to availability of vacancy. If such vacant post as assistant teacher is available in the said school and if the appointment of the petitioner in the post of the assistant teacher is approved by the respondent no. 3, the salary of the petitioner will be fixed on notional basis from the date of appointment i.e. 18th April, 1997 till the date of approval and no financial benefit will be given to the petitioner for the aforesaid period except that the said service during the aforesaid period will be counted for the purpose of retirement benefit. The financial benefit will be given to the petitioner only from the date of approval of the appointment.

7. Leave is granted to the petitioner to communicate the order to the respondent no. 3 within a period of three weeks and the respondent no. 3 will complete the entire exercise within a period of four weeks from the date of receiving the copy of this order.

With the above observation, the writ application is disposed of.

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