
(1985) 05 CAL CK 0010
In the Calcutta High Court
Case No : C. R. No. 3217 (w) of 1984

SM. Asha Bose

APPELLANT

Vs

Dist. Inspector of Schools (S. E.) Cal. and Others

RESPONDENT

Date of Decision : 13-05-1985

Acts Referred:

Citation : 89 CWN 935

Hon'ble Judges : Amitabha Dutta, J

Bench : Single Bench

Advocate : Harashit Chakraborty and Himadri Barua, for the Appellant; Bikash Chandra Bhattacharjee, for the Respondent

Judgement

Amitabha Dutta, J.—In this writ petition the petitioner has prayed for Mandamus commanding the respondents not to give effect to the direction of the respondent No. 1, District Inspector of Schools, Secondary Education, Calcutta (hereinafter called the D.I. of Schools) to terminate the services of the petitioner as Headmistress of Tiljala Balika Vidyalaya at 93/1, Dr. Girindra Sekhar Basu Road, Calcutta (hereinafter called the school) after 28.12.83 and the order of the Administrator of the School in pursuance of such directions asking the petitioner to make over charge of the school on the forenoon of 28.12.83. The petitioner's case in substance is that she has been illegally and arbitrarily denied extension of service beyond 60 years of age and that the respondent No. 1 had no authority to make the impugned order which is illegal, incompetent and without jurisdiction.

2. The respondent Nos. 1 to 5 are the D.I. of Schools, Administrator of the School, the Board of Secondary Education, West Bengal, the Director of Secondary Education, West Bengal (hereinafter called the Director) and the State of West Bengal respectively. The respondent Nos. 1, 4 and 5 have filed return stating that the petitioner applied for extension of service one month before reaching superannuation instead of six months before her superannuation as required under the Rule, that the Administrator forwarded the same without

comment that the D.I. of Schools on careful consideration of the petitioner's service record and administrative ability did not recommend extension of her service to the Director who after careful consideration agreed with the views of the D.I. of Schools and that as the petitioner reached superannuation when her application for extension was being processed the D.I. of Schools rightly directed the Administrator to terminate her service.

3. The petitioner Sm. Asha Bose was appointed Headmistress of the School which has been a government aided recognised non-government secondary institution on 6.5.60. Her date of birth is 28.12.23. She attained the age of 60 years on 28.12.83. Under Memo No. 372-Edn. dated 31.7.81 of the Education Department, Government of West Bengal teachers in all government aided educational institutions opting for revised scale of pay shall retire at 60 years, provided however that those who were above 54 years but below 57 years, of age on 1st April 1981 shall retire on completion of 62 years of age or on 31st March 1987 whichever is earlier and for such teachers who were above 57 years of age on 1st April 1981 retirement will be on completion of 65 years or on 31st March 1987 whichever is earlier. The petitioner opted for the revised scale of pay and as she was above 57 years of age on 1st April 1981 she came under the second category.

4. The State Government by a subsequent order No. 407-Edn. dated 12.9.83 provided that in case of teachers ages above 54 years but below 57 years on 1.4.81 and above 57 years of age on 1.4.81, the period of service beyond 60 years of age upto 62 years of age or 65 years of age as the case may be is to be considered as extension of service and such extension is to be guided by the conditions laid down in G. O. No. 863-Edn. dated 2.6.69.

5. Under G. O. 863-Edn. dated 2.6.69 the age of superannuation of the employees of recognised non-government institutions shall be 60 and thereafter, the employees may be retained in service on extension until they attain the age of 65 years subject to the usual condition of physical fitness and mental alertness.

6. The petitioner applied for extension of her service for one year from 1.1.84 to 31.12.84 on 12.12.83 enclosing with her application a medical certificate dated 8.12.83 of her physical and mental fitness. The Administrator of the School who was incharge of management in place of the Managing Committee forwarded the said application to the D.I. of Schools by his letter dated 14.12.83. In that letter he requested the D.I. Schools "to kindly consider the case as she is physically and mentally fit as certified by a registered medical petitioner". He further wrote as follows :

A line- in reply is earnestly requested so as to enable me to make payment of salaries and allowances to Sm. Bose for the month of January 1984 onwards.

7. A controversy has been raised as to whether the said letter of the Administrator could be treated as recommendation for extension of service of the petitioner. In my view, the trend of the letter shown that the administrator was in

favour of extension of service of the petitioner. Rule 28(1) (iii). of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 (hereinafter called the Management Rules of 1969) provides that the committee (or administrator) has pen power to extend the service of a teacher and thereafter, seek approval of the Director or officer authorised by him.

8. The D.I. of Schools by his letter No. 693/D dated 23.12.83 wrote to the Director that the petitioner committed administrative lapses as she had not applied for extension of service within the title limit that she put wrong dates of birth in grants in aid application for last 10 years that she received government money on wrong fixation of pay and that she failed to maintain "normalcy of the school". He observed that the petitioner was physically fit as certified by the registered medical practitioner and that he was in doubt whether she was mentally alert. According to him her attainments and efficiency were also questionable. He suggested that no further extension should be granted to the petitioner and her service might be terminated with effect from 28.12.83 which was the date of her attaining the age of 60 years. The D. I. of Schools forwarded a copy of the said letter to the Administrator directing him not to allow the petitioner to continue in service after 28.12.83 and to serve a notice of termination on her. The Administrator in pursuance of such direction wrote the letter dated 28.12.83 (Annexure "Q" to the writ petition).

9. At that stage the present writ petition was moved on behalf of the petitioner on 2.1.84 and an interim order of injunction was passed by this Court restraining the respondents from giving effect to the said direction of the D.I. of Schools to the Administrator and the Administrator's letter dated 27.12.83 to the petitioner asking him to make over the charge of the school. Thereafter the office of the Director put up the letter of D.I. of Schools before him on 31.1.84 with a note summarising the grounds given by the D.I. of Schools but stating wrongly that the D.I. of Schools was of opinion that the petitioner was not mentally alert although the D.I. of Schools actually expressed doubt as to whether the petitioner was mentally alert. The Deputy Director placed the office note before the Director who simply endorsed on it the word "Approved".

10. Upon hearing the learned advocates for the parties and considering the facts and circumstances of the case I find that the D.I. of Schools was guided by irrelevant considerations and the Director who is the final authority to decide whether approval to the extension of service applied for by the petitioner was to be granted or not did not apply his mind and mechanically accepted the views of the D.I. of Schools without giving any reason. Rule 28(2) of Management Rules of 1969 requires that in case of disapproval of any extension of service the Director or the officer authorised by him shall communicate to the Committee the reasons therefore. It shows that reasons for disapproval are to be recorded by the Director for communication to the committee or the administrator of the school as the case may be.

11. I do not however accept the contention raised on behalf of the petitioner that

the G.O. No. 407-Edn. dated 12.9.83 (by which the benefit of enhancement in the age of retirement beyond 60 years granted by the G.O. No. 372-Edn. dated 31.7.81 was restricted to those teachers who would fulfill the conditions of extension of service) is invalid. In my view, the government has power to change the conditions of service of its employees subject to the provisions of the Constitution and also to grant benefits or restrict benefits granted to them by imposing conditions.

12. One of the considerations which guided the D.I. of Schools was that the petitioner did not apply for extension within time limit as required under the rule. It has been pleaded in paragraph 14 of the affidavit-in-opposition sworn on 14.9.84 on behalf of the respondent Nos. 1, 4 and 5 that under GO. No. 407-Edn. dated 12.9.83 application for extension must be made six months before the date of superannuation of attainment of the age of 60 years. But the said G.O. No. 407-Edn. dated 12.9.83 a copy of which is annexure "P" to the said affidavit is silent on the point. Moreover, the petitioner reached the age of 60 years on 28.12.83 and the said G.O. which treated the enhancement of age of retirement beyond 60 years as extension of service was promulgated as late as in September 1983 and circulated thereafter and so it was impossible for the petitioner to apply for extension of service six months prior to her reaching the age of 60 years. So the consideration of failure to apply for extension of service on the part of the petitioner in or before June 1983 is clearly wrong.

13. It has been averred in para 15 of the said affidavit-in-opposition as follows:

The District Inspector of Schools on careful consideration of the petitioner's service record and her administrative ability recommended for not extending her service to the Director of Secondary Education for passing an appropriate order. The Director of Secondary Education after a careful consideration was also pleased to agree with the recommendation of D.I.

The respondent No. 1 D.I. of Schools in his letter No. 693/D dated 23.12.83 to the Director referred The petitioner's putting wrong date of birth in grants in aid application for last 10 years, receiving government money on wrong fixation of pay and failure to maintain normalcy of the school as administrative lapses on the part of the petitioner. But it appears that the excess amount drawn due to wrong fixation of pay of the petitioner was subsequently adjusted. The charge of failure on the part of the petitioner to maintain normalcy of the school is very vague. In any event the alleged irregularities or lapses which might have been grounds for initiating disciplinary proceedings against the petitioner by the committee of the school could not be taken into account as relevant considerations for determining the mental alertness of the petitioner. Under G.O. No. 407-Edn. dated 12.9.83 read with G. O. No. 863-Edn. dated 2.6.69 the relevant considerations for extension of service of a teacher are his or her physical fitness and mental alertness. In the present case the petitioner furnished a medical certificate that she was physically and mentally fit. The D.I. of Schools in his report to the Director accepted the medical certificate regarding

the petitioner's physical fitness but expressed doubt whether the petitioner was mentally alert. So he did not give any definite opinion that the petitioner was not mentally alert. But the office note, placed before the Director wrongly mentioned that according to the D.I of Schools the petitioner was not mentally alert. In the face of the medical certificate furnished by the petitioner and the indefinite opinion expressed by the D.I. of Schools it was incumbent on the part of the Director to satisfy himself by interviewing the petitioner and/or obtaining expert opinion about her mental alertness before disapproving of extension of her service. It is also possible that the Director was misled by the wrong office note on the D.I. of Schools opinion about the petitioner's mental alertness. Besides there is the cryptic endorsement with the word "Approved" by the Director who put nothing else on record regarding his decision in the matter.

The valid exercise of discretion by a public authority requires a genuine application of mind and a conscious choice. It is free to obtain advice and consult suitable persons. But it is vital that the public authority should genuinely keep the decision in its own hand. In a vital matter like the extension of service which is the source of livelihood of a teacher. The public authority must act reasonably and upon lawful and relevant grounds without omitting to specify the grounds of decision. In the present case it appears that the Director in exercising his discretion did not genuinely apply his mind. His failure to record reasons for his decision is tantamount to violation of rule 28(2) of the Management Rules, 1969. The D.I. of Schools had no authority to direct the Administrator to terminate the service of the petitioner before the decision of the Director.

I, therefore, find that the writ petition succeeds. The respondents are directed by a writ of Mandamus not to give effect to the decision disapproving of the extension of service of the petitioner from 1.1.84 to 31.12.84 as applied for by her. The order dated 23.12.83 of the respondent No. 1 to the respondent No. 2 and the respondent no. 2's order dated 27.12.83 are quashed. The respondent Nos. 1 and 4 are directed to sanction payment of salaries and allowances to the petitioner and the respondent No. 2 is directed to pay the same for the aforesaid period of one year within two months from this date. Regarding extension of service for the second term of one year from 1.1.85 the petitioner is permitted to apply for it within one month from this date if she has not already applied and such application shall be dealt with by the concerned authorities accordingly to the rules. The petitioner's entitlement to the benefit of service for the period subsequent to 31.12.84 will abide by the decision of the appropriate authorities in accordance with law. The Rule is thus made absolute. The pending applications are disposed of accordingly. The interim orders are vacated. There will be order as to costs.