

(2000) 11 CAL CK 0046
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction Appellate Side W.P. No. 17185 (W) of 2000

Sm. Sangita Moitra

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 13-11-2000

Acts Referred:

Recruitment and Leave of Teachers of Primary Schools of West Bengal Rules, 1991 — Rule 8, 9
West Bengal Primary Education Act, 1973 — Section 106

Citation : (2001) 2 CALLT 173

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Mr. P.K. Ghosh, Mr. S.B. Mukherjee and Mr. B.B. Biswas, for the Appellant; Mr. Tulsidas Maity, for the Respondent

Judgement

M.H.S. Ansari. J.

1. The case of the petitioner in brief is that she was appointed as primary teacher in Ahiritola Banga Bidyalaya for Girls (Primary section) on 1.1.93 and has been functioning as such continuously since that date.

2. It is stated that there are two approved primary teachers in the said school including the teacher-in-charge who will be retiring on superannuation on 31st July. 2000. Thereafter, there will be only one approved teacher in the said school for total number of 115 students in IV Class unit which will be inadequate according to the present roll strength of the said school. The teacher-In-charge, it is further stated, has recommended, the regularization of the petitioner in the said school and as no action has been taken thereon, the instant writ application has been filed inter alia, for issue of a writ commanding the respondents to accord approval of the service of the petitioner as primary teacher and to pay her salary month by month as also the arrears since the date of her appointment

3. Mr. S.B. Mukherjee appearing along with Mr. B.B. Biswas, learned Advocates

for the writ petitioner submitted that by virtue of 7/8 years continuous service, the petitioner is entitled to be approved in the said post. Reliance has been placed on the following judgments of the Supreme Court in support of the aforesaid contentions. (1) V.M. Chandra Vs. Union of India and Others, , (2) Arun Kumar Rout and Others Vs. State of Bihar and Others, . (3) Secretary, H.S.E.B Vs. Suresh and Others etc. etc., , (4) Union of India and Others Vs. Subir Mukharji and Others, , (5) R.K. Panda and Others Vs. Steel Authority of India and Others, . Reliance has also been placed upon the Judgments of the single Judge of this High Court reported in (1) 2000(2) CLT(HC) 231, (2) 2000(2)CLJ 238 and to unreported Judgment dated 3rd May, 2000 in C.R. No. 4020(W) of 1990.

4. It must be stated here that in so far as the Judgments of the learned single Judges of this Court referred to supra and relied upon by the learned counsel for the petitioner are concerned, they relate to the appointments made and wherein directions were issued by the learned single Judges in the respective matters pertaining to appointments of the petitioners in respective cases which has been made prior to the coming into force of the Rules called the Recruitment and Leave of Teachers in Primary Schools, 1991.

5. u/s 106 of the West Bengal Primary Education Act, 1973. power has been conferred upon the State Government to make rules for carrying out the purposes of the Act. The State Government in exercise of the said power made the rules regulating the Recruitment and Leave of Teachers in Primary Schools in West Bengal published in the Calcutta Gazette on 25.11.91. A Division Bench of this High Court had occasion to consider the said rules in Ziaul Islam v. State of West Bengal & Ors. 1999(1) CLT 509 (HC). After referring to the Judgment in West Bengal Primary Education v. State of West Bengal & Ors. reported in 1997(1) CLJ 165, it was observed by the Division Bench that in the matter of recruitment the same would be governed by the West Bengal Primary Education Act, 1973 which came into force with the effect from 20.9.1974 and the rules framed thereunder published in the Calcutta Gazette on 25.11.91.

6. The Division Bench in Ziaul Islam's case (supra), held as under:

"Rule 8 of the 1991 Rules aforementioned provides for the manner in which the Primary School council would fill up the number of vacancies. The said procedures provide that a panel for eligible candidates be prepared and for the said purpose the Employment Exchange would be requested to send the names of the candidates (trained or untrained) who have requisite qualification and in order of seniority of registration.

Rule 9 provided for the selection process in great details. The said Act and the Rules provides for a complete code in the matter of recruitment of teachers. It is now a well settled principal of law that if some matters are included by reason of a statute, other matters by necessary implication are excluded. No other procedure for selection having been prescribed, the District Primary School

Council who are creature of the statute, have no other option but to follow the provisions of the said rules in the matter of recruitment of teacher. They cannot deviate therefrom. We are conscious of the fact that although seemingly they appear to be mandatory in nature but in certain circumstances they may be held to be directory."

7. The Division Bench in paragraph 15 further held;

"It is now well settled by the decision of the Supreme Court of India that recruitments have to be made, in terms of the statutory rules."

8. And in paragraphs 17 and 18, it was held as under;

"It is now also a well settled principles of law that any appointment in violation of the recruitment rules will be void."

"Furthermore, it is further well settled that no recruitment can be made in violation of or in derogation of the provision of recruitment rules. Such recruitment rules framed in consonance with the principle laid down under Articles 14 and 16 of the Constitution of India. Reference in this connection may be made to reported in JT 1996(2) SC 435 and Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, ."

9. In West Bengal Board Primary Education v. State of West Bengal & Ors 1997(1) CLJ 165, cited supra, the Division Bench in that case considered the question of absorption of teachers who claimed to be the organizer teachers who had been appointed by Managing Committee of School, in the following terms;

The second Principal question framed by the learned trial Judge must also be answered in negative in view of the fact that the teachers when so appointed having not been appointed under any provision of law or upon following any rule conforming to the provisions of Articles 14 and 16 of the Constitution and their services being not protected under any statute, question of their regularisation does not arise. This bench in several cases including in Registrar of North Bengal University v. Biplab Roy & Ors. in F.M.A. No. 159/93 disposed of on 24.1.96, inter alia, observed;

"The Supreme Court in a number of decisions categorically held that regularisation cannot be a mode of appointment. Reference in this connection may be made to B.N. Nagarajan and Others Vs. State of Karnataka and Others, and R.N. Nenjundeppav. J. Thimmaiah reported in 1972 (2) SCR page 749:1972 Labour & Industrial Cases 618, which have recently been followed by the Supreme Court in V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, ; Sk. Jamaludin v. State of West Bengal reported in 1995 Lab. I.C. 1853. Similar view has been taken in Ashoke Kumar Pal v. State of West Bengal; C.O. No. 4244(W) of 1995 disposed of on 25.4.1995 and reported in 1995 Lab. I.C. 319; Narendranath Palai Vs. State of West Bengal and Others, (All) and J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., ; Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, ; Dr.

Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others, . This aspect of the matter has also been considered by various Division Benches of the Patna High Court on amongst others in 1994(1) PLJR 68; 1995(2) PLJR 309 and 1995(2) PLJR 573."

10. In Biman Ch. Karmakar v. State of West Bengal & Ors., 2000 Lab. IC 170, a Division Bench judgment to which I was a Member after referring to various Judgments of the Supreme Court as also of this High Court held as under;

"It is no longer permissible for an/person to contend that any appointment can be made or a Court can direct appointment of a person de hors the mandatory provisions of the statutory rules. If the statutory rules operate in the field of recruitment such rules must strictly be adhered to and the authorities concerned are necessarily bound thereby. Any action on their part in appointing a teacher in deviation thereof would render the appointment a nullity. This aspect of the matter is squarely covered by several Supreme Court decisions in Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and others, , E. Ramakrishnan and Others Vs. State of Kerala and Others, , R.N. Nanjundappa Vs. T. Thimmiah and Another, , B.N. Nagarajan and Others Vs. State of Karnataka and Others, , V. Sreenivas Reddy v. Government of A.P. (1994) 6 JT (SC) 461 : (1995 Lab 1C 319; Lalan Kumar Singh v. The State of Bihar reported in (1995)2 Pat LJ 309 upheld in Ashwani Kumar and Others Vs. State of Bihar and Others, , State of Orissa v. Dr. Pyari Mohan Mishra reported in AIR 1997 SC 974: 1005 Lab. I.C. 1068. J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., . Suffice it to state that this aspect of the matter is also covered by several Division Bench decisions and Full Bench decision of this Court. Reference in this connection may be made to Director of Public Instructions of W.B. v. Dr. Ashis Pal reported in (1998) 2 CHN 241, Ziaul Islam v. State of West Bengal reported in 1991(1) CLT509 and a Full Bench decision of this Court in Debasish Dutta v. State of West Bengal reported in (1998) 2 Cal. LJ apart from the decision in West Bengal Board of Secondary Education v. State reported in (1997) 1 Cal. LJ. 165. The entire case of action of the writ petitioner are based on some circulars which stand repealed after coming into force of the said Act and the Rules."

11. In the light of the Judgments of the Division Bench which are directly applicable to the instant case in that the Division Bench have referred to the Act and the Rules governing the Recruitment of Teachers in Primary Schools and keeping in view that the said judgments are binding on me sitting singly as I am, it is not considered necessary to refer to the various Judgments of the Supreme Court and of the learned single Judges referred to and relied upon by the learned counsel for the petitioner. Judicial propriety requires that the judgments of the Division Bench be followed when they are directly applicable to the case on hand.

12. Judged in the light of the said Judgments of the Division Benches of this High Court, it will be seen that the petitioner was appointed on 1.1.93 that is after coming into force of the Recruitment Rules, 1991. Such appointment of the

petitioner was de-hors the mandatory provisions of the statutory rules. The appointment was thus a nullity.

For the reasons aforestated, there is no merit in the writ application and the same is accordingly dismissed, however, without any order as to costs.

13. Application dismissed