
(1992) 05 CAL CK 0030
In the Calcutta High Court
Case No : C.O. No. 1414 (W) of 1990

Smt. Chhabi Auddy

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 26-05-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1992) 2 CALLT 388

Hon'ble Judges : Khwaja Mohammad Yusuf, J

Bench : Single Bench

Advocate : A.B. Chatterjee and Anadi Banerjee, for the Appellant; Mukul P. Banerji, B.P. Subba, N. Padheria and Dilip K. Samanta, for the Respondent

Judgement

Khwaja Mohammad Yusuf, J.—This writ application was allowed by a substantial order of 13th February, 1991 but on 17th June, 1991 the Headmaster functioning as Rector and the Secretary of the Hari Har Maha Vidyalaya at Ghutiari Sharif moved an application for variation/recalling/setting aside. modification of the said order of 13th February, 1991. In my Judgment of 13th February, 1991 I directed the District Inspector of Schools (S.E.), South 24-Parganas, to forthwith grant approval as a full-time Assistant Teacher to the petitioner, Smt. Chhabi Auddy, and also directed the School authorities including the Headmaster (Rector) of the School to take immediate steps to appoint the petitioner as a full-time Assistant Teacher of the School, and also waive the age bar, if any. But on the basis of the application of 17th June, 1991 where allegations was made that the order was taken at the back of the School authorities and by suppressing of facts I kept in abeyance my order of 13th February, 1991.

2. The recalling or vacating application moved by the Respondents Nos. 4 and 5 i.e. the Headmaster (the Rector) and the Secretary of Hari Har Maha Vidyalaya specifically alleged that no copy of the writ application was served upon the petitioners and the School authorities do not know the grounds on which the writ petition was filed. It is the specific case of the petitioner that from 1981 the

Education Directorate approved ten full-time and ten part-time posts of teachers in various subjects and one part-time Teacher Suchismita Mukherjee is working in the School since 1976 being approved as such to teach Bengali by Memo dated 30th January, 1984 issued by the D.I.S. concerned. The writ petitioner Smt. Chhabi Auddy was appointed sometime in 1982 as a part-time Assistant Teacher in Bengali and she was approved as part-time Teacher in Bengali by the D.I.S. concerned by Memo dated 20th December, 1982. An additional post was created for Schedule Caste and in 1985 one Aurobinda Naskar who was M.A., B.Ed. was appointed full-time Teacher in Bengali to fill in the additional post and he is working since 1985 as such with the approval of the D.I.S. It is the specific case of the School that the Managing Committee moved the D.I.S. to sanction full-time posts for English, Political Science, Philosophy and Commerce subjects but no step has been taken as yet and the study of the students is suffering. It is alleged by the School authorities that the petitioner takes only six/seven classes per week in Bengali whereas Suchismita Mukherjee takes ten/twelve classes per week. It is the further case of the School that Smt. Chhabi Auddy is irregular and not punctually discharging her duties nor follows the routine. The School is of the view that if at all any part-time Teacher is to be made full-time it should be Suchismita Mukherjee and no one else. It is specifically denied on behalf of the School that the School is in need of a second Teacher in Bengali and this plea taken by the writ petitioner is said to be wholly false and baseless.

3. The School authorities no doubt have made some cogent points which were not before the Court when the order of 13th February, 1991 was because the application was moved without notice to the School authorities. Now a substantial picture has emerged out and for the ends of justice the matter must be decided afresh so that conscionable justice be done and justice should not only be done but one must feel the justice has been done. In that view of the matter I allow the application dated 17th June, 1991 and recall the order passed ex parte on 13th February, 1991.

4. This exercise is being done and the Court's extra time is unnecessarily spent on this matter at the fault of the writ petitioner's learned Advocate-on-record for not serving the copy of the writ petition upon the School authorities which is obviously the bounden duty of the learned Advocate, and such instruction is clearly written at the top of my List. I censure Mr. Anadi Banerjee, the learned Advocate-on-record of the writ petition, for this irresponsible behaviour. I refrain from inflicting any personal penalty in shape of cost upon Mr. Banerjee which he deserves. I have noticed that these days ex parte orders with proper notice to all concerned are often taken by pressing urgency of matters and afterwards it transpires suppression of facts and basic materials which puts the Court in unnecessary repetition of work.

5. Now I have heard the matter in full on Affidavits. The case of the petitioner is that she is an M.A. in Bengali from Calcutta University having passed in 1973 and she is also an Honours Graduate and completed B.Ed, training in 1984. She got

herself enrolled with the Employment Exchange but she did not get any employment through the Government of West Bengal. In 1981 the petitioner got employed as part-time Teacher in Bengali in Hari Har Maha Vidyalaya at Ghutiari Sharif in South 24-Parganas. Thereafter one Teacher was made permanent as full-timer in 1985 due to work-load. The strength of students with Bengali Vernacular as first language is 800. The petitioner got approval as a part-time Assistant Teacher by the District Inspector of Schools (S.E.) with effect from 1st July, 1982 by Memo dated 20th December, 1982. The petitioner served the School with the hope that one day she would be appointed as a permanent Teacher and would be approved. It is stated that the petitioner was given the duty of full-time Teacher in Bengali. On 13th July, 1989 the petitioner made a representation to the Director of School Education regarding her appointment as full-time Teacher against substantive vacancy. The case of the petitioner is that the School is in need of a second teacher in Bengali and as the petitioner is serving the institution since 1982 she should be given the approval as full-time Teacher and absorbed as such. But justice was denied to the petitioner and the authorities failed to act reasonably and is damaging her career. It is her further case that due to the advancement of age the petitioner would not be in a position to get any full-time job in any school in this State. As such she prays for a direction upon the State-respondents for her absorption as a full-time Teacher.

6. The State-respondents filed Affidavit-in-Opposition and specifically stated in paragraph 6 the procedure required to be followed to fill up a post of Assistant Teacher as per Rules of appointment. It is stated that without following the procedure of appointment according to the Rules of Recruitment there is no scope to accord approval to the petitioner as a full-time Teacher. It is further stated that there is no sanctioned post of full-time Teacher in the said School and as such the question of approval does not arise.

7. The Secretary and the Headmaster (the Rector) in their Affidavit-in-Opposition stated that the full-time and part-time posts of teachers are from time to time approved by the District Inspector of Schools. One Suchismita Mukherjee is a part-time Teacher since 1976 and was duly approved as such by the D.I.S. with effect from 11th May, 1981 by the Memo dated 30th January, 1984. It is stated that in 1982 the petitioner was appointed as a part-time Assistant Teacher and was approved as such by the District Inspector of Schools by Memo dated 20th December, 1982. It is a fact that in 1984 an additional post was created but the said post was reserved for a Schedule Caste candidate and in 1985 one Aurobinda Naskar was appointed a full-time Teacher in Bengali to fill up the said additional post. The Managing Committee of the School applied to the D.I.S. for full-time Teachers in English, Political Science, Philosophy and Commerce subjects but no step has been taken either by the D.I.S. or the Directorate of School Education which is affecting the study of the students in those subjects. In paragraph 12 these respondents have given reasons as to why the petitioner cannot be appointed or approved as a full-time Teacher in Bengali. The reasons are : (a) according to Circular dated 10th September, 1980 issued by the

Directorate of School Education the existing approved part-time Teacher shall have to appear before the Selection Committee for appointment as a whole-time teacher in the same subject so that teaching experience may be counted and marks allotted : (b) Suchismita Mukherjee is also a part-time Teacher serving the School since 1976 ; (c) Smt. Mukherjee takes 10/12 classes per week whereas the petitioner takes 6/7 classes per week and has never been entrusted with the duties of full-time Teacher ; the petitioner is irregular and not punctual in discharging her duties ; and (d) in case the post of a full-time teacher is sanctioned and if the Managing Committee decides to appoint a full-time teacher in Bengali then the case of Smt. Suchismita Mukherjee must be considered in the light of the Government Rules before the petitioner because of her seniority in service. It is further stated that the petitioner has made out a false case before the Court that the School is in need of a second Teacher in Bengali which is totally baseless. Actually the School is in need of Teachers in English, Political Science, and Philosophy very much as there is not a single full-time Teacher in these subjects. The Affidavit sets out the procedure of recruitment which is not necessary to be mentioned here. But it is the specific case of the School that it did not require any further full-time Teacher in Bengali. It is also the case of the School that two part-time approved Teachers and one full-time approved Teacher for Bengali are enough to cope with the pressure of work-load in the subject. It is specifically denied that the age of the petitioner will stand as age bar to her appointment as a full-time Teacher as alleged by her.

8. In the Affidavit-in-Reply to the State-respondents the writ petitioner admitted that she could not improve upon the Rules regarding appointment (vide paragraph 4). In the Affidavit-in-Reply to the respondents Nos. 4 and 5 she stated that the additional post, created in 1984 was an unreserved post but it was turned into a reserved post for Schedule Caste Candidate to accommodate one Sri Aurobinda Naskar who was a brother of the Headmaster. Smt. Mukherjee did not take any step to exercise her legal right whereas the petitioner did. The rest is the repetition and nothing new has been said.

9. Mr. Chatterjee, the learned Advocate appearing for the petitioner, argued that the Hari Har Maha Vidyalaya is a Higher Secondary School with 800 students and the petitioner was appointed in 1981 as part-time Assistant Teacher in Bengali and was approved by the District Inspector of School concerned by Memo dated 20th December, 1982 with effect from 1st July, 1982. Though Smt. Suchismita Mukherjee was another part-time Teacher, both she and the petitioner were teaching as part-timers and in 1984 a post was created in Bengali in general category but the School authorities in order to provide a relative of the Headmaster turned it into a Schedule Caste category and one Aurobinda Naskar, brother of the Headmaster, was given the appointment as full-time Assistant Teacher for Bengali and as such the petitioner's chance to be absorbed was frustrated. The petitioner is working on a nominal salary of Rs. 250/- per month and she deserves preference over Smt. Mukherjee because Smt. Mukherjee did not take any step to exercise her legal right to be absorbed as a full-time

Teacher. The School authorities also frustrated the right of the petitioner by not creating supernumerary post with all benefits prescribed in law. The age factor stands in the way of the petitioner and relied upon the case of Bakul Rej reported in 1987 Lab. IC 62 and another case reported in 1991(2) CHN 355.

10. Mr. Samanta, the learned Advocate appearing for the State-respondents, submitted that the full-time Teacher can be appointed only according to the Recruitment Rules and not otherwise. The compliance of the Recruitment Rules is compulsory for the School authorities and the same could not be given a go-by in case of recruitment. The necessity to recruit teaching and non-teaching staff depends upon some fulfilment of requirements and the necessity of subject-teacher is to be judged by the authorities concerned. It is argued that there is no sanctioned post in the School in Bengali for the present, as such there is no scope to appoint the writ petitioner as whole-time Bengali Teacher. It is further submitted that the decision in the case of Bakul Rej cannot be applicable in the instant case as the petitioner has not come by way of challenging the appointment of any Teacher in respect of vacancy occurred in 1984.

11. Mr. Mukul Prokash Banerji, the learned Advocate appearing for the respondents Nos. 4 and 5 i.e. the Secretary and the Headmaster (the Rector), submitted first on the facts of the case and then stated that the School has been recognized by the West Bengal Council of Higher Secondary Education in 1976 and in 1981 ten full-time and ten part-time posts of Teachers in various subjects were approved. Smt. Suchismita Mukherjee was approved with effect from 11th May, 1981 as part-time Assistant Teacher in Bengali by the Memo dated 30th January, 1984 issued by the D.I.S. concerned while the writ petitioner Smt. Chhabi Auddy was approved as a part-time Assistant Teacher in Bengali with effect from 1st July, 1982 by the Memo dated 20th December, 1982 issued by the D.I.S. concerned and as such the seniority of Smt. Mukherjee should not and ought not to be superseded. Even following the principle of Bakul Rej case Smt. Mukherjee serving earlier than the writ petitioner must be given preference. It is submitted that the work-load is much more in Commerce, Political Science and English as for example in Commerce the work-load is 1512, in Political Science 870, in English 801 and in Philosophy 370 but there is no part-time or full-time Teachers in these subjects. Mr. Banerji submitted that if the writ petitioner is made full-time Teacher in Bengali at this stage then no useful purpose will be served when the aforesaid four subjects require immediate attention and appointment of Teachers by the authorities concerned.

12. I have considered all aspects of the case of the petitioner and the respondents and the submissions made by all the parties. This is an admitted position that the petitioner was approved as a part-time Assistant Teacher in Bengali in the Hari Har Maria Vidyalaya w.e.f. 1st July, 1982 by the District Inspector of Schools concerned vide his Memo dated 20th December, 1982. Now she is serving as a part-timer for more or less nine years uninterruptedly on a fixed salary. It also appears and is an admitted position that one Smt. Suchismita

Mukherjee was duly approved w.e.f. 1 lth May, 1981 by the D.I.S. concerned vide his Memo dated 30th January, 1984. Admittedly the appointment and approval of Smt. Mukherjee was earlier than that of the petitioner. At the same time the position stands undisputed that the petitioner got employed in the School in 1981 whereas Smt. Mukherjee is working since 1976. In either case both of the Teachers are part-time Assistant Teachers in Bengali. Admittedly Smt. Suchismita Mukherjee is senior in both respect, first, from the viewpoint of employment and second, from the viewpoint of approval as part-timer whereas the petitioner, Smt. Chhabi Auddy, comes next to her on both counts. I am not dealing here as to who is efficient and who is not much efficient and as to who is taking more classes and who is taking less classes, but certainly I shall like to point out some legal factors which are standing in the way of the approval of the petitioner as full-time Assistant Teacher. Mr. Chatterjee appearing for the petitioner has made some allegations against the School authorities and particularly the Rector (who was the Headmaster) that he was interested in the appointment of his brother Aurobinda Naskar and as such a vacancy of general category was turned into a Schedule Caste category by manipulation to frustrate the petitioner's chance of absorption. But the main objection of Mr. Samanta appearing for the State was that no appointment can be made by by-passing the Recruitment Rules and it is not possible to give anybody approval or appointment by jumping over the Recruitment Rules or by over-looking the statutory Recruitment Rules. At the same time Mr. Banerji, the learned Advocate appearing for the School authorities, submitted that for the present there is no necessity of having any full-time Assistant Teacher in Bengali because the School is already having one full-time and two part-time Teachers in the subject. But the pressing need is to have Assistant Teachers in Commerce, Political Science and English as well as in Philosophy where the work-load is quite heavy and there is no Teachers at all in those subjects and the students are suffering. At the same time the contention on behalf of the School is that Smt. Mukherjee has precedence over the petitioner because she is serving since before the petitioner and was also approved as part-timer earlier than the petitioner.

13. I have my full sympathy with the petitioner Smt. Chhabi Auddy who is serving the School as a part-timer on a paltry amount for the last nine years or so and she has no immediate prospect of becoming a full-time teacher. The learned Advocate for the petitioner argued more from the humanitarian point of view and less from the legal point of view. Undoubtedly the Court has right to look to the humanitarian aspect provided the humanitarian aspect if obstructed by any law or rules must be brought to the notice of the Court and must be challenged outright. Mr. Chatterjee has neither brought, to the notice of the Court any law or rule which empowers to get the relief to the petitioner outright nor he did challenge any provision of the Recruitment Rules which stands in the way and must be struck down or declared illegal so that the obstruction in the way of approval and appointment of the petitioner as full-time Teacher can be removed. The Court has noticed in many cases that non-approved teachers

working for years together have not been given their due share and this chronic disease is infiltrating and polluting the structure of the School education by creating unrest among a section of unapproved teachers. But I do not think that as yet any right approach has been made by such teachers through proper legal advice for the remedy of their grievances. Simply by way of sympathy nothing can be gained and the Court will be powerless to by-pass without rhyme or reason the Statutory Rules framed by the Government for recruitment of teachers.

14. Every appointment is to be guided by the Recruitment Rules framed in exercise of the power conferred under the Rules for Management of Recognized Non-Government Institutions (Aided and Unaided), 1969. It has not been pointed out by Mr. Chatterjee or anybody else till now to me that this Recruitment Rules give a right to the unfortunate persons like the petitioner to be absorbed permanently in the service nor anybody pointed out the lacuna in the Recruitment Rules or challenged the vires of the Rules to be declared illegal thereby removing the hurdle for appointment of those who are serving the Schools for years together in a satisfactory way. Even no appointment is possible on permanent basis as whole-time teacher under Rule 28(7) of the Management Rules, 1969. The Supreme Court while condemning the practice of ad hoc appointment of teachers deprecated ad hocism as "hiring and firing" policy followed by the State Government for a long period leading to the breach of Articles 14 and 16 of the Constitution but at the same time said Very pointedly as under : "If any of the petitioners in these petitions has under any existing rules acquired the right to be treated as a regularly appointed teacher, his case shall be considered by the State Government and an appropriate order may be passed in his case" (vide Rattan Lal and Others Vs. State of Haryana and Others,

15. In the instant case I never say for a moment that the petitioner is not suffering. Injustice is being meted out to the petitioner and to Smt. Suchismita Mukherjee for not making them full-time Teachers. They are thus deprived of their right of livelihood which comes in clash with Articles 14 and 16 of the Constitution and the protection of law is denied to both of them. The Court must do justice and should not say in favour of the petitioner only who has moved the Court and not mention the case of one who is not before the Court but whose case has been brought to the notice of the Court by the School authorities. The learned Advocate of the petitioner has not taken any point which requires to be struck down to remove discrimination in matters of approval and appointment of the part-time teachers. Simply by saying that the petitioner is working for such a long period and she has right to be approved as a full-time Teacher cannot solve the problem unless the Court is made to understand how that relief can be given when no such Rules exist, but on that score there is no argument at all. The Court is always ready to hear such argument from purely legal and constitutional points of view which should provide substantial relief to the petitioner and other similarly situated persons. Now it is a well recognized principle that the law exists to serve the needs of the society and must keep pace with the needs and

aspirations of the people and cannot remain immutable. The law is not an unalterable object and in a changing society it must march in tune with the changed ideas and ideologies. The Court can safely interfere, if not the legislature.

16. There is much substance in the argument advanced by the School authorities that Smt. Suehismita Mukherjee is working in the School earlier than the writ petitioner and she has definitely precedence over the petitioner. Justice demands that if any vacancy takes place on permanent basis or any additional post is created in Bengali, both the petitioner and Smt. Mukherjee must be allowed to appear before the Selection Committee in accordance with the Recruitment Rules and selection will depend on merit. I direct that the School authorities shall be duty bound to invite the writ petitioner and Smt. Suehismita Mukherjee for such an interview if the occasion arises in future and they cannot be excluded from the interview under any circumstances. If the writ petitioner or Smt. Mukherjee is excluded from such interview the entire interview shall be invalid and bad. I also direct that the age bar, if any, in the case of the writ petitioner or Smt. Suehismita Mukherjee shall not stand in the way of their consideration, approval and appointment and this Court hereby waives any age bar in respect of these two ladies.

17. In that view of the matter the writ application is disposed of with the aforesaid direction.

18. Let xerox copy of the Judgment be made available to the parties on usual undertaking and upon compliance of necessary formalities.