
(2013) 07 CAL CK 0127
In the Calcutta High Court
Case No : Writ Petition No. 24040 (W) of 2012

Smt. Debleena Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2013) 3 CHN 746 : (2013) 3 LLN 547

Hon'ble Judges : Arun Mishra, C.J.; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Piush Chaturvedi and Ms. Anwesha Saha, for the Appellant; Amitesh Banerjee and Ms. Munmun Tiwari, for the Respondent

Judgement

1. The Court: A learned Single Judge of this Court by order dated 01.03.2013 has doubted the correctness of the ratio laid down by a Full Bench of this Court in the case of Gobinda Chandra Mondal Vs. Principal, Rabindra Mahavidyalaya, and referred the matter to the Chief Justice for placing the same before a Larger Bench to decide as to whether the temporary non-teaching staff of the school in question was entitled to get age relaxation for participating in the selection process. The matter was thereafter placed by the Chief Justice before this Bench for consideration of the preliminary issue as to whether it was necessary to make a reference, as sought for, in the matter.

2. Mr. Chaturvedi, learned advocate appearing for the petitioners submitted that no reference could be made in view of the Rules of this Court, particularly, Rule 8 of Chapter VII of the Calcutta High Court Appellate Side Rules. In support of his contention, he relied on Ahamed Hossain Sk. Vs. State of West Bengal and Others, and Texmaco Ltd. Vs. Tirupati Buildstates Pvt. Ltd.,

3. He further submitted that the ratio in Gobinda C. Mondal (supra) was not overruled by a Larger Bench of this Court nor by any decision of the Apex Court and was binding upon the learned Single Judge.

4. Per contra, Mr. Amitesh Banerjee, learned advocate appearing for the State submitted that the ratio in *Gobinda C. Mondal (supra)* was per incuriam inasmuch as the Full Bench had held that the relaxation of age of ad-hoc employees in respect of future appointments through a valid selection process to be of binding precedent whereas such benefit was accorded to the temporary employees in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, an exercise of power under Article 142 of the Constitution and could not have been treated to be of binding effect. He also referred to a decision of *State of Karnataka and Others Vs. M.L. Kesari and Others*,

5. Chapter VII of the Calcutta High Court Appellate Side Rules deals with "Reference to a Full Bench."

Rule 8 of the said Chapter reads as follows:

Every decision of a Full Bench shall be treated as binding on all Division Benches, and Judges sitting singly, upon the point of law or usage having the force of law determined by the Full Bench, unless it be subsequently reversed by a Bench, specially constituted, consisting of such number of Judges as in each Case shall have been fixed by the Chief Justice, or unless a contrary Rule have since been laid down in a pre-Constitution decision of the Judicial Committee of the Privy Council or of the Federal Court of India or in a decision of the Supreme Court of India.

6. It is, therefore, clear that a decision of a Full Bench is to be treated as binding on all Division Benches and Judges sitting singly on a point of law or usage having the force of law as determined by the Full Bench. Such decision of the Full Bench shall lose its binding effect only if it is revised by a larger Bench of the Court or a contrary rule had since been laid down in a pre-Constitution decision of the Judicial Committee of the Privy Council or of the Federal Court or that of the Supreme Court.

7. The aforesaid Rule fell for interpretation before a Full Bench of this Court in the case of *Ahamed Hossain Sk. Vs. State of West Bengal and Others*, wherein the Full Bench held as follows:

34. The principles that emerge from the decisions, cited supra, are that the decisions of the Supreme Court are binding on all the Courts, Article 141 of the Constitution embodies the rule of precedent. A Special Bench/Full Bench judgment of that High Court is binding on the question of law decided by it and despite the same if any Division Bench holds to the contrary then a Division Bench has the authority to differ with the Division Bench which has taken a view contrary to the Special Bench judgment. A Single Judge of a High Court is bound by the judgment of another Single Judge and a fortiori judgments of Benches consisting of more judges than one. So also, a Division Bench of two Judges of a High Court is bound by judgments of another Division Bench of two Judges and Full Bench. A Single Judge or Benches of High Courts cannot differ from the earlier judgments of co-ordinate jurisdiction merely because they hold a different

view. When a Division Bench of two Judges differs from the judgment of another Division Bench of two Judges, it has to refer the case to a Full Bench. A Single Judge cannot differ from a decision of a Larger Bench except when that decision or a judgment relied upon in that decision is specifically overruled by a Full Bench or the Supreme Court. However, if the decision of the Larger Bench is inconsistent with the law laid down by a Full Bench or the Supreme Court, the proper course to the Single Judge would be to refer the matter to the Division Bench.

35. In my considered view, therefore, it is only within the narrowest field that a judgment of a Larger Bench can be referred for reconsideration.

(Emphasis supplied)

8. It does not appear that the ratio of the Full Bench in Gobinda C. Mondal (supra) has been overruled by any larger Bench of this Court or by any decision of the Supreme Court. Reference has been made to paragraph 55 of Uma Devi (3) and it has been strenuously argued that the same does not constitute binding precedent under Article 141 of the Constitution of India.

9. It appears that the Full Bench was not unconscious of such proposition. Bearing in mind such contention, the Full Bench followed the procedure adopted by the Apex Court in Uma Devi (3) and other cases on self-same facts in the matter of age relaxation of temporary/ad hoc employees (who were not regularised) so as to enable them to participate in future selection process to such posts. One may be profitably refer to the observations of the Full Bench in that regard:-

17. We think paragraph 55 of Uma Devi's case is apposite as rightly contended by the learned counsel for the writ petitioners. In consonance with the line of the above ratio in Uma Devi's case itself the Supreme Court has passed the order as follows:

...We also notice that the High Court has not averred to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in CAs Nos. 3595-612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

It is true the said direction was under Article 142 and not under Article 141 to accept as a statement of law of the land enunciated by the Supreme Court but

the then direction of the Supreme Court taken consistently can hardly be ignored.

18. Even before the decision of Uma Devi came to be rendered in case of Keshav Narayan Gupta and Others Vs. Jila Parishad, Shivpuri (MP) and Another, the Supreme Court in paragraph 5 of the report has said as follows:

We, therefore, do not see any reason to take a view different from the view taken by the High Court. It is, however, submitted by the learned counsel for the appellants that these appellants have worked for 12 years by now and there are no complaints regarding their service. Hence, if any regular appointments are made, the cases of the appellants should also be considered by waiving, if necessary, the age bar. We see some force in this contention. We, accordingly, direct that when regular appointments to the posts at present occupied by the appellants are made, the cases of the appellants will also be considered along with the other applicants by waiving the age bar in the case of the appellants, if necessary. Until such regular appointments are made the appellants will continue to function on an ad hoc basis as of now. With these directions the appeals are dismissed.

.....

23. It seems to us the said decision was rendered without noting carefully the ratio of Uma Devi's case and further aforesaid two Supreme Court's decisions (which have stated the ratio) in case of M.L. Keshri and Satya Prakash whereby the ratio of Uma Devi's case as recorded above have been clearly culled out. Therefore the said reported Division Bench judgment and unreported Division Bench judgment are not appropriate or helpful to this case. It appears that Division Bench has relied on the decision of the Supreme Court in case of Hindustan Petroleum Corpn. Ltd. Vs. Ashok Ranghba Ambre, hat at the time of recruitment process the age of the fresh candidate cannot be relaxed but the aforesaid judgment of the Supreme Court has nowhere said that the persons who are engaged irregularly their case could be considered by relaxing age bar.

24. In view of the above discussion we conclude as follows:

No ad hoc or temporary appointee can be absorbed nor be regularized in any post in Government or Government aided establishment de hors Recruitment or Service Rule ordinarily.

If the appointment is made without undertaking selection procedure under Rule on ad hoc or temporary basis engaging the candidates having requisite qualification namely age and education at the time of appointment against substantive post the candidates in those cases shall be allowed to compete and/or participate in the selection process along with other eligible candidates at the time of regular recruitment process condoning the age as they have acquired right to be considered. Of course, their services must be continuous and without any break in the vacancy of substantive post at the time when the regularization is demanded and selection process undertaken. But in case where the appointees

are not qualified at all and they have been engaged for rendering services as an ad hoc basis or temporary measure their case cannot be considered under any circumstances either against substantive post or the post yet to be created.

10. The aforesaid observations in Gobinda C. Mondal (Supra) make it amply clear that the Full Bench was fully conscious of the fact that the direction of the Apex Court in Uma Devi (3) (supra) relating to age relaxation was not under Article 141 of the Constitution of India but under Article 142 of the Constitution of India. Hence, such decision of the Full Bench could not be said to be "in ignorantia" or "per incuriam" on such score.

11. In Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, a Constitution Bench of the Supreme Court held as follows:

Per incuriam means a decision rendered by ignorance of a previous binding decision such as a decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law. A ruling making a specific reference to an earlier binding precedent may or may not be correct but cannot be said to be per incuriam.

12. Furthermore, no declaration of law by the Apex Court has been placed before us which runs contrary to what has been held in Gobinda C. Mondal (Supra).

13. Such issue having been considered and dealt with on merits by the Full Bench was no longer res integra before the learned Single Judge and the ratio laid therein was binding upon the said Court.

14. It is trite law that the ratio declared by a larger Bench is binding on a smaller Bench of the Court. [See: State of U.P. Vs. Jamshed and Another, P. Ramachandra Rao Vs. State of Karnataka, Committee of Management Kanya Junior High School Bal Vidya Mandir, Etah, U.P. Vs. Sachiv, U.P. Basic Shiksha Parishad, Allahabad, U.P. and Others,

15. Criticizing the practice of a smaller Bench doubting the ratio declared by a larger Bench, the Apex Court in the case of Official Liquidator Vs. Dayanand and Others, held as follows:

We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the

system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

16. It appears to be a consistent and prudent practice followed by the Apex Court to grant the relief of relaxation of age to temporary/ad-hoc employees (who were irregularly appointed but could not be regularised) to enable them to participate in future selection process to such posts.

[See: Satya Prakash and Others Vs. State of Bihar and Others,), V Harinder Kaur and Others Vs. Union of India (UOI) and Others, State of M.P. and Others Vs. Sanjay Kumar Pathak and Others, , State of West Bengal and Others Vs. Banibrata Ghosh and Others, , State of Madhya Pradesh and Others Vs. Yogesh Chandra Dubey and Others,

17. The Full Bench, acknowledging such procedure, had extended the self-same relief on similar factual matrix of the case. We find no reason to doubt such stance adopted by the Full Bench.

18. Whether the ratio laid down in a decision requires to be reviewed or not was considered by the Apex Court in the case of The Keshav Mills Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, . In paragraph 23 of the said report, the Apex Court held as follows:

It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations:- What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court bearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions.

19. Stressly the principle of "stare decisis" at paragraph 34 of the said report the Apex Court further held:

It must be conceded that the view for which the learned Attorney-General contends is a reasonably possible view, though we must hasten to add that the view which has been taken by this Court in its earlier decisions is also reasonably possible. The said earlier view has been followed by this Court on several

occasions and has regulated the procedure in reference proceedings in the High Courts in this country ever since the decision of this Court in *New Jehangir Vakil Mills Ltd. Vs. Commissioner of Income Tax, North, Kutch and Saurashtra*, was pronounced on May 12, 1959. Besides, it is somewhat remarkable that no reported decision has been cited before us where the question about the construction of S. 66(4) was considered and decided in favour of the Attorney-General's contention. Having carefully weighed the pros and cons of the controversy which have been pressed before us on the present occasion, we are not satisfied that a case has been made out to review and revise our decisions in the case of *New Jehangir Vakil Mills Ltd. Vs. Commissioner of Income Tax, North, Kutch and Saurashtra*, and the case of the *The Petlad Turkey Red Dye Works Co. Ltd., Petlad Vs. The Commissioner of Income Tax, Bombay, Ahmedabad*,

20. In view of the aforesaid dicta and as we are of the opinion that the ratio laid down by the Full Bench of this Court in *Gobinda C. Mondal (supra)* is a reasonable one which has been consistently endorsed by the Supreme Court in various decisions (*supra*), we find no reason to refer the issue for reconsideration by a Large Bench. Accordingly, we are of the opinion that the ratio laid down in *Gobinda C. Mondal (supra)* is binding upon the learned Single Judge. The matter is remitted to the learned Single Judge to decide the case in the light of the law declared by the aforesaid Full Bench.