

(1998) 09 CAL CK 0013
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, C.O. No. 10115 (W) of 1991

Smt. Kamala Roy

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

Date of Decision : 23-09-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 19, 21, 226

West Bengal Primary Education (Amendment) Act, 1973 — Section 105(4), 107

Citation : (1998) 3 CALLT 458

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Mr. Saradindu Samanta and Miss Susmita Dutta, for the Appellant; Mr. A.P. Sircar, Mr. Subir Sanyal and Mr. Amitabrata Roy, for the Respondent

Judgement

1. The facts of the case of this petition is summarised as follows :
2. Pursuant to an advertisement published by the Secretary, Duff Primary School. P.O. & P.S. Chinsurah. District-Hooghly, the petitioner submitted an application for the post of an Assistant Teacher. Accordingly, she was called to an interview along with other candidates and appointed by the Secretary of the School as an unapproved Assistant Teacher in the said School. From then on she had been continuing as an Assistant Teacher in the School. Another teacher Smt. Bharati Dutta resigned from her post, consequently, a post of an Assistant Teacher fell vacant on and from 15-7-1983 which given effect from 26th April, 1982. Therefore, the Maanglng Committee taking a sympathetic attitude as the petitioner was working as an unapproved teacher, recommended to the District inspector of School to appoint the petitioner in the above vacant post and to accord approval of the same.
3. The petitioner has stated inter alia in the writ petition that she was getting Rs.100 P.M. with yearly increment of Rs.5 per annum. She gets at this moment Rs.145 per month, which is far below the scale of pay of approved teachers.

Although she made several representations to the District inspector of Schools (P.E.) for approval of her post, but. It seems that it did not evoke any response from the D.I. of Schools (P.E.). So. from time to lime, the petitioner has claimed to have issued several reminders to the D.I. of Schools (P.E.) but all these efforts did not fructify into any action. She has further claimed to have submitted a Memorandum to the Hon"ble Chief Minister, even such efforts did not cut any fee, therefore, she having without any other alternative, then, filed this case in this court.

4. Affidavit-in-opposition was, however, filed by the respondent No.1. It has been strongly disputed that the petitioner was appointed in the said school. It has been further stated that the Secretary had no business to issue the letter of appointment to the writ petitioner inasmuch as he did not have power to issue such appointment letter. Even assuming such letter was issued, it could afford any right to the petitioner to be appointed as Assistant Teacher. Since appointment was made by the Secretary/Administrator without observing the legal formalities, notwithstanding such appointment given to the petitioner, she cannot claim any lawful right thereon. It has been, however, stressed by the respondent No.1 that the West Bengal Urban Primary Education Act has been repealed and to over-see the functions of the Primary Schools in urban area and rural areas a statutory board i.e., the District Primary School Council was constituted. The claim of the petitioner is therefore, invalid and unlawful. Her appointment was not made after observing all legal requirements which was then, required to be followed. With these grounds, the writ petition is claimed to be dismissed.

5. Subsequently, the petitioner filed an application for impleading the Chairman. District Primary School Council, Hooghly and pursuant to the said application, the petitioner was granted leave to amend to cause title and to implead the President. Ad-hoc Committee. That is how. the Ad-hoc Committee has been impleaded and affidavit-in-opposition was also filed by the Council. The President. Ad-hoc Committee, Hooghly apart from other contentions, has taken a strong ground regarding about the delay in filing the writ petition since the petitioner had alleged to have been appointed on April, 26, 1982 and the writ application was filed in 1991. In the said affidavit-in-opposition, it was, however, strongly claimed by the Secretary, Primary School Council that the petitioner was appointed by the School Authority against a post of Assistant Teacher which was not approved nor the petitioner was included as a candidate in the panel, therefore, she was not entitled to such appointment. Even assuming she was appointed as such, her appointment shall not afford a legal right as a reason whereof the writ petition is also not maintainable so also, on accounts of delay. With these ground, the Secretary, Ad-hoc Commute claimed to dismiss the writ petition.

6. The writ petitioner has filed a copy of the letter purported to have been issued by the Secretary, Duff Primary School on April 23, 1982 whereby the petitioner

was directed to join as an Assistant Teacher from 26th April, 1982. Pursuant to the said order of appointment, the petitioner worked as an Assistant Teacher in the said School. The Managing Committee recommended to the District inspector of School on 15th July, 1983 to appoint the petitioner against the vacancy caused by the resignation submitted by Smt. Bharati Dutta.

7. Admittedly. Duff Primary School is situated within the Chinsurah Municipal Area at Hooghly and the said School was governed by the West Bengal Primary Education Act. 1930. Although the rules were framed under the provisions of the West Bengal Primary Education Act, 1930. But those rules were ostensive inapplicable to the urban area. Under the provisions of 66 of 1930 Act, the method of recruitment of the Assistant Teachers of rural primary school could be effected by the State Government and they were competent to issue also notification under the above provision. Thus, the notification would be *mutatis mutandis* applicable to the Primary Schools situated within the Municipal Area. The West Bengal Urban Primary School Education Act, 1963 was. however, made applicable to all Primary Schools situated within Municipalities but, under the said Act, no rules were framed. Subsequently, the West Bengal Primary Education Act. 1973 came into force on 27th September, 1973 but the provisions of the Act were directed to be applicable in different districts on various dates. By reasons of section 107 of 1973 Act, those provisions stood repealed with effect from 2nd July, 1989 which was the appointed date u/s 105. Section 105(4) of 1973 provides a non obstante clause whereby it has been indicated that all rules. orders and notifications made or issued under 1930 Act from time to time shall be applicable to the District School Board and continued to be in force which were applicable immediate before the repeal of such provisions in so far as those were not inconsistent with 1973 Act.

8. In case of appointment of teachers in the recognised (aided) primary schools and Government sponsored primary schools in municipal area was concerned, the State Government empowered the Managing Committee in terms of the Government order No.1472-Edn. (P) dated 20th July, where no Advisory Committee was constituted nor any panel was prepared by such Advisory Committee. The Government has issued Notification No.1614-Edn. (P) dated 8th November, 1974, which reads as follows:--

"The undersigned is directed to say that the Managing Committees of recognised (aided) Primary and Junior Basic Schools in Urban areas are the appointing authorities in respect of teachers of such schools. But such appointments are approved by the District inspectors of Schools (PE) in terms of the G.O. No.1472-Edn.(P) dated 20.7.72. However, in case of appointment of organizer teachers and the teachers-in-position, prior approval of the Director of Public instruction is necessary.

[2] in terms of the G.O.No.649-Edn.(P), dated 24.4.71, free education for boys in classes 1 to iv has been introduced in all Primary and Junior Basic Schools in urban areas (excluding the Schools which receive D.A. only). As the entire cost of

running the Primary Junior Basic Schools is now borne by Government, it is considered necessary that Government should have adequate control over the private and aided Primary and Junior Basic Schools in the matter of appointment of teachers.

(3) In the circumstances, in partial modification of the G.O. No. 1472-Edn.(P) dated 20.7.72, the Governor is pleased to order that the Advisory Committee of each municipal area (including Calcutta) constituted by Government be empowered to prepare panels of candidates for appointment of teachers (both trained and untrained) in recognised Primary and Junior Basic Schools in urban areas. Rules and orders for preparation of panels under the District School Boards will apply mutatis mutandis in this case. The cases of unapproved teachers now working (appointed prior to 1.4.1974) in aided Primary and Junior Basic Schools may be considered at the time of preparation of panels. The Managing Committees of recognised (aided) Primary and Junior Basic Schools shall appoint teachers from out of the approved panels for the respective municipal areas after the names of candidates are formally communicated by the District inspectors of Schools (P.E.) to the Schools concerned.

(4) The Governor is also pleased to order that all appointments in Government sponsored Primary Schools in urban areas (including Calcutta) shall be made by the District inspectors of Schools (P.E.) from out of the approved panels for each municipal area. Appointments in Government sponsored Primary Schools in rural areas be made from out of the panels prepared by the District School Boards and approved by the District Schools Boards and approved by the Director of Public instruction as usual.

(5) This order will take effect from 1.1.75.

9. Subsequently, the above notification G.O. No. 1472-Edn.(P) dated 20th July, 1972 was partially modified whereby the Managing Committees of the recognised (aided) Primary and Junior Basic Schools were directed to appoint teachers from out of an approved panel of the respective Municipal Areas where an Advisory Committee was constituted. After the names of those candidates were formally communicated by the District inspector of Schools to the School concerned.

10. In this case, a contentious issue has been raised by the Hooghly District Primary School Council that there was a panel already prepared by the District Advisory Committee. Therefore, the Managing Committee was incompetent to appoint any teacher after such panel being prepared. It has been indicated by the District Primary School Council that the writ petitioner assuming, was appointed by the Managing Committee but it was clearly or unequivocally indicated in the appointment letter that no guarantee of appointment could be given. Strong reliance was placed by the petitioner on Annexure "C" letter dated 15.7.1983 which was communicated to the petitioner by the Secretary of the Managing Committee that the petitioner was appointed against the post of Bharati Dutta who was working as a guest teacher with effect from 8.4.1976. But

the said letter does not in any manner strengthen then the case of the petitioner inasmuch as even her predecessor Bharati Dutta was working there as guest teacher without any remuneration.

11. From the correspondence it has appeared beyond any doubt that the petitioner has been working as an unapproved Assistant Teacher (purely on temporary basis). Therefore, such temporary appointment does not provide a legal light to the petitioner claiming appointment. The respondent. District Primary School Council, Hooghly has relied upon a Judgment reported in 1995 (1) Chn 490 in the case of Ram Sharan Shastry v. State of West Bengal & Others. Although the aforementioned judgment relates to an appointment of a teacher in Secondary School but the said principle shall have far reaching and binding force on the present case. In the absence of the statutory Rules the executive power of State can be exercised to issue executive instruction which shall have force of law. In this case as per notification 1614-Edn. (P) dated 8th November, 1974, the State Government had withdrawn the power of the Managing Committee in so far as the appointment of the Assistant Teacher was concerned in respect of the areas where there was already an advisory board. In the above background it has to be ascertained whether in fact there was an advisory committee constituted by the State Government for Hooghly District. The respondent has. however, produced before me a xerox copy of the panel prepared by the advisory committee of the district. Therefore, in the above situation, there can be no manner of doubt that there was an advisory committee who prepared the panel of names for the post of Assistant Teachers. In such eventuality, the powers of the Managing Committee came to an end immediately after the constitution of the advisory committee.

12. It might be very hard to the petitioner as her appointment neither could be regularised nor the State Government could be directed to create a post. Since the appointment was de hors, the notification, however, harsh or difficulty. It might cause to the petitioner, the court cannot in the above background issue any direction either to the District Primary School Council, Hooghly or to the State Government for creation of a post.

13. The petitioner has relied upon several notifications but, I find none of them is relevant to the present fact situation. Therefore, it is irrelevant for me to discuss them in detail.

14. The Ad-hoc Committee has taken an irrefutable ground that the writ petition suffers from inexplicable delay for being filed. In support of such contention, reliance was placed on the xerox copy of the unreported judgment in F.M.A.T. 9 of the 1997 dated 14th January, 1998. Of course, no rigid or inflexible rule could be laid down as to in which cases the claim of the petitioner can be dismissed at its threshold on only ground of delay. It always depends on the facts and circumstances of each case. In this case, the petitioner claims to have joined in service from 1982 and several representations were submitted for sanctioning her post. The writ petition was filed in 1991. Petitioner's further claim is that she

is still continuing in service till date. From the correspondence, it appears that she submitted a representation even to the Chief Minister and filed this case within a period of two years from such representation. In this background it cannot be said that there was either inordinate or unexplained delay in tiling the case. Be that as it may, since there was no valid appointment by the Managing Committee, therefore, issuance of direction to the President, District Primary School Council, Hooghly. would neither be expedient nor apposite. I must make it clear that since the petitioner was allowed to work in the said Primary School as an Assistant Teacher at least from 1982. she may not be disturbed till a regular teacher is appointed.

15. The Primary School Council also shall affords an opportunity to the writ petitioner to appear as a candidate for the post of Assistant Teacher along with other candidates in case of vacancy. In such exigency, if she is found over-aged, the Chariman, District Primary School Council taking into account of her past service, shall condone the same and permit her to appear in the interview. Save and except the above direction. I did not find any merit in this writ petition, which is accordingly dismissed, but, in the circumstances without costs.

Later :

16. Prayer for stay is refused.

17. Petition dismissed