
(2007) 04 CAL CK 0040
In the Calcutta High Court
Case No : F.M.A. No. 179 of 2005

Smt. Mandira Chatterjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

West Bengal Primary Education Act, 1973 — Section 106(1)

Citation : 111 CWN 688

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : L.K. Gupta and K. K. Pal, Tulsidas Maity, for the Appellant;Saikat Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal is directed against the judgment and order dated 25th November, 1998 passed by the learned Single Judge in the writ petition bearing C.O. No. 6484(W) of 1992. The said writ petition was filed by three writ petitioners and out of the said three writ petitioners only the writ petitioner No. 3 preferred the instant appeal assailing the said judgment and order dated 25th November, 1998. The learned Single Judge by the aforesaid impugned judgment and order dated 25th November, 1998 dismissed the writ petition on merits. From the records it appears that the appellant herein was appointed as Assistant Teacher in Tara Sundari Balika Vidyabhaban. Howrah w.e.f. 1st November, 1976 on a basic pay of Rs. 60/- per month. The Headmistress of the said school thereafter, approached the District Inspector of Schools (PE) for according approval to the service of the said appellant by a written representation dated 1st August, 1983 wherein the said Headmistress specifically mentioned that the appellant was appointed in normal vacancy. Pursuant to the Government Notification bearing No. 896 Edn(P) dated 28th April, 1978. case of approval was required to be referred to and considered by the Urban Advisory Committee.

2. In the present case. Urban Advisory Committee by the resolution dated 15th March, 1984 enlisted the names of the unapproved teachers and forwarded the list of the said unapproved teachers to the Director of Public Instruction for according necessary approval. In the said list of unapproved teachers, name of the appellant was categorically mentioned against Serial No. 18.

3. The District Inspector of Schools (PE). Howrah by the Memo dated 5th July, 1985 requested the Director of School Education. West Bengal for according approval of appointment of 35 unapproved teachers appointed before 30th June, 1977 as enlisted by the Urban Advisory Committee including the appellant herein alongwith other teachers. Since no decision was taken by the said Director of School Education. West Bengal regarding approval of appointment of the appellant alongwith other unapproved teachers forwarded by the Urban Advisory Committee, this appellant alongwith two other unapproved teachers filed a writ petition before this court, which was dismissed by the learned Single Judge by the judgment and order under appeal.

4. Mr. L. K. Gupta, learned Senior Counsel representing the appellant submits that the learned Single Judge while deciding the writ petition failed to appreciate the facts of the case in -an appropriate manner. Mr. Gupta submits that the appellant herein was appointed by the Managing Committee of the school which was the proper appointing authority at the relevant time in 1976 and such appointment of the appellant was made in normal vacancy. Mr. Gupta further submits that there was no Recruitment Rule framed under the West Bengal Urban Education Act, 1963 providing for the method of recruitment and hence, the appointment of the appellant was neither illegal nor irregular. The learned Counsel of the appellant also submits that as per the prescribed procedure, the case for approval of appointment in urban aided primary schools upto 31st December, 1976 was required to be sent to the Urban Advisory Committee and in the present case, such requirement has duly been fulfilled.

5. It has also been submitted by the learned Counsel of the appellant that the Urban Advisory Committee had duly selected the appellant by enlisting her name in the list of unapproved teachers. Mr. Gupta further submits that the District Inspector of Schools (PE), Howrah specifically requested the Director of School Education for according approval of the appointment of the 35 unapproved teachers including the appellant herein who were empanelled and recommended by the Urban Advisory Committee. Mr. Gupta specifically urged before this court that the right of the appellant in the matter of approval of appointment to the post of Assistant Teacher had crystallized on 30th October, 1978 on completion of two years service pursuant to the notification bearing No. 196-Edn (P) dated 28th April, 1969 read with 739-Edn (P) dated 11th July, 1969.

6. The provisions of the West Bengal Primary Education Act, 1973 came in force with effect from June, 1990. Mr. Gupta submits that the right of the appellant to get approval of her appointment stood crystallized long before the said effective date in the month of June, 1990. In other words, it is the contention of Mr. Gupta

that as the question of approval of appointment of the appellant culminated before the Primary Education Act, 1973 came into force, her case cannot and does not fall within any mischief under the subsequent Act. which came into force with effect from June, 1990. Mr. Gupta also submits that the aforesaid 1973 Act cannot be made applicable with retrospective effect and furthermore, the provisions of the said Act regulates the cases of fresh appointments only. The learned Counsel of the appellant submits that the case of the appellant should be governed by the procedures prescribed and was in force at the relevant time i.e. much before June, 1990.

7. Mr. Saikat Banerjee, learned Counsel of the State-respondents submits that pursuant to the Memo bearing No. 768-Edn (P) dated 22nd November, 1991. the Government of West Bengal made a subordinate legislation known as the Rules regulating the Recruitment and Leave of Teachers in Primary Schools in West Bengal. By reason of such promulgation of the said Rule, all executive instructions/Government orders concerning appointment of teachers and their service conditions stood annulled. The said subordinate legislation was made in the name of the Governor after previous publication in terms of the requirements of Section 106(1) of the West Bengal Primary Education Act, 1973. In the said Rules, the District Primary School Council has been completely and absolutely vested with the power of selecting and appointing candidates as primary teachers in Primary Schools under its jurisdiction. Mr. Banerjee further submits that the District Inspector of Schools (PE), Howrah although requested the Director of School Education, West Bengal to pass appropriate order regarding approval of appointment in the case of 35 empanelled unapproved teachers including the appellant herein on 5th July, 1985 but the veracity of the said document cannot be ascertained at this stage after long lapse of time.

8. Mr. Banerjee also submits that rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. According to the learned Counsel of the State-respondents, a litigant even if entitled to relief in law. may yet be denied such relief in equity because of subsequent or intervening events. Mr. Banerjee, learned Counsel of the State-respondents submits that reliefs claimed by the appellant herein might have become redundant or unenforceable by lapse of time or due to the change of law. Mr. Banerjee referred to and relied on the following decision of the Supreme Court in the case of Beg Raj Singh vs. State of U. P. & Ors., reported in (2003) 1 SCC 726 (Para 6): AIR 2003 SC 833 in support of the aforesaid contention.

9. The learned Advocate of the State-respondents submits that no subsisting judicially enforceable legal right of the appellant was surviving in the matter of granting approval as a Primary School Teacher on the strength of the Government circulars/executive instructions, which were holding the field prior to coming into force of the Recruitment and Leave. Rules of Primary Teachers since all such executive instructions/ government orders stood repealed with effect

from November, 1991. The learned Advocate of the State-respondents further submits that after coming into operation of the Recruitment and Leave Rules of primary teachers with effect from 22nd November, 1991. the writ petitioner had no judicially enforceable legal right to demand performance of any legal duty by the Director of School Education. West Bengal to approve her appointment on the strength of the Government orders, which were in force prior to 22nd November, 1991. Mr. Banerjee referred to and relied on the decision of the Supreme Court in the case of Director of Settlements, A. P. & Ors. vs. M. R. Apparao & Anr., reported in (2002) 4 SCC 638 in support of the aforesaid argument.

10. Considering the arguments advanced on behalf of the respective parties we are satisfied that the appellant herein was appointed as an Assistant Teacher against normal vacancy with effect from 1st November, 1976 and furthermore, following the prescribed rules, the then Urban Advisory Committee empanelled the appellant alongwith others and forwarded the said panel containing the names of 35 unapproved teachers including the appellant herein to the Director of School Education. West Bengal for granting necessary approval. The appellant herein suffered serious prejudice and should not be allowed to suffer prejudice and hardship for an indefinite period as the competent authority, namely, the Director of School Education. West Bengal failed and neglected to accord necessary approval to the aforesaid appointment of the appellant inspite of submission of the panel by the concerned Urban Advisory Committee following the prescribed rules as was prevailing at the relevant point of time.

11. It has also been argued on behalf of the respondents that the grievances of the appellant cannot be considered at a belated stage and no relief should be granted to the appellant herein on the ground of delay alone. We are unable to accept the aforesaid argument advanced on behalf of the respondents as the appellant herein all along approached the concerned authorities for according necessary approval and as a matter of fact, the concerned Urban Advisory Committee also empanelled the name of the appellant for according approval as an Assistant Teacher upon being satisfied about the eligibility of the said appellant. Even assuming there was delay on the part of the appellant herein to approach this Hon"ble Court then also, relief cannot be denied to the said appellant as on account of the aforesaid delay, the appellant herein did not gain anything and furthermore no third party interest has accrued on account of such delay. Accordingly, on the ground of delay this court should not refuse to grant any relief to the appellant herein.

12. We are convinced that in the given circumstances of this particular case, responsibility as to delay and laches rests on the respondent authorities and not on the appellant. When the respondent authorities sat tight over the matter and failed to take appropriate decision, they should not now be permitted to raise the plea that due to passage of time and change of law. appellant had no legally enforceable right before the court.

13. This court cannot permit any illegality and/or irregularity to be sustained only

on the ground of delay until and unless any third party-right has been created. In the case of Collector, Land Acquisition, Anantnag & Anr. vs. Mist. Katiji & Ors., reported in AIR 1987 SC 1353. Hon'ble Supreme Court has specifically held that the courts should adopt liberal approach so that a litigant is not denied substantial justice. The relevant portion from the said decision is quoted hereunder:

"3.....

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3.....

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so....."

14. The appellant herein also cannot be denied relief only on the ground that the West Bengal Primary Education Act, 1973 has already come into force and the District Primary School Council has been vested with the power of selecting and appointing Primary Teachers in a primary school. In the present case, the appellant was admittedly appointed as a Primary Teacher with effect from 1st November, 1976 and therefore, there is no scope to appoint the said appellant as a teacher of the primary school once again by the concerned District Primary School Council.

15. We are of the firm view that appellant acquired enforceable right on the basis of circulars/instructions issued by the authority and squarely applicable in her case. Such right cannot be defeated or denied only on the plea of change of law. which came into force subsequently and had no retrospective operation.

16. The only thing which is required to be done in the instant case is to grant approval to the aforesaid appointment of the appellant by the competent authority. At the relevant time, the Director of School Education. West Bengal was the competent authority to accord approval to the appointment of the said appellant. Since the appellant has been appointed by the competent authority against normal vacancy with effect from 1st November, 1976. the Director of School Education. West Bengal cannot withhold approval of such appointment specially when following the prescribed rules, the then Urban Advisory

Committee has already empanelled the appellant alongwith others and forwarded the same to the Director of School Education for according necessary approval.

17. For the aforementioned reasons, we are unable to agree with the decisions of the learned Single Judge as mentioned in the judgment under appeal since we do not find any ground for withholding the approval to the appointment of the said appellant as the Primary Teacher of the concerned school till date. Accordingly, we direct the Director of School Education, West Bengal to accord necessary approval to the aforesaid appointment of the appellant herein as Primary Teacher on the basis of the available records and in absence of such records, the said Director of School Education will reconstruct its file on the basis of the records already annexed with the present proceeding. Since a considerable time has already been lapsed, the Director of School Education is also directed to grant approval to the appointment of the said appellant without any further delay but positively within a period of three weeks from the date of communication of this order.

18. Needless to mention that the Director of School Education, West Bengal will accord such approval from the date of initial appointment of the appellant as Primary Teacher of the said school pursuant to the recommendation of the Urban Advisory Committee since the appellant was appointed against the normal vacancy in the concerned primary school. The appellant herein will also be entitled to receive the payment of arrear dues from the date of approval of the appointment by the Director of School Education, West Bengal in terms of this order. The concerned District Inspector of Schools, (Primary Education), is, therefore, directed to calculate the arrear dues of the appellant within two weeks from the date of granting approval to the appointment of the appellant by the Director of School Education, West Bengal and necessary payment of arrear dues should be released to the appellant within a period of three weeks thereafter positively.

19. In view of the aforesaid directions, the judgment and order under appeal cannot be sustained and the same is set aside. This appeal, therefore, stands allowed.

20. There will be however, no order as to costs. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

I agree.