
(1998) 11 CAL CK 0028

In the Calcutta High Court

Case No : Constitution Writ Jurisdiction, C.O. No. 10949 (W) of 1994

Smt. Puspa Singh and Another

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Citation : (1999) 1 CALLT 393

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Judgement

The Court

1. The petitioners claim to have been appointed as Assistant Teachers in Sarat Chandra Prathamik Vidya Mandir in 1974. They have relied upon two letters issued to them by the Secretary of the School. According to the petitioners since that date they have been working as additional teachers in the school. They have filed this writ application in 1994 asking for a direction on the Education Authorities to approve the petitioners services.

2. The District Primary School Council has opposed the writ application. They have submitted that the writ application was grossly delayed and should not be entertained. The second submission is that the petitioners had not been appointed by following the procedure. The letters of appointment have been criticised on the ground that they were not on the official school pad and that there was no mention of any resolution of the Managing Committee by which their appointment was made. It is pointed out that the appointment letter of the petitioner No. 2 did not even bear the seal of the school. Thirdly, it is said that the petitioners' appointments had never been forwarded by the Managing Committee of the school to the authorities for approval. Fourthly, it is submitted that there was no vacancy against which the petitioners could have been appointed. It is stated that it was for the District Authorities to create the post against which the appointment could be made and the Managing Committee of the school could not create a post.

3. The petitioners relied upon the decision in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, to contend that they were entitled to be regularised because they have been in continuous service without break and to the satisfaction of all concerned. This decision was considered subsequently by a larger Bench of the Supreme Court in Ashwani Kumar and Others Vs. State of Bihar and Others, .

4. Briefly stated, the Supreme Court said that the question of regularisation would arise when :

(a) The appointment is made against an "available named vacancy".

(b) The appointment against such vacancy is made following the rules and regulations governing such appointment.

(c) The incumbent has been employed for a long period of time against such vacancy.

5. If any one of the factors were missing, regularisation cannot be granted.

6. This is the present law. See also L.N. Ghosh v. State of West Bengal 1993 (1) CHN 382.

7. The other decisions cited by the petitioners do not hold to the contrary. The unreported decision in Khuku Ghosh v. State of West Bengal & Ors. C.O. No. 8691(w) of 1988 : judgment dated 21.12.89] does not indicate whether there was a vacancy against which the petitioner had been appointed. The court found that the proper procedure had been followed in appointing them and that the petitioners had been duly discharging their functions.

8. The unreported decision of the learned single Judge in Smt. Manasi Sen v. State of West Bengal [C.O. No. 313 (w) of 1996 : Judgment dated 23.9.97] was set aside by the Division Bench in appeal [MAT No. 3489 of 1997 : Judgment dated 23.3.98). The Division Bench was of the view that the writ petitioners were bound to prove that their appointments were in terms of the recruitment rules as also the diverse circulars before they could ask for regularisation. The decision of the Supreme Court in All Manipur Regular Posts Vacancies Substitute Teachers' Association Vs. State of Manipur, is not on the point but it proceeded on the basis that there were regular vacancies against which regularisation was claimed.

9. The last decision cited by the petitioners was Arun Kumar Rout and Others Vs. State of Bihar and Others, In that case the Supreme Court directed regularization of employees who had been appointed against the sanctioned post but their method of appointment was irregular. In the case before me it is in dispute that the appointment of the petitioners were made against sanctioned post as well. Besides, the Supreme Court while directing regularisation repeatedly made it clear that the decision was limited to the special facts of the appeal and the decision was not to be treated as precedent.

10. Given the principles enunciated by the Supreme Court in Aswini Kumar's

case the facts of the case may be considered.

11. The basic question is whether the petitioners appointments were made against sanctioned posts ?

12. The petitioners have not claimed that they were appointed against a normal vacancy or a vacancy created in a substantive post of death, retirement or otherwise .They claim to have been appointed to an additional or post created for the first time. The school is a Primary School. It is in an urban setting. Prior to the coming into force of the West Bengal Primary Education Act, 1973, which is applicable to all primary schools whether rural or urban, the law relating inter alia to recruitment of teachers in Primary Schools in Rural areas was contained in the Bengal (Rural) Primary Education Act, 1930 and the Rules framed thereunder which were published on 25th July 1940. These Rules were amended from time to time. One such amendments is contained in Notification No. 196-Edn. dated 28th April 1969. The relevant extract of this notification reads :

"1. (1) A Primary School maintained by the Board shall ordinarily have one teacher for every forty pupils or part thereof not being less than twenty and a second teacher may be admissible when the roll strength exceeds forty five only.

(2) No post of a teacher under sub-rule (1) shall be created in a particular school without the recommendation of the District inspector of Schools. But if by such creation of additional post, the total sanctioned strength of teachers of the Board is exceeded, the prior approval of the Director of Public instruction, West Bengal, shall also be obtained."

13. By Government Order No. 793-Edn P dated 11th July 1969 the State Government wrote:

Sub: Recruitment and Confirmation rules for the teachers under District School Board--Application of--to schools in Urban areas.

The undersigned is directed to state that the rules laid down in this department Notification No. 196-Edn (P) dated the 29th April, 1969 on the above subject are applicable mutatis-mutandis to all aided/recognised Primary (including Junior Basic) schools under private management and to the Government Sponsored Free Primary Schools in Calcutta/other urban and rural areas, excepting those under the management of Calcutta Corporation or other local bodies."

14. The position has been substantially maintained in Rules 3 and 4 of the Recruitment and have Rules framed under the 1973 Act.

15. The petitioners said that the total strength of the students at the school at the time of their appointment were such that in terms of the prescribed ratio of students : teacher, assistant teachers could have been appointed in 1974. Incidentally the respondents have also disputed the details of the total strength of the students and have questioned the documents annexed by the petitioners on the ground that they were not signed or attested.

16. Assuming the school roll did have the number of students warranting the appointment of two additional teachers, but the justification for creation of a post, does not authorise the Managing Committee to create a post without the approval of the competent authority. There was thus no sanctioned post against which the petitioners claim to have been appointed.

17. The several notification relied on by the petitioners do not assist them. Memo No. 1017-Edn. (P) dated 24th May. 1972 speaks of the Managing Committee being the appointing authority but goes on to state "but the District Inspector of Schools (Primary Education) will approve all the appointment of teachers in such schools"

18. Memo No. 975-Edn. (P) dated 26th November, 1981 issued by the Education Department dealt with the problem of taking action on pending cases of appointment of teachers inter alia in aided and sponsored Primary Schools. It said that the District inspector of Schools (P) could dispose of the pending cases with the prior approval of the Director of Primary Education subject to the following:

"(i) Only those case of appointment which have been continuing for more than two years without any break may be approved:

(ii) The incumbents appointed possess the qualifications prescribed for the post;

(iii) The appointments were given after observing the normal procedure for recruitment to such posts;

(iv) The appointments were given on observance of teacher-pupil ratio prescribed:

(v) All concerned may be informed accordingly."

19. This assumes that there was a substantive post against which the appointments were made.

20. Whoever the appointing authority may be, the appointing authority can only appoint against a sanctioned vacancy and in accordance with the procedure prescribed.

21. In view of this finding, it is not necessary for this court to go into further discussion as to whether the petitioners" were otherwise qualified to be appointed as Assistant Teachers.

22. However the respondents are justified in their comment that the normal procedure for appointment does not appear to have been followed in either of the petitioners" case. All that was stated in the letters of appointment which are substantially identical and signed by one 3-D. Ral:

"As reference to your application for teachership I am glad to inform you that the Managing Committee has selected you as an assistant teacher in our school. So you are requested to join the School on 1st November, 1974.

Please treat this letter as your appointment letter."

23. There is nothing to show that the Managing Committee of the School recommended their appointment by resolution.

24. There is also the question of delay in the petitioners" approaching this court. The petitioners have said that in 1974 itself two additional teachers namely Arati Biswas and Pratibha Das had been given appointments, wrongfully overlooking the petitioners" case. There was not a whisper of protest. There has not even been any demand for justice to the Education Authorities for approval of the petitioners" appointment at any stage. The delay in the circumstances of the case is unconscionable.

For the reasons aforesaid the writ application is dismissed and the interim order is vacated. There will be no order as to costs.

25. Application Dismissed.