

(1999) 07 CAL CK 0057
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, C.O. No. 18564 (W) of 1992

Smt. Sunanda Chakladar

APPELLANT

Vs

State of West Bengla and Others

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Primary Education Act, 1973 — Section 106

Citation : (1999) 3 CALLT 277

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. B. Sinha, J.—The petitioner in this writ application has, inter alia, prayed for the following reliefs:

"a) a writ in the nature of Mandamus commanding the respondents and/ or their servants and/or their agents to forthwith confirm and/ or approve the service of your petitioner in a permanent nature and to pay all the service benefits to your petitioner with effect from February 6. 1968/ 9.3.72 that is to say salary and other usual allowances to your petitioner in accordance with law and further commanding the respondents and/or their servants and/or their agents to cancel and/or withdraw and/or rescind the order and/or Memos and/or Circulars standing on the way of your petitioner denying the benefit as prayed for ;

b) a writ in the nature of Certiorari directing the respondents and/ or their servants and/or their agents to send unto this Hon''ble Court the records of the entire proceeding including the decision and/or Memos and/or orders culminating thereto so that conscionable justice may be administered by quashing the same."

2. The petitioner was appointed as an Assistant Teacher in Deshagourab Vidya Mandir in the month of February, 1968 and she was acting as Assistant Teacher in the said school for the last 24 years.

3. Mr. Pal, learned counsel, appearing on behalf of the petitioner, inter alia, has submitted that keeping in view the various Circular letters issued from time to time, State was bound to approve her service. The learned counsel in this connection has relied upon an unreported decision of a Division Bench of this court in the case of Calcutta District Primary School Council & Others v. Smt. Dipali Ghosh & Others , disposed of on 11.1.1996 (FMAT No.724A/93). The learned counsel submits that the Division Bench of this Court upon considering a large number of Supreme Court decisions and the decision of this court directed the Calcutta District Primary School Council to accord approval in accordance with law treating the petitioner's case as an isolated one within a period of two months from date and on her approval she would be treated as a teacher duly appointed in accordance with entitled to the benefit of a proper scale of pay with effect from the date of the said approval. Mr. Pal, learned counsel, submits that the report filed by the School authority would show that the petitioner has been continuing as a Teacher in the said school.

4. Mr. Maiti, learned counsel, appearing on behalf of the Calcutta District Primary School Council on the other hand has relied upon a decision in the case of Calcutta District Primary School Council v. Anuva Roy reported in 1996 Lab IC 1990. Unfortunately, the Division Bench decision in Smt. Dipali Chosh case (supra) had not been brought to the notice of this court in Anuva Roy case although it appears that Mr. Maiti, learned counsel, had appeared in both the cases. In Dipali Ghosh's case it appears that the petitioner therein prayed for regularisation of her service. The writ application was allowed and her service was directed to be regularised with retrospective effect.

5. The learned Judges however, held that initial appointment of the petitioner was not illegal as there had been an appropriate vacancy in accordance with law and the school authority was justified to make an appointment though not on a date when she did not have the requisite qualification but she acquired the same subsequently.

6. The only question therefore which was argued in Dipali Ghosh's case was as to whether in view of the aforementioned initial defective appointment, the service of the Assistant Teacher could be regularised. The learned judges upon taking into consideration the said submission directed:

"The only direction we can pass in the present case is that the writ petitioner respondent's case is to be considered by the Calcutta District Primary School Council for the approval of her case in accordance with law within a period of two months from this date. Treating the writ petitioner respondent to be of a special category where the Managing Committee of the school was the appointing authority at the relevant time and the District Inspector of Schools was the authority to approve such appointments, as per Notification No.975-Edn(p) dated 26.11.81 only those cases of appointment which have been continuing for more than two years without any breach could be approved by the District Inspector of Schools. We take into account the very fact that the Administrator who was a

Government Officer and who replaced the Managing Committee, sent her case for approval as regards the appointment by three representations made on 2.3.80, 7.5.80, and 12.10.80 respectively. In view of such an action having been taken by the Administrator, it cannot be said any more by the Calcutta District Primary School Council that her appointment was done in a manner defective or irregular vis-a-vis the appointing authority but then what she lacked was an approval by the appropriate authority. We direct the Calcutta District Primary School Council to accord approval in accordance with law treating Smt. Dipali Ghosh case as an isolated one within a period of two months from this date and on her approval she would be treated as a teacher duly appointed in accordance with law entitled to the benefit of a proper scale of pay with effect from the date of the said approval".

7. A bare perusal of the said judgement would show that the said case was treated to be an isolated one and no law has been laid down therein. It is now well-known that where the court considers the case to be isolated one, evidently the same is not to be treated as a precedent. Even the Division Bench did not issue direction for regularisation in favour of the said writ petitioner with retrospective effect but directed the authority to grant approval from the date specified therein. Unfortunately, the provision of the West Bengal Primary Education Act, 1973 and the Rules framed therein had not been brought to the notice of the Division Bench deciding Dipali Ghosh's case. The history of Legislation relating to Primary Education in the State of West Bengal has been stated in details in the case of West Bengal Board of Secondary Education v. State of West Bengal reported in 1997 (1) CLJ 165. In the said decision it has clearly been held that the question of appointment of the organiser teacher upon deletion of Rule 3D of 1940 Rules framed under the Bengal (Primary) Rural Education Act, 1930 does not arise. In the said decision, an earlier Division Bench decision in the case of Chairman, Ad-hoc Committee v. Jitendra Nath Chatterjee reported in 95 CWN 355 was noticed but the said decision has not been considered in Ghosh's case.

8. It is neither in doubt nor in dispute that the State of West Bengal in exercise of its power conferred u/s 106 of the West Bengal Primary Education Act, 1973 framed rule in the year 1991, known as Recruitment & Leave Rules. By reason of the provision of the said Act and the Rules framed thereunder, the District School Board is no longer the appointing authority and in its place a new statutory authority has been constituted, namely, the District Primary School Council. Rules 8 and 9 of the Recruitment Rules clearly lay down the manner in which such recruitments are to take place. The circular letter relied upon by the petitioner in this writ application and considered in Dipali Ghosh's case does not survive any longer upon coming into force the aforementioned 1991 Rules. Furthermore, the right of the organiser teacher did not exist after the deletion of Rule 3D of 1940 Rules as has been held by a Division Bench of this court in J.N. Chatterjee case (supra). Furthermore, in Dipali Ghosh case, the decision in the case of State of Mysore and Another Vs. S.V. Narayanappa, and other decisions

had not been brought to their Lordships" notice wherein it has clearly been held that the regularisation cannot be a mode of recruitment. This aspect of the matter had been considered in the case of Calcutta District Primary School Council v. Anuva Roy reported in 1996 Lab IC 1990.

9. It is now well-settled in view of various decisions of this Court as also the Supreme Court that appointment must be made in terms of the Recruitment Rules and any appointment made in contravention thereof shall be illegal and void ab-initio. Reference in this connection may be made in the case of Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra reported in 1995 SC 962. This aspect of the matter has also been considered recently by a Division Bench of this court in the case reported In 1997 (1) CHN 105. In Dipali Ghosh's case neither the precedent nor the statutory rules were brought to the notice of the Division Bench of this Court and thus it is not binding on any Bench. In any event as the said decision was rendered as an isolated case, on that ground too the same cannot be said to be a law which can be treated to be a precedent.

For the reason aforementioned and in particular the decision in Anuva Roy case, there is no merit in this writ application which is accordingly dismissed.

There will be no order as to costs.

10. Application dismissed