

(1985) 02 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 66 of 1983

Smti Sabita Majumder

APPELLANT

Vs

The Managing Committee, Jatindra Kumar Junior High School
and Others

RESPONDENT

Date of Decision : 21-02-1985

Acts Referred:

Citation : (1985) 1 GLR 347

Hon'ble Judges : T. Nandakumar Singh, J; R.K. Manisana Singh, J

Bench : Division Bench

Advocate : M. Nath, for the Appellant; M.K. Bhowmick, for Respondent No. 1,
D.P. Kundu and U.B. Saha for Respondents 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Singh, J.—The Petitioner is a poor teacher whose only fault which has deprived her of right to employment that she is the daughter of the Secretary of the school in which she was appointed. If that would have been the be-all and end-all of the story then certainly we would have given her all reliefs available to her. But the story is otherwise. There is a cancer in institutional functioning which infects even right causes and affects public interest and in this case it has also affected the poor Petitioner.

2. We have heard Petitioner's counsel Mr. M. Nath. We have also heard learned Advocate-General, Tripura. We are taken through the letter of appointment, Annexure "3", under which the Petitioner claims her right to stay in the post and also recover emoluments for services rendered by occupying the post. This letter is dated 21.3.82 and on the next date, as per Annexure "4", it appears, Petitioner joined service pursuant to the said letter of appointment. It cannot be denied that she was aware fully of the terms of the appointment. She was appointed, vide Annexure "3", "to serve (this) institution subject to the approval of the Education department and other terms and conditions laid down in the order". The first term itself is very important according to which the appointment

was "temporary" and was not supposed to "confer any title to permanent employment". The third condition at stated is that the appointing authority reserved the right of termination of the service. But the question is, whether she had been validly "appointed" at all. This, indeed, is the main contention raised in this application by Mr. Kundu, learned Advocate-General, Tripura.

3. Our attention is drawn by Mr. Kundu to several and Annexures of the writ petition. On a perusal of Annexures 6, 7, 8 and Annexure "R/2" of the counter which is and letter addressed to the Secretary of the school by the third Respondent, we have gained insight into the background of the case. Indeed Mr. Nath, counsel for the Petitioner, could not also dispute the position that when the Petitioner was "selected", though it was done by Selection Committees her father was a member of the Selection Committee. There lies the lethal chances. The third Respondent rightly, therefore, took objection to the "selection" and refused to confirm or approve the "appointment" of the Petitioner in a public institution, a teaching institution wherein public confidence in the capabilities of the personnel manning the institution is of highest importance. Teachers are builders of nations. Each parent has a right to insist that his child receives the best instruction of the desired standard from properly qualified teacher. It is indeed for this reason that great care is taken for "selection" of teachers before appointment and rightly the procedure to be followed in such cases is the institutional sanction of prior selection by a properly constituted Selection Committee.

4. The error, therefore, in this case was not that Petitioner's appointment did not follow a Selection"; it came in the Selection Committers constitution. A person intimately connected with candidate so as to influence the decision of the Committee in favour of the candidate has no entry or place in such Committee in the very nature of things. There is a like hood of decision of the Committee being influenced and public confidence thereby shaken. The action of the third Respondent, in our opinion, is unexceptional. It is not only for the reason that he took exception to the Selection Committee having Petitioners father as one of its member that we approve this action, we do to for another reason. What we find in Annexure "R/2" is indeed a reasonable dispensation meted out to the Petitioner. She has not been debarred. She has been given a fair chance to take a test again but at the hands of the Committee which was pure and unaffected which was clean and unsoiled, which was capable of inspiring confidence in public mind. Third Respondent directed that all candidate who were interviewed earlier for the post may be re-interviewed but by a Selection Committee excluding Petitioner's father. Before such a Committee the Petitioner shall have a right to appear and get her merit tested.

5. For the foregoing reasons, we do not find any merit in this petition. However, we still like to observe that in case of the Petitioner chooses to appear before the re-constituted Selection Committee and she is selected she shall have the right to claim the arrear salary for the services she had already rendered even though

her appointment was not "approved"" by the Director (Third Respondent). We do not see anything in Rule 8 of the Rules, Grant-In-Aid Rules (Recurring) to Privately Managed Primary/Junior Basic School in Tripura, which are placed by Mr. Kundu for our consideration as may kill Petitioner's right in this respect. As approval contemplated under Rule 8 may be an approval ex post facto. It may be an approval with retrospective effect. It must necessarily be shown however that the ground, on which the Rule is invoked against any person to deny "approval", is no longer germane. When the cancer is removed, the Petitioner, possessing a sound body and a sound mind with moral strength shall not be hit and her claim shall not be rejected applying Rule 8, She shall be entitled to the arrear salary for the services which she had already rendered factually, though irregularly.

6. Learned Advocate-General contested our interpretation of Rule 8 to say that retrospective approval is not contemplated-under the Rule. It is true that the Rule speaks of "without prior approval". But, in our view, this expression does not take away the discretionary power of the authority concerned. The Rule is an enabling provision which enables the Director to exercise his power in a just and reasonable manner. We are not sure if these Rules have any statutory force and therefore one may not have any right thereunder to oppose an "approval". In any case they may have no binding at all in that event.

7. In the result, the application is dismissed but with the above observation. No costs.