

(1999) 06 CAL CK 0006

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 1672 of 1999

Sonada Degree College and Others

APPELLANT

Vs

Deshpad Rai and Others

RESPONDENT

Date of Decision : 11-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal College Service Commission Act, 1978 — Section 16, 16(1), 17, 17(2), 2

Citation : (1999) 2 CALLT 558

Hon'ble Judges : Satyabrata Sinha, Acting C.J.; Mahemmad Hameed Shams Ansari, J

Bench : Division Bench

Advocate : Mr. Bhudeb Bhattacharya, Mr. Biman Kanti Basu and Mr. Anish Biswas, for the Appellant; Mr. J.L. De, Ms. Sanghamitra Nandi and Mr. P.R. Mondal, for the Respondent

Judgement

S.B. Sinha, A.C.J.

1. This case depicts as to how failure on the part of the State to make rules in terms of section 16 of the West Bengal College Service Commission Act, 1978, may lead to non-appointment of teacher in the post of a Principal, despite the fact that his name was recommended by the College Service Commission.

2. Keeping in view the points involved in this appeal, it is not necessary to state the fact of the matter in great details. An advertisement was Issued by the West Bengal College Service Commission inviting applications from indain citizens for appointment to the post of Principal of non-Government affiliated Colleges, details whereof had been mentioned therein, and where for academic qualifications were laid down in the following terms :

"Academic Qualifications : (a) Master Degree in Arts/Science/Com-merce/Muslc/ Fine Arts with at least 55% marks or its equivalent grade and good academic record, Ph.D. Degree or evidence of equivalent published work of high standard having five publication in reputed and standard journals and teaching experience

in an affiliated degree College or University for at least 16 years preferably with administrative experience;

Or

(b) Serving as Reader in any affiliated College or University with total teaching experience of not less than 16 years;

Or

(c) Good academic record and serving as academic administrator equivalent to Reader in any University or Research institute with at least 10 years teaching experience in any affiliated College or University plus 6 years administrative experience :

Or

(d) Serving as Selection Grade Lecturer in any affiliated College with at least 55% marks at the Master's level and good academic record with teaching experience of not less than 16 years with authenticated administrative experience of at least 5 years in any academic institution."

3. In terms of the said advertisement, a candidate could apply for the post of Principal in a particular non-Government affiliated College. The appellant No. 1 herein is a College which Imparts education in Arts, and not in Science subjects. The writ petitioner was holder of the Master Degree in Chemistry. In terms of the said advertisement, he applied for the post of principal in the appellant College and his name was recommended by the College Service Commission. However, no appointment letter was issued in his favour. In the aforementioned situation, the writ petitioner/respondent No. 1 herein filed a writ application which was allowed by the learned trial Judge on the ground that the counsel appearing on behalf of the College Service Commission categorically stated that the College authorities had no other alternative but to issue an appointment letter in terms of its recommendation.

4. Mr. Bose. learned counsel appearing on behalf of the appellants has raised a short questions in support of this appeal. Learned counsel submits that in the event the writ petitioner is appointed, the same would be violative of statute 5(5) of North Bengal University Statute, which reads thus :

"The Principal of a College shall ordinary take not less than four periods of class work in a week in a subject taught in the College."

5. Mr. Dey, learned counsel appearing on behalf of the writ petitioner on the other hand submitted that in the advertisement it had not been stated that the candidate must hold a Master's decree in Arts so as to enable him to take classes as envisaged under the aforementioned University Statute. According to the learned counsel, the authorities of the College Service Commission being an expert body had the opportunity to consider the qualification held by his client and they having satisfied themselves the fact that the writ petitioner was

qualified to hold the post of Principal of the College in question, no exception thereto can be taken by the College authorities.

6. Mr. Mondal, learned counsel appearing on behalf of the Commission has stated that the Commission in exercise of its Jurisdiction under subsection (2) of section 17 of the West Bengal College Service Commission Act, has framed a Regulation. Regulation 4(2) of the said Regulation provides that the qualifications for recruitment to the posts of Teachers shall be such as may be determined by the State Government. Our attention has also been drawn to the provisions of section 7 of the said Act.

7. Mr. Bhudeb Bhattacharya, learned counsel appearing on behalf of the State, however, submitted that no rule has been framed prescribing the qualification for appointment in the post of Principal by the State Government in exercise of its power conferred upon It u/s 16 of the said Act. According to the learned counsel, the State, in the matter of laying down the qualifications for the post of Principal, abide by the provisions contained in the Statute framed by the respective Universities. The said Act was enacted to provide for the Constitution of a College Service Commission in West Bengal and for matters connected therewith or incidental thereto. Section 2 contains interpretation clause. The word "prescribed" means prescribed by rules made under this Act. Section 7 provides for functions of the Commission. The said provision contains a non obstante clause imposing a duty upon the Commission to select persons for appointment to the post of teachers in a College notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary. Clause (ii) of the proviso appended thereto enjoins a duty upon the Commission which is to the following effect:

"(ii) for selection of person for appointment to the post of Principal, the Commission shall be aided by the Vice Chancellor of the University to which such College is affiliated or his nominee and a nominee of the Chancellor of such University."

8. Section 9 provides for the effect of recommendation of the Commission. In terms of sub-section (1), all appointments in the post of Teachers of a College have to be made on the recommendation of the Commission. Sub-section (3) of section 9 reads thus:

"(3) The method of, and the qualifications required for, appointment of a Teacher of a College under clause (b) of sub-section (2) shall be such as may be prescribed."

9. Sub-section (1) of section 16 empowers the State Government to make rules, inter alia, for the purpose of carrying out the purposes of the Act. Sub-section (2) thereof lays down matters which would be governed by the rules without prejudice to the generality of the provisions contained in subsection (1) of section 16 including any matter which can be or is required to be prescribed. Section 16, keeping in view the phraseology used in subsection (3) of section 9

of the Act, must be read together. Sub-section (3) of section 9 mandates upon the State to prescribe the qualifications required for appointment of a Teacher under clause (b) of sub-section (2), and keeping in view the definition of the word "prescribed" as contained in section 2(1) of the Act, there cannot be any doubt whatsoever that the qualifications for appointment of a Teacher must be prescribed by way of rules. It is a well settled principles of law that when statute mandates that a particular thing has to be done in a particular manner, the same has to be done in the manner prescribed, or not at all. It is true as has been submitted by Mr. Mondal that tn terms of sub-regulation (2) of Regulation 4 framed by the Commission in exercise of its power u/s 17 of the Act, qualification for recruitment to the post of Teachers, so far as the Commission is concerned, would be such as may be determined by the Stale Government, but the said provision ex facie is contrary to and inconsistent with the provision contained in clause (d) of sub-section (2) of section 16 read with sub-section (3) of section 9 of the said Act. The Regulation itself is defective in the sense that the Commission is bound by the qualifications which may be prescribed by the State Government and the same cannot be done except by making a Rule. Even if we accept the submissions of Mr. Bhattacharya that in absence of any rule, the State Government has adopted a policy decision that the qualifications prescribed under the statute for appointment in the post of a Teacher are required to be followed. In the instant case, the writ petitioner/respondent No, 1 does not fulfil the criteria laid down therein. Clause (5) of Statute 5 framed by the North Bengal University is mandatory in nature. The Principal of a College, in terms of the said provision, is required to take minimum number of classes provided for therein. A Teacher is not expected to take classes in a subject for which he is not qualified and principally that is the reason why the qualification for the purpose of holding the post of a Principal was required to be prescribed. The views expressed by us finds support from a recent decision of the apex court in Ram Sevak Singh Vs. U.P. Singh and Others, , wherein distinguishing Its earlier decision in Dr Prit Singh Vs. S.K. Mangal and Others, the apex court observed : "in the present case, the College Imparts education in teaching as well and, therefore, Master"s Degree in Education is a degree in respect of a subject taught in the College". Although the fact of the matter in the said case was different, but the observations made by the apex court therein clearly go to show that a Principal who also comes within the purview of the definition of Teacher may be asked to teach a particular subject, and selection of Principal would depend upon holding of his qualification to teach in that subject

10. For the reasons aforementioned, we are of the opinion that the writ petitioner/ respondent No. 1 being not qualified to teach the subjects taught in the College, could not have been recommended for appointment. Such recommendation by the Commission being de hors the qualifications determined by the State, must be held to be contrary to the spirit and object of the University Act and the statute framed thereunder. Before parting with this case, we must express our anguish that despite the fact that the said Act had been

enacted as far back in 1978, State did not find time to make any rule in terms of section 16 read with sub-section (3) of section 9 of the Act. They are directed to do it forthwith. High Court in exercise of its jurisdiction under Article 226 of the Constitution of India normally does not direct that a legislation should be made, as it is the duty of the legislature to do so, but such direction has become imperative in this case, as in absence of prescription of the qualification in terms of the provision of the Act, the entire exercise made by the Commission in the matter of appointment of Teachers may be jeopardised. The State Government, therefore, is hereby directed to make appropriate rules at an early date and not later than 6 weeks from the date of communication of this order. Although we have all sympathies for the writ petitioner, particularly in view of fact that had the qualifications been prescribed, he could have opted for becoming a candidate in a College where science subjects are taught, but in the peculiar facts and circumstances of the case, we are not in a position to exercise our equitable jurisdiction in his favour. It would be open to the Commission to recommend the writ petitioner's case for appointment as Principal in any College where science subjects are taught.

The appeal and the applications are allowed.

Let plain copy of operative portion of the order countersigned by Assistant Registrar (court) be given to Mr. Bhattacharya.

H.H.S. Ansari, J.

11. I agree.

12. Appeal allowed