
(2006) 01 CAL CK 0036
In the Calcutta High Court
Case No : M.A.T. No. 2730 of 2001

Sri Bhudev Biswas

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 12-01-2006

Acts Referred:

Citation : (2006) 2 CALLT 231 : (2006) 110 FLR 1122

Hon'ble Judges : V.S. Sirpurkar, C.J.;Tapen Sen, J

Bench : Division Bench

Advocate : Partha Sarathi Basu and S. Talukdar, for the Appellant; Amalesh Roy, Robilal Moitra, Government Pleader, for the Respondent

Judgement

V.S. Sirpurkar, C.J.—This appeal is against the order of the learned single Judge whereby the learned single Judge has dismissed the writ petition holding that the petitioner was not entitled to be regularised as teacher since he was not an organising teacher. In this the learned single Judge has given the finding of fact that the said teacher was employed on 2nd April, 1984 but the inspection by the District Level Inspection Team (hereinafter referred to as DLIT) had taken place earlier to that and his name was not to be found in the inspection report as the teacher was not present at the time of DLIT inspection. The learned single Judge has also directed that the salary, if any, earned by the original writ petitioner should be refunded and for that purpose recovery should be made since the original appointment of the writ petitioner itself was bad and unjustified in law.

2. The following facts will highlight the controversy involved in the matter.

2.1. The writ petitioner claimed that he started his service in the school from 2nd of April, 1984. The name of the concerned school is Debigunj Vivekananda Junior High School. It is admitted position that the school was started somewhere in the year 1974 and got the recommendation from the Government only on 2nd January, 1987. The petitioner claimed that two other teachers namely Sri Satya Ranjan Biswas and Smt. Anjali Biswas were also appointed though the name of

the petitioner was placed after these two persons perhaps because these two persons are in continuation as teachers in the said school.

The petitioner is at present not continuing as per the recommendation granted by the Board to the school as Junior High School with permission to open Class V and VI with effect from 1st January, 1986 and Class VII and VIII with effect from 1st January, 1987.

2.2. The petitioner for the first time moved this High Court in 1989 by filing a writ petition [C.O. No. 16704(W) of 1989] as he was not shown to be the approved teacher in the communication dated 15th July, 1988 by the District Inspector of Schools (SE), Darjeeling. This writ petition was allowed and the Hon"ble Justice Susanta Chatterjee (As His Lordship then was) directed the Director of School Education to consider the case of the petitioner in the light of his representation.

2.3. The Director of School Education accordingly heard the petitioner as also the other two teachers mentioned earlier and came to the conclusion that none of those three teachers could be conferred the status of organising teachers, therefore, there could not be an automatic approval in their cases. The order of the Director of School Education was passed on 20th March, 1990. After hearing the representative of the petitioner a clearest finding in that order was given to the effect that all the three teachers were appointed only "after" the inspection by the DLIT, as when the inspection was being taken up these three teachers were not seen to be present as organising teachers.

2.4. For the reasons unknown the petitioner did not challenge this order, instead he started firing representations to the Director of School Education taking objection to his order dated 20th March, 1990 but did not challenge the same in any manner. He also fired Some representations to the District Inspector of Schools and very strangely on 22nd January, 1993 the District Inspector of Schools, Siliguri passed an order granting approval to the petitioner along with Sri Satya Ranjan Biswas in Science-Math Group. Accordingly the petitioner forced his way to the school. He was not allowed by the school to join and in fact the petitioner admittedly came to know that the District Inspector of Schools (SE), Siliguri was contemplating recall of the order passed on 22nd January, 1993. This seems to be really probable because it is obvious that the District Inspector of Schools had no authority whatsoever to sit over the order passed by the Director of School Education, who is the higher authority who has passed the order after hearing the petitioner. That order had also become final. The order dated 22nd January, 1993 passed by the District Inspector of School very strangely does not make any mention of the earlier orders passed by the Director of School Education dated 20th March, 1990.

2.5. However, seeing that the said order dated 22nd January, 1993 was either going to be recalled or cancelled, the petitioner approached this Court by way of a writ petition [C.O. No. 5791(W) of 1993] and an order came to be passed

therein restraining the authority from passing any such recalling order. The petitioner on the basis of this order of the High Court joined the school and started teaching in the school.

This order was passed by the Justice D.K. Basu (As His Lordship then was) on 26th May, 1993, It seems that the petitioner thereafter continued to serve till the dismissal of the writ petition on 13th July, 2001. In the meantime the petitioner also sought release of the arrears of the salary and that was also ordered in his favour by an order dated 6th September, 1996. Accordingly, a sum of Rs. 1,47,55G/- was directed to be given to the petitioner by way of arrears of salary till then. The order passed by Justice D.K. Basu (As His Lordship then was) was sought to be vacated by the Managing Committee by making application. However, it seems that the said application was directed to be heard along with the writ petition itself. The original petitioner supported the order by filing a supplementary affidavit before us.

2.6. It was only on 10th November, 2000 when the petitioner for the first time moved an application for amendment of the writ petition by challenging the order of the Director of School Education dated 20th March, 1990 which had so far remained unchallenged, that amendment was also allowed. Ultimately, the writ petition came up for hearing before the learned single Judge and he dismissed the same. As has been stated earlier the learned single Judge had also directed refund of salaries paid to him.

3. Learned Counsel appearing on behalf of the appellant very earnestly urges before us that the finding of the learned single Judge that the petitioner should not get the advantage of an organising teacher is factually not correct. According to the learned Counsel there is no evidence on record that there was any DLIT inspection for the school or any inspection team ever took the inspection of the school. Learned Counsel is at pains to point out that there was no authentic document in the shape of an inspection report produced before the Court and in fact the documents which were produced as report were disbelieved by the learned single Judge as not being authentic copy of the report. The learned Counsel submitted that there was no inspection at any point of time, therefore, it could not be held that the petitioner was employed only after the inspection report and that the petitioner was not found to be the organising teacher in the inspect of the DLIT. Learned Counsel, attacks the order of the Director of School Education on the ground that the Director did not have before him any records as such his finding that the petitioner was employed after the inspection and could not be the organising teacher could not be said to be a correct finding. We were taken through the records extensively as also the observations made by the learned single Judge in the Judgment. The learned Counsel argues that once a finding regarding the DLIT goes then automatically the petitioner would get the status of an organising teacher and would be entitled to the approval which was rightly granted by the District Inspector of Schools.

4. The learned Counsel further says that at any rate there was no justification on

the part of the learned single Judge to order recovery of the salaries paid to the appellant/petitioner as firstly it was nobody's case that the appellant/petitioner was not qualified to teach and secondly the appellant/petitioner had actually worked and taught and therefore he could not be said that his initial appointment was fraudulent or in any way non est.

5. As against this the learned Counsel for the Managing Committee reiterated the finding given by the learned single Judge and pointed out that there was a clearest possible evidence available on record that there was an inspection held and in fact the petitioner himself had relied upon a document dated 15th July, 1988 wherein there was a clear cut reference to such an inspection having taken place and further the petitioner not being found to be present during that inspection. The learned Counsel urged that this document was relied upon by the petitioner in his writ petition and it goes clearly to suggest that the petitioner's appointment was made after the inspection by the DLIT. Learned Counsel also pointed out that this admission which has been rightly relied upon by the learned single Judge.

6. As regards recovery of salary, however, the learned Counsel very fairly left the matter to the discretion of the Court without opposing the same. The recovery was, however, tried to be reiterated by the learned Government Pleader though haltily.

7. It is on this background that it is required to be seen as to whether the learned single Judge was right in dismissing the writ petition.

8. Everything would depend in this case on one singular fact that as to whether there was any inspection by the DLIT and if so and further whether the petitioner was appointed after the said inspection. It goes without saying that if the petitioner was found to be present and employed during that inspection the petitioner could be termed as an organising teacher and would get the benefit of the approval as per the settled law. However, it seems that the petitioner has to draw a complete blank on that. Firstly it is to be seen that the finding that petitioner was appointed only after the inspection has been recorded by the Director of School Education as back as in the year 1990. For the reason unknown the petitioner sat over that order and did not challenge the same in any way. That order of the Director of School Education became binding on the petitioner. It is only when the petitioner was reeling under the pressure during the pendency of the writ petition, that he for the first time challenged the order by making an application for amendment of the writ in the year 2000, that is after 10 years of the order passed. One look at the order passed by the Director of School Education suggests that the Director of School Education had taken up that exercise at the instance of this Court's order dated 12th December, 1989. Therefore, it is only for the sole purpose of seeing as to whether the petitioner was an organising teacher, that the exercise had been undertaken. The Director of School Education has also made reference to the earlier communication dated 8th July, 1988 wherein there is a clear cut mention that the school authorities

had applied for inspection of the school in 1974 itself. The Director of School Education has also referred to the earlier inspection report dated 8th July, 1988 which suggests that the petitioner was not in the service of the school on that date. The petitioner's case before the Director of School Education was that he was employed on 2nd April, 1984. However, since the Director took the view that since he was employed only after the inspection by the DLIT he could not be viewed as organising teacher. This finding is to be found in the last paragraph of the order. We are not prepared to accept that a responsible officer like Director of School Education would pass any remarks regarding inspection of the school in a casual manner unless he was armed with the records supporting the said facts. After all, the Director of School Education was deciding this matter as per the orders passed by this Court. Learned Counsel for the petitioner, however, attacked this order suggesting that there is no reference to any particular report. However, there also the learned Counsel has to draw blank. In paragraph 10 of his writ petition the petitioner referred to a document dated 15th July, 1988. The assertion is as follows:

10. That the said school was inspected on several occasions by the District Inspector of Schools (SE), Darjeeling and Assistant Inspector of Schools (SE), Darjeeling and they submitted their respective inspection reports. The District Inspector of Schools (SE), Darjeeling by his office Memo No. 24/SLG dated 15.7.1988 submitted an inspection report to the Director of School Education, West Bengal and a xerox copy of the same is annexed hereto and marked with letter "C". In the said inspection report it was reported that the petitioner was working as Assistant Teacher of the said school with effect from 2.4.1984.

9. Not only this but along with the said averments the said document dated 15th July, 1988 was also annexed as annexure "C". One look at this document would suggest that the District Inspector of Schools (SE), Darjeeling had informed the Director of School Education, West Bengal that the inspection of the school was taken up at the request of the school made some where in the year 1974 and though the copy of the report of the DLIT inspection was not traceable in the office, there was a copy of the application seeking inspection which copy was made available to the District Inspector of Schools on 5th March, 1988 from which the particulars of the Managing Committee, the teaching and non-teaching staff could be known. Then there is a reference to the other records and it is suggested that at the time of inspection only 5 persons were found to, be the teaching and non-teaching staff and the petitioner was certainly not one of them and there is thereafter a specific reference wherein it is mentioned that subsequently, however the organising committee appointed the following teachers from the dates noted against each of them after the inspection made by the DLIT. That is where the name of the petitioner appears and it suggests that his appointment was made on 2nd April 1984. We have deliberately referred to the pleadings of the petitioner in paragraph 10 wherein the petitioner has relied upon the said document which itself suggests that the petitioner's appointment came to be made after the inspection was held by the DLIT. Learned single Judge

has precisely referred this admission. There can be no doubt that the learned single Judge has at some places in the Judgment scoffed at some documents which were tried to be produced before the learned single Judge as reports. The learned Counsel invited our attention to those observations by the learned single Judge holding that in fact there was no inspection ever made of the school. We are afraid after scanning through the Judgment very carefully we do not find any such finding. All that we find is criticism by the learned single Judge, over some documents which were tried to be produced before the learned single Judge as copies of the inspection report of the DLIT. Those copies were the cyclostyled copies and the learned single Judge refused to hold those copies as authentic reports of the inspection. However, the learned single Judge has nowhere held that there was in fact no inspection at all. We would have ordinarily examined the cyclostyled copies which were produced before the learned single Judge in support of the pleadings, that there was an inspection. However, it is obvious that the petitioner has himself admitted in annexure "C", the document dated 15th July, 1988, which does make a reference to an inspection having been made. We are not in reality concerned with the date of the inspection as we are on the question of the factum of inspection and the further fact that the petitioner was not employed on that date when inspection took place. Learned Counsel for the petitioner suggested that even that cyclostyled copy appears to be a manufactured document. We do not think that the Government would go to that extent of manufacturing some false documents particularly when there has been a stand taken by the Director as back as in the year 1990 that there was an inspection and the appointment of the petitioner came only thereafter. We did not find, therefore, any reason to question the finding of fact recorded by the learned single Judge that there was an inspection in the school and further the petitioner was employed only thereafter. Cyclostyled copy of the DLIT inspection report which has been doubted by the learned single Judge shows that the inspection took place on 20th January, 1984. Therefore, the appointment of the petitioner would be the subsequent event and thus the petitioner would not be in a position to claim the status of organising teacher. We, therefore, do not find any merit in the appeal in so far as this finding is concerned.

10. However, this brings us to the second direction of the learned single Judge whereby the learned single Judge has directed recovery of the salaries paid to the petitioner. We are not in a position to support that finding for the simple reason that it is nobody's case that the petitioner was initially appointed fraudulently or that he did not have any qualification to be appointed, in his second stint when he started working from 19.5.93 or as the case may be from 25.6.93 and continued to work up to 13th July, 2001. It must be noted that, that was the basis on an order passed by this Court. It was on the basis of a direction by this Court to which we have made reference while stating the facts that the petitioner continued to teach. It is nobody's case that he did not teach. This was a fit case where we can bring out the maxim "*Actus curiae neminem gravabit*". Therefore, the petitioner, had continued on the basis of Court's order could not

be allowed now to suffer and to return back all the salaries paid to him which he has earned over the years working as teacher which he has actually done. The learned single Judge has relied on two Supreme Court decisions namely AIR 2000 SC 3638 and Manohar v. Sanjay Education Society, (1999) 9 SCC 118 . However, we find that both the cases are on different on facts. There was no interim order in favour of the petitioners in those cases. In this case, however, there was an interim order because of which the petitioner could serve. Again this is not a case where the petitioner has been given excess salary without working for the same. We, therefore, set aside that part of the Judgment and hold that it will not be necessary for the petitioner to return back the salaries paid to him as ordered by the learned single Judge, to that extent the appeal is allowed. We, therefore, pass the following order:

I. The appeal is dismissed in so far as the appellant's prayer for the reinstatement and approval is concerned.

II. The appeal is allowed in so far as it relates to recovery of salary as ordered by the learned single Judge,

III. It is pointed out that Justice O.K. Basu (As His Lordship then was) had already ordered for release of the current along with arrears of salary and ultimately an order came to be passed in the year 1998 that sum of Rs. 1.47.556/- should be released. It seems that earlier though the order to continue the petitioner was passed in 1993, till 1998 salary was not released and ultimately the salary was released and deposited with the school authority. It is an admitted position that the amount is still lying with the school authority. Since that amount pertains to the period for which the petitioner had actually worked, that amount shall be paid to the petitioner in the light of the observations made by us in this Judgment.

IV. Barring the issues mentioned above no other issues involved in the matter has been interfered with.

V. Under the circumstances we do not pass any order for cost.

Urgent xerox certified copy of this order may be supplied to the parties, on usual undertakings.