

(2004) 04 CAL CK 0022
In the Calcutta High Court
Case No : M.A.T. No. 2981 of 1997

State of West Bengal and Another	Vs	APPELLANT
Pintu Nandi and Others		RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Bengal (Rural) Primary Education Rules, 1930 — Rule 3D, 4A

Citation : (2005) 1 CHN 277

Hon'ble Judges : Soumitra Pal, J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : ;D.P. Mukherjee and B. Chaudhuri, for the Respondent

Final Decision : Allowed

Judgement

Soumitra Pal, J.—Instant appeal arises out of an order dated 8.8.1997 passed by the learned Trial Judge, inter alia, granting liberty to the Chairman to comply with the Court's order by issuing an appointment letter in favour of the petitioner by 19.9.1997.

2. The facts are that Gangadhar Nandy, the Headmaster of a school and father of the respondent/ writ petitioner died on 21.12.1991 at the age of 62 years and 21 days, that is, after he was superannuated at the age of 60 years. At the time of death the said Gangadhar Nandy was on a third extension on his prayer for extension of such service. After the death of the said Gangadhar Nandy, his son filed an application for being appointed as an Assistant Teacher as a dependent heir or ward of a teacher who died-in-harness. Pursuant to such application his prayer was considered but the respondents declined his prayer for appointment on compassionate ground.

3. In such circumstances being aggrieved, the petitioner being the son of the deceased moved the writ application being C.O. No. 8435(W) of 1993. The relief as prayed for by the writ petitioner in the writ petition, which is relevant, is as follows: -

"A) Writ in the nature of Mandamus commanding the respondents to forthwith give employment on regular basis to the petitioner in the post of Assistant Teacher in any primary school under Kalna South Circle, Burdwan as the son of deceased Head Teacher, Gangadhar Nand who died-in-harness."

4. The learned Trial Judge by an order dated 12.7.1993 disposed of the writ petition. The relevant portion of the order is as hereunder:

"Hearing the learned advocate appearing for parties, I direct the Chairman, Ad-hoc Committee, Burdwan District Primary School Council to process the matter and recommend the competent authority i.e. Director of School Education within 15th September, 1993.

Director of School Education is directed to approve the recommendation of the Primary School Council by 30th October, 1993 and the Primary School Council is directed to absorb the petitioner in the same school or in any school in the vicinity of his residence or within the circle, if possible."

5. Pursuant to such direction, as it appears from the application for stay filed by the appellants, all papers relating to the appointment of the writ petitioner on compassionate ground were sent to the Director of School Education. Thereafter on mentioning before the learned Trial Judge on 7.12.1994 directions were issued to the Director of School Education to consider and dispose of the case of the writ petitioner within the time stipulated in the order. The Director of School Education (Primary) after considering turned down the claim of the writ petitioner regarding the appointment on compassionate ground since the death of the father of the petitioner took place after the attainment of 60 years of age. On 9.6.1997 the learned Trial Judge issued certain directions and thereafter, on 8.8.1997 passed the order under appeal preferred by the respondents in the writ petition. The relevant portion of the order is set out hereunder:

"Pursuant to the order passed by this Court on 9th June, 1997, the Director of School Education submitted a report dated 6th August, 1995. From the report and the relevant records produced by an officer attached to the Law Department of the Directorate of School Education, it appears that the Chairman, Burdwan Dist. Primary School Council simply forwarded the application to the Director of School Education without recommending the case in terms of the order passed by this Court on 12th July, 1993.

In such view of the matter, the Chairman, Burdwan Dist. Primary School Council is given liberty to comply with the Courts order and forward the same after due recommendation to the Director of School Education by 22nd August, 1997. The Director of School Education is given liberty to comply with the Court's order for according approval to the recommendation by 4th September, 1997 and such decision shall be communicated and transmitted to the Chairman, Burdwan Dist. Primary School Council by 4th September, 1997 and the Chairman is given liberty to comply with the Courts order by issuing an appointment letter in favour of the petitioner on 19th September, 1997."

6. None appeared on behalf of the appellants. The respondent/writ petitioner is represented by their learned Advocates. Submissions were made that considering the circumstances the writ petitioner should be given appointment on compassionate ground.

7. During the course of argument reference was made to a judgement of the Division Bench of this Court in M.A.T. 1442 of 1998, Chairman, Ad-hoc Committee v. Mohd. Monirul Islam. From a perusal of the facts in the said judgement it is found that first respondent's father Late Usuf Ali Shaikh was a Headmaster of a primary school who reached his superannuation in 1989. Application was made for extension of service and such extension was granted. Thereafter, during second extension the father of the respondent/writ petitioner therein died on 29.6.1991. The respondent/ writ petitioner therein being a dependent of said Late Usuf Ali Shaikh filed an application for grant of appointment on compassionate ground which was ultimately rejected. Being aggrieved the dependent filed a writ petition. The said writ petition was allowed. Being aggrieved by the said order the respondents in the said writ petition filed the appeal. From a reading of the said judgement it is evident that Their Lordships while allowing the appeal interpreted Rules 3D and 4A of the Bengal (Rural) Primary Education Rules, 1940 (hereinafter referred to as the 1940 Rules) framed under the Bengal (Rural) Primary Education Act, 1930 in the facts and circumstances of the said case. The said appeal was allowed. The relevant portion of the said judgement is reproduced hereunder :

"Rules 3D aforementioned clearly states that appointment on compassionate ground can be given only to a dependent of an employee who had died-in-harness i.e. before he reaches the age of superannuation. It has not been and could not be disputed that the age of superannuation in relation to an assistant primary teacher was sixty years. Thus Rules 3D and 4A read together and given a harmonious construction must mean that the benefit of Rule 3D was not available to a teacher who was on extended service in terms of Rule 4A."

8. Rules 3D and 4A of the 1940 Rules are as follows:

"3D. Notwithstanding anything contained in Rule 3, Rule 3A or Rule 3B, but subject to the provisions of Rule 3C, a ward of a primary teacher who died-in-harness may be appointed with the approval of the Director of Public Instruction, West Bengal as an assistant teacher/ school mother against regular vacancy irrespective of whether the available vacancy is to be reserved for trained or untrained candidates; provided that he/she fulfils the minimum qualifications for such appointment.

4A. A teacher appointed by the Board may be retained in service upto the age of 60 years, but the Board may, if it thinks fit, grant thereafter extension of service of a teacher on a year to year basis upto the age of 65 years, provided the teacher continues to be physically fit and mentally alert.

Explanation.-The continuous period of service extended beyond the age of 60

years of the teacher will count towards increment in the scale of pay, terminal benefits and other benefits with the approval of the Government."

9. The Division Bench in its judgement in Md. Monirul Islam's case (supra) also considered the contention advanced before it that the words "other benefits" in the Explanation to Rule 4A would include the benefits given to the dependent of the deceased employee in terms of Rule 3D. The said contention was rejected in the following terms:

".....We are afraid we cannot agree with the said contention. Rule 3D was enacted keeping in view the provision of Article 16(2) of the Constitution of India. If such rule making authority was to grant the said benefit to the dependent of an employee an express reference ought to have been made therefore in the exception. The same having not been done, it is not possible for the Court to read the benefits of Rule 3D as having been incorporated by reference in the Explanation appended to Rule 4A. An Explanation as is well known, has a definite function. It is not a substantive provision (See. S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, In the instant case the Explanation appended to Rule 4A clearly suggests the types of benefits to which a teacher on extended service was to derive. No benefit was given nor was contemplated in terms of Rule 3D of the 1940 Rules in favour of a dependent of an assistant teacher particularly in view of the fact that appointment on compassionate ground is not a rule but an exception. We are also of the view that such a rule has to be expressly provided for."

10. In the case on hand the father of the writ petitioner died during the extended period of service after he was superannuated at the age of 60 years. The son that is the respondent/ writ petitioner applied for appointment on compassionate ground which was rejected by the authorities concerned. The facts in the present case is similar to the facts in the judgement (supra) and the ratio laid down in the said judgement (supra) is thus applicable in the instant case. Therefore, the respondent/ writ petitioner cannot avail himself of the benefit of Rule 3D of the 1940 Rules.

11. For the reasons as above we have no hesitation to hold that the writ petitioner/ first respondent was not entitled to any relief. We, therefore, set aside the judgement under appeal. The appeal is allowed accordingly. There will be no order as to costs.

Leter:

12. Let urgent xerox certified copy of this judgment be furnished to the appearing parties, if applied for, on priority basis.

M.H.S. Ansari, J.:

13. I agree.