
(2009) 07 CAL CK 0037
In the Calcutta High Court
Case No : F.M.A. 1192 of 2008

State of West Bengal and Others

APPELLANT

Vs

Binapani Samanta (Khatua) and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Citation : (2009) 07 CAL CK 0037

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Kishore Kumar Prasad, J

Bench : Division Bench

Advocate : Kanailal Samanta, Saktipada Jana, for the Appellant; Kashikanta Moitra, Subir Sanyal, Ms. Reshma Rahaman for the Respondent/Writ Petitioner, Kamallesh Bhattacharyya, Ms. Somoshree Saha for the Respondent-School Authority, for the Appearing Parties

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred assailing the judgment and order dated 28th November, 2006 as corrected by the subsequent order dated 2nd February, 2007. By the order under appeal, learned Single Judge issued various directions relating to the approval of appointment of the respondent/writ petitioner as well as payment of salary including arrears after granting such approval.

2. Coming to the factual matrix of the writ petition filed by the appellant herein we find that the respondent/writ petitioner filed another writ petition being W.P. No. 12545 (W) of 2000 on the earlier occasion which was ultimately disposed of by another learned Single Judge of this Court by the order dated January 19, 2004 whereby and whereunder the said learned Judge directed the District Inspector of Schools (SE) concerned to enquire whether the said writ petitioner was an organiser teacher in the school or not. The operative part of the said order dated January 19, 2004 is set out hereunder:

".....I direct the District Inspector of Schools to reconsider this matter

and while doing so he shall enquire into the following aspects.

Whether she was an organiser teacher in the school or not. If so, then he shall call for all the records from the school authority to find out whether the claim of the organiser teacher is justified or not. In that case he shall pass appropriate order for approval to the appointment of the petitioner.

If it is found that the petitioner's case is not coming within the purview of organiser teacher then he shall decide the question of approval of the petitioner's appointment specifically and not in cryptic manner. This shall be done within a period of eight weeks from the date of communication of this order.

The writ petition is, thus, disposed of without any order as to costs....."

3. In compliance with the aforesaid order of this Court, District Inspector of Schools (SE), Paschim Medinipur ascertained the claim of the writ petitioner and ultimately held that the said writ petitioner was not an organiser teacher in the school concerned and, therefore, no relief can be granted to the writ petitioner.

4. Challenging the said decision of the District Inspector of Schools as communicated by office Memorandum dated 18th November, 2004, another writ petition being W.P. No. 47 (W) of 2005 was filed and the same was finally disposed of by the judgment and order under appeal.

5. Assailing the judgment under appeal Learned Counsel of the appellant submitted that the District Inspector of Schools rightly held that the respondent/writ petitioner cannot be treated as an organiser teacher of the school since the school was recognised in the year 1974 and the writ petitioner was appointed long thereafter on 21st December, 1984. The Learned Counsel of the appellant further submitted that the writ petitioner was also not appointed by the organising Managing Committee.

6. Referring to the office Memo dated 18th November, 2004 issued by the District Inspector of Schools rejecting the claim of the writ petitioner, Mr. Samanta, Learned Counsel of the appellant submitted that the name of the writ petitioner did not appear in the DLIT report which was the basis of granting recognition and/or subsequent upgradation to the school concerned.

7. From the records we find that pursuant to an advertisement published in the local newspaper, writ petitioner was selected for the post of Assistant Teacher and the letter of appointment was issued by the Secretary of the school pursuant to the direction of the Managing Committee on 21st December, 1984. The Learned Counsel of the appellant submitted that there was no sanctioned vacant post of Assistant Teacher in Social Science group in the said school at the relevant time in the year 1984 where the writ petitioner could be appointed. Referring to the Memo dated 21st April, 1986 issued by the Director of School Education, West Bengal, Learned Counsel of the appellant also submitted that the additional post of Assistant Teacher in the said school was sanctioned pursuant to the aforesaid Memo dated 21st April, 1986 and in the said Memo it

was also specifically mentioned by the said Director of School Education that the said additional post should be filled up by the school authorities strictly according to the existing recruitment procedure. Mr. Samanta further submitted that in terms of the Rules for Recruitment of Teachers & Non-teaching employees prevailing at the relevant time, no appointment of teacher in non-government secondary schools could be made without prior permission of the District Inspector of Schools (SE) and in absence of sanctioned vacant post.

8. In the present case, the school authority in absence of any sanctioned vacant post appointed the writ petitioner in the post of Assistant Teacher even without obtaining any prior permission from the District Inspector of Schools (SE) concerned.

9. In the aforesaid circumstances, it can be said without any fear of contradiction that the respondent/writ petitioner was appointed by the school authority in clear violation of the Recruitment Rules prevailing at the relevant time.

10. Mr. Kashikanta Moitra, learned Senior Counsel representing the respondent/writ petitioner submitted that the writ petitioner had been working in the institution uninterruptedly since 1984 and, therefore, on humanitarian ground, respondent authorities should approve her appointment so that she is not deprived of pensionary and other benefits after continuously discharging her duties for more than 25 years. Mr. Moitra referred to and relied on the following decisions of the Supreme Court in support of his aforesaid contention:

1) Indira Bai Vs. Nand Kishore,

2) (2001) 4 ST 22 [Nawal Kishore Prasad vs. State of Bihar and others]

11. On examination of the relevant materials on record and upon hearing the submissions of the Learned Counsel of both the parties we find that the respondent/writ petitioner herein cannot be treated as an organiser teacher since her name was never mentioned in the DLIT report on the basis whereof the recognition was granted to the school concerned in accordance with law. Furthermore, the teacher concerned was admittedly, not appointed by the organising Managing Committee.

12. Undisputedly, the school was recognised long before the respondent/writ petitioner was appointed as an Assistant Teacher by the Managing Committee of the school. Therefore, it is difficult to treat the respondent/writ petitioner as organiser teacher of the said school.

13. The Managing Committee of the school unfortunately, did not adhere to the recruitment procedure at all in the matter of appointment of the writ petitioner. The said Managing Committee of the school without obtaining any prior permission from the District Inspector of Schools concerned and also without complying with the other prescribed procedures as mentioned in the Rules for Recruitment of Teachers & Non-teaching Employees effective from 1.8.1981 to 30.8.1987 selected and appointed the writ petitioner as an Assistant Teacher of

the school in the year 1984 even in absence of any sanctioned vacant post.

14. Appreciating the necessity, Director of School Education, West Bengal by the Memo dated 21st April, 1986 sanctioned additional post of Assistant Teacher in respect of the school concerned and specifically directed the school authority by the said Memo to fill up the said additional post strictly according to the recruitment procedure which was unfortunately not complied with.

15. The selection and appointment of the respondent/writ petitioner to the post of Assistant Teacher is vitiated due to the aforesaid series of illegalities and such illegalities cannot be cured or regularised at this stage in accordance with law. Therefore, appointment of the respondent/writ petitioner as an Assistant Teacher of the school concerned cannot be held to be legal and valid by this Court.

16. The decisions cited by Mr. Moitra, learned Senior Counsel of the respondent/writ petitioner have no manner of application in the facts of the present case.

17. For the aforementioned reasons, we are of the opinion that the District Inspector of Schools (SE), Paschim Medinipur has rightly rejected the claim of the writ petitioner by refusing to treat her as an organiser teacher of the school concerned and we approve the aforesaid decision of the said District Inspector of Schools. We are also of the opinion that the learned Single Judge committed serious errors in not appreciating that the Managing Committee of the school concerned did not appoint the writ petitioner as an Assistant Teacher of the school upon complying with the provisions of the Rules for Recruitment of Teachers & Non-teaching Employees as were applicable at the relevant time. Unfortunately, the said learned Judge failed to appreciate various illegalities committed by the Managing Committee of the school concerned while selecting and appointing the respondent/writ petitioner as an Assistant Teacher of the school, which we have specifically mentioned hereinbefore.

18. In the aforesaid circumstances, the judgment and order under appeal passed by the learned Single Judge cannot be sustained.

19. As a result, we allow this appeal and set aside the judgment and order under appeal passed by the learned Single Judge.

20. In the facts of the present case, there will be no order as to costs.

21. Let urgent Xerox certified copy of this judgment, if applied for, be given to the learned Advocates of the parties on completion of usual undertaking.

Kishore Kumar Prasad, J.

22. I agree.