

(2012) 07 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal No. 2319 of 2010

State of West Bengal and Others

APPELLANT

Vs

Mandira Chatterjee and Others

RESPONDENT

Date of Decision : 17-07-2012

Acts Referred:

Citation : (2013) 1 CALLT 41

Hon'ble Judges : J. Chelameswar, J;Altamas Kabir, J

Bench : Division Bench

Advocate : Soumitra Ghose Chowdhury, for the Appellant; Lakshmi Kanta Pal, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment and order dated 18th April, 2007, passed by the Calcutta High Court in FMA No. 179 of 2005, whereby the Division Bench set aside the order passed by the learned Single Judge dismissing the writ petition filed by the Respondent Nos. 1, 5 and 6 herein. The State of West Bengal is in appeal against the said order of the Division Bench.

2. From the materials on record, it appears that the Respondent No. 1 had been appointed as a teacher in Tara Sundari Balika Vidyabhaban, Howrah. By the Managing Committee of the School on 1st November, 1976, under the existing Rules. Under the said Rules, appointments of teachers were made in accordance with the teacher-student ratio and, as was contended by the Respondent No. 1, her appointment had been made against a substantive vacancy created on the basis of such policy.

3. It further appears that along with others, the case of the Respondent No. 1 was forwarded to the Director of School Education, West Bengal, for approval in July, 1985, but without giving any reasons, the names of the said teachers remained unapproved and. In between the West Bengal Primary Education Act, 1973, came into force on 30th June, 1990. Under the said Act and the Rules

framed thereunder, the method of selection and appointment of primary teachers in the primary schools in West Bengal underwent a complete change. Under the new Rules, the selection and appointment of primary teachers were now required to be made by the District Primary School Council from a panel to be prepared by them after following the procedure for preparation of such panel.

4. On 14th March, 1992, the Respondent No. 1 and the Respondent Nos. 5 and 6. Made a representation to the District Inspector of Schools (Primary) for approval of their appointment. Since the same was not considered favourably, the Respondent No. 1 along with the Respondent Nos. 5 and 6, filed a writ petition, being Company No. 6484 (W) of 1992, before the Calcutta High Court, praying for a Mandamus to the Director of School Education to approve their appointment as primary teachers in the school in question. The writ petition was dismissed by the learned Single Judge on the ground that since a new law had intervened, the right of the aforesaid Respondents, if any, had been obliterated.

5. In appeal, the Division Bench took a contrary view and held that since the right of the said Respondents had crystallized prior to coming into operation of the West Bengal Primary Education Act, 1973, their appointment and approval of such appointment, would be governed by the earlier Rules and not by the provisions of the subsequent Act and the Rules framed thereunder. Accordingly, the Division Bench directed the Director of School Education, West Bengal, to accord approval to the appointment of the Respondent Nos. 1, 5 and 6, from the date of their initial appointment as Primary Teachers of the school in question, pursuant to the recommendation of the Urban Advisory Committee. Further direction was given to the effect that the said Respondents would be entitled to the payment of arrear dues from the date of approval of the appointment by the Director of School Education, West Bengal, in terms of the order of the Division Bench.

6. As indicated herein-above, it is against the said judgment and order of the Division Bench of the Calcutta High Court, that the present appeal has been preferred by the State of West Bengal.

7. Appearing for the State of West Bengal, Mr. Soumitra Ghosh Chaudhuri, learned Counsel, submitted that the Division Bench of the Calcutta High Court erred in setting aside the judgment of the Single Bench, which was based on the finding that the rights of the parties would be governed by the laws, as existing on the date of seeking relief in the Court upon filing of the writ petition and that since on that date it was the West Bengal Primary Education Act, 1973. Which held the field, the direction given by the Division Bench of the High Court was not only erroneous, but was also incapable of being implemented. Among the several decisions in support of his submissions, Mr. Chaudhuri, referred to the decision of this Court in *Beg Raj Singh v. State of U.P. and Others* (2003) 1 SCC 726 wherein this Court observed as follows:

The ordinary rule of litigation is that the rights of the parties stand crystallized on

the date of commencement of litigation and the right to relief should be decided by reference to the date on which the Petitioner entered the portals of the Court. A Petitioner, though entitled to relief in law. May yet to be denied relief in equity because of subsequent or intervening events i.e. The events between the commencement of litigation and the date of decision. The relief to which the Petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law.

8. Relying on the said observations, Mr. Chaudhuri submitted that even if the Respondent Nos. 1, 5 and 6 had acquired a right under the earlier Rules, the same stood extinguished with the commencement of the 1973 Act.

9. On the other hand, on behalf of the Respondent No. 1 Mr. Deba Prasad Mukherjee, learned Counsel, contended that having been appointed against a normal vacancy, the said Respondents had acquired a right, which had crystallized and was the right available to the said Respondents at the time of filing of the writ petition.

10. Having considered the submissions made on behalf of the respective parties, it appears to us that the facts of this case are somewhat different from the other cases of this type, in that, the Respondent Nos. 1, 5 and 6 had acquired a right under the existing Rules, which was denied to them without any reason having been given by the concerned authorities. Their case was also recommended by the Urban Advisory Committee, which had been set up under the existing Rules, for recommending the names of the such teachers for approval. Such recommendation was not also taken into consideration and the case of the Respondent Nos. 1, 5 and 6 remained undecided till such time the new Act came into force in 1990.

11. It is well settled that the rights of a litigant on the date of seeking relief before the Court, would be governed by the laws, which were existing at the time when the litigant acquired such right. It is true that the rights must have crystallized on the date of making of the application, what has happened in the instant case. In our view the Division Bench has correctly assessed the matter in directing the Director School Education, West Bengal, to grant approval to the of the Respondent Nos. 1, 5 and 6. The question with which we are faced is, how such a direction can be implemented when at this point of time, it is the West Bengal District Primary School Council, which is the for preparation of the panels and making in the respective schools where vacancies arise. We, therefore, allow the appeal and in order to meet the situation, we direct the said Council to Include the names of the Respondent Nos. 1, 5 and 6 in the panel of teachers prepared by it for the District of Howrah, and thereafter, to grant approval to their appointment in respect of the school in which they were appointed, within one month from the date of communication of this order. However, with regard to the payment of arrears, as directed by the Division Bench of the High Court, we modify the same and direct that such arrears will be payable to the Respondent Nos. 1, 5 and 6 from 1st August, 2007.

There will be no order as to costs.