

(2012) 03 CAL CK 0044

In the Calcutta High Court

Case No : MAT 3208 of 2004 With WP 25581 (W) of 2007 With WPCRC 1675 (W) of 2001

State of West Bengal and Others

APPELLANT

Vs

Papia Prodhan and Others

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 03 CAL CK 0044

Hon'ble Judges : Shukla Kabir (Sinha), J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Jaharlal De and Ms. Anjusree Mukherjee, for the Appellant; Tapabrata Chakraborty, Ajoy Debnath and Mr. Sujit Saha for respondent no. 1, Mr. Arabinda Chatterjee, Bharat Chandra Simai and Ms. Moupiya De for the school authority, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—Ours is a court of record. We must set our record in order. We must rectify mistake, if any, committed by us. If we find any wrong order passed by us in any co-lateral proceeding touching subject matter of the present appeal, we must find out ways and means to correct it and set our record right. Keshabpur Jalpai Gadadhar Jogendra Milan Vidyapith in the District of Purba Midnapore was recognized by the West Bengal Board of Secondary Education in 1963 as II Class Junior School and in 1965 as IV Class Junior School. In 1986 the Board upgraded the School permitting them to commence Class IX and X with effect from January 1986 and January 1987 respectively. The School had enough strength to get appropriate sanctioned posts consequent upon recognition. The School in fact filed a writ petition being WP 5244(W) of 1997, inter alia, alleging inaction on the part of the authorities for non-consideration of the prayer for increase of the teaching and non-teaching staff strength in the School. The learned Single Judge directed the authority to consider the representation. The School was not happy. They preferred an

appeal. The Division Bench vide order dated May 21, 1997 appearing at pages 74-76 of the paper book asked the concerned District Inspector of Schools to cause an enquiry to find out staff-student ratio and correspondingly recommend for increase of staff strength. We are told that as per direction of the District Inspector of Schools, the Assistant District Inspector of Schools caused an enquiry. While he was conducting his visit, he found twenty-four teaching and non-teaching staff unapproved. Out of them, six were absent, when he visited the school and others were found present. The District Inspector of School sent the report to the Director of School Education for consideration in terms of the order of the Division Bench. This was done in 1998. On perusal of the purported letters of appointment annexed to the paper book, we find that the respondents being twenty-four in number were appointed on various dates by one Chittaranjan Maity during the period from 1986 to 1991. The said Chittaranjan Maity was the Headmaster and Secretary of the school, who retired in May, 2003. Pertinent to note, original or xerox copies of the letters of appointment were not shown to us, in the paper book typed copies were available, wherefrom the signature could not be verified.

2. Those twenty-four staff filed a writ petition on September 29, 1997 being WP 29352(W) of 1997. The State/appellants claimed that they were never served with a copy of the writ petition, so was the school authority represented by Mr. Arabinda Chatterjee, learned Counsel. Both of them claimed that the proceeding had not been known to the authorities prior to the contempt proceeding was brought. Be that as it may, the writ petitioners filed an interim application before the learned Single Judge being CAN 7886 of 1999 being "application for appropriate order" filed on September 17, 1999. The learned Judge passed the following order:

It appears from the report submitted by the Assistant Inspector of School that the number of approved teaching and non-teaching staff employed in the concerned school is insufficient. It further appears from the said report that more teaching and non-teaching staffs are required to be appointed as a large number of students are studying there. The petitioners are unapproved teachers and non-teaching staff in the said school. Their grievance is that their appointments have not yet been regularized.

Having regard to the aforesaid report which is annexure "H" to the instant application, the Director of School Education, West Bengal is directed to sanction additional posts of teaching and non-teaching staff as per requirement of the school in question within three weeks from the date of communication of this order and thereupon the concerned District Inspector of Schools (SE) Tamaluk shall approve and regularize the appointments of the writ petitioners as Assistant Teachers and non-teaching staffs within two weeks thereafter.

Upon such approval being granted the concerned authorities shall release salaries and other benefits to the writ petitioners within two weeks thereafter.

The application for appropriate order as also the writ application are accordingly disposed of.

3. From the said order it would appear that while disposing of the application, the learned Judge disposed of the writ petition itself without hearing the concerned respondents. The learned Judge relied on the report of the Assistant Inspector that the teaching and non-teaching staff strength was insufficient compared to the student strength. His Lordship directed the Director of School Education "to sanction additional posts of teaching and non-teaching staff" as per requirement of the school within three weeks, coupled with a mandatory direction upon the District Inspector of Schools "to approve and regularize appointments of the writ petitioners as Assistant Teachers and non-teaching staff". In the next paragraph the learned Judge directed release of salary. In effect, the learned Judge directed sanction of posts for filling up of the vacancies by way of regularization only considering the writ petitioners and thereafter, release of their salary. The entire order was passed in absence of the State and/or the school authority. The petitioners then filed contempt proceeding. Another learned Single Judge issued Rule of contempt in 2001. We find series of orders passed by the learned Single Judge in contempt proceeding, wherein an Advocate of this court was appointed as Special Officer for the purpose of implementation of the order. By the order dated September 26, 2003 the learned Single Judge recorded that at the time of passing of the order by the writ court, the school authority was present. We do not find such recording in the original order. Mr. Chatterjee categorically asserted that the school was totally in the dark. The writ petition was never served upon them. The learned Judge further observed that no defence was taken to the writ petition. The learned Judge appointed an Advocate as Special Officer to visit the school to find out the position and furnish a report. The matter was adjourned. The matter came up before the contempt court on December 12, 2003. The Officer-in-Charge of the local Police Station was called and was asked to explain why G.D. entry was refused. The matter again appeared on January 15, 2004. The contempt court monitored sanction of post, the process continued until the State filed the appeal along with an application for condonation of delay.

4. The school authority did not however, file any appeal. Two members of the managing committee filed an appeal before the Division Bench being Appeal no. MAT 721 of 2004. The Division Bench vide order dated April 5, 2004 dismissed the application for leave to appeal by observing that neither the managing committee nor the school filed appeal against the impugned order. The State filed the instant appeal on December 16, 2004, when the Division Bench condoned five years delay and expedited the hearing of the appeal.

5. The appeal has now come up for hearing before us. We have heard the parties at length on the last occasion as well as today.

6. Mr. Jaharlal De, learned Counsel appearing for the State contends that the writ petition was disposed of without serving a copy on the State. The State could not

get any opportunity to place their version. On merits, Mr. De contends that upon the West Bengal School Service Commission Act, 1997 coming into force, the learned Single Judge could not have directed regularization of teaching staff. Mr. De further contends that the order impugned was clearly hit by well settled principle of law, so laid down by the decision of the Apex Court in the case of Secretary, State of Karnataka v. Uma Devi (3) reported in 2006 Volume 4 Supreme Court Cases page 1.

7. Opposing the appeal, Mr. Tapabrata Chakraborty, learned Counsel appearing for the respondents contends that they were appointed in the upgraded section to cope up with the emergent requirement of the school. The school was one of those, who were allowed by the Board to send up students. Hence, the unapproved teaching and nonteaching staff were entitled to be regularized in duly sanctioned posts, which the school was entitled to as on the date of recognition. Mr. Chakraborty has claimed that at best they could be termed as Teachers in position having a chance of regularization. Mr. Chakraborty has relied upon the Division Bench decision in the case of State of West Bengal & Ors. v. Hasna Banu & Ors. reported in 2010 4 Calcutta High Court Notes (Calcutta) 438 as also the Apex Court decision in the case of State of Karnataka and Others Vs. M.L. Kesari and Others, . Relying on the said two decisions, Mr. Chakraborty contends that even if the ratio decided in the case of Uma Devi (supra) would govern the issue that could not have any retrospective effect. The learned Single Judge passed the order in 1999. At that time, the Apex Court decision was not holding the field. Moreover, paragraph 53 of the said decision would rather obligate the Government to take one time measure to regularize irregular appointments. He refers to a Government circular dated September 16, 2011, which is kept on record. Relying on the said circular Mr. Chakraborty contends that when the State decided to regularize the unapproved casual staff in various establishments, they could not discriminate the teaching and non-teaching staff, who are yet to be approved.

8. Elaborating his submission Mr. Chakraborty on merits contends that they were working since 1986 onwards. They were found present by the Assistant Inspector as well as the Special Officer appointed by the contempt court. Their appointments might be irregular. They were however, entitled to be fairly dealt with. The learned Judge directed consideration of their case in the post to be sanctioned. Some of them were appointed even in vacant sanctioned posts. Hence, they could come within the exception, provided in the decision in the case of Uma Devi (supra). Mr. Chakraborty heavily relies on paragraph 5 of the decision in the case of M.L. Kesari (supra), wherein the Two Judge Bench of the Apex Court interpreted the decision in the case of Uma Devi (supra) and observed that the employees working for ten years or more without any blessing of the court in any "duly sanctioned post", they could come within the exception provided paragraph 53 of the decision in the case of Uma Devi (supra). Mr. Chakraborty lastly contends that even in the case of Official Liquidator v. Dayanand reported in 2008 7 Supreme 671 the Apex Court observed that the

Central Government should find ways and means to consider the plight of those casual employees.

9. Supporting the appeal, Mr. Chatterjee, learned Counsel appearing for the school authority submits that the respondents/writ petitioners were never appointed by the school. The school did not have any knowledge of their so-called appointments, even after passing of the order in 1999, the respondents did not take any active step in having implementation of the said order. Mr. Chatterjee wants to show us the resolution of the managing committee upgrading the school. According to him, the respondents/writ petitioners' appointment did not find place in the said resolution. His reference to the resolution is however, strongly opposed by Mr. Chakraborty. According to him, the school authority cannot feign ignorance about their presence by making a statement at the Bar without having any documentary support through proper pleadings.

10. We have considered the rival contentions. In our view, once the learned Judge considered an application for appropriate order, the learned Judge should have satisfied himself as to whether copy of the writ petition was duly served upon the respondents. His Lordship perhaps missed out this aspect. His Lordship might have through inadvertence, disposed of the writ petition itself, which was yet to be served upon the respondents. Hence, the respondents did not get any opportunity to place their version before His Lordship. At the same time, the learned Judge should not have relied upon the statement of the respondents/writ petitioners in the contempt proceeding that the order was passed in presence of the school authority. In the contempt proceeding the court can only pass appropriate order for implementation of the original order. The scope of contempt court is limited. Contempt is between the court and the contemnor. The court is also competent to see that its order is implemented. At the same time, the court cannot extend the scope of the order by widening the same. To that extent, we feel that the learned Judge perhaps was not right in monitoring the sanctioning process that too, by appointing special officer. With all humility and deepest regards we have for His Lordship, we are of the view that the order could not be passed in absence of the respondents being served with the copies of the writ petition.

11. Coming to the factual matrix, we are of the view that the decision in the case of Uma Devi (supra) would squarely apply herein. We are constrained to hold that the respondents/writ petitioners could not come within the exception so highlighted by the Apex Court in the case of M.L. Kesari (supra), as appointment, even if given full credence, was not in duly sanctioned post.

12. The matter may be viewed from another angle. The Apex Court as well as this court repeatedly upheld the fundamental right guaranteed to the citizens specially under Articles 14 and 16 of the Constitution. In any State post or State aided post each and every eligible candidate must get equal opportunity to compete for the same. It is the bounden duty of the State to make the

atmosphere congenial for all eligible candidates to compete for the post. Once the post is sanctioned in the school and salary is disbursed from the State exchequer, it becomes an aided post that would attract the mischief of Articles 14 and 16 of the Constitution obligating the school as well as the State to see that all eligible candidates must get an opportunity to compete for the said post. Even if the authority sanctioned any post as per earlier order of the Division Bench, such post could only be filled up through a regular selection process in accordance with law. There is no concept of regularization of any illegal appointment.

13. We have considered the scheme referred to by Mr. Chakraborty that gave some financial benefit to the casual employees of the State working in different establishments. It is for the State to extend such benefit to the casual employees working in the State aided institutions if they so like, for that the respondents would be free to approach the State. We cannot extend any blessing on that score.

14. If the school has given appointment to the respondents/writ petitioners, they must settle the score with the school or the persons who gave them appointment. The State must not be burdened with such liability and/or responsibility.

15. The appeal succeeds and is allowed. The order under appeal is set aside.

16. There would be however, no order as to costs. Urgent Photostat certified copy of this order, if applied for, be given to the parties on priority basis.

I agree.