

(2006) 07 CAL CK 0018

In the Calcutta High Court

Case No : A.P.O. No. 118 of 2004, G.A. No. 2973 of 2003 and W.P. No. 49 of 2002 & APO No. 118 of 2004, GA No. 2973 of 2003 and WP No. 49 of 2002

State of West Bengal and Others

APPELLANT

Vs

Sk. Manuruddin and Others

RESPONDENT

Date of Decision : 03-07-2006

Acts Referred:

Citation : (2007) 1 CALLT 12

Hon'ble Judges : Vikash Sridhar Sirpurkar, C.J.;Aniruddha Bose, J

Bench : Division Bench

Advocate : Bhudeb Bhattacharya, Shyamal Sarkar and Asim Kumar Halder, for the Appellant;Kamalesh Bhattacharya and Zakir Hossain and Amal Baran Chatterjee, for the School Authority, for the Respondent

Judgement

Vikash Sridhar Sirpurkar, C.J.—This Judgment shall dispose of both the appeals, being A.P.O. No. 118 of 2004 and A.P.O. No. 184 of 2004, which are identical. The questions being commons, the parties have also addressed us jointly. However, for the sake of convenience, we shall first take up A.P.O. No. 118 of 2004.

2. The appeal is filed challenging the Judgment This Judgment shall dispose of both the appeals, being A.P.O. No. passed by the learned single Judge reviewing his own Judgment and thereby holding that the original writ petitioners were entitled to get the approval as the teachers in Madrasah and were also entitled to get the consequent benefits.

3. Few facts would help us understand the controversy involved. All the petitioners are claiming to be the teachers and a non-teaching staff in a Madrasah called Satgharah High Madrasah, Bardipara Road, Kolkata. They claimed that they were appointed in this Madrasah to teach 9th and 10th classes on 30.5.1996. This Madrasah is said to have been started in 1975 but got the recognition as a Junior Madrasah on 7.3.1996. Thereafter, an application was

made to the Government for permission to start the High Madrasah for teaching 9th and 10th classes in the month of April, 1996. The Madrasah started those classes of 9th and 10th in anticipation of the permission from the Government and also proceeded to appoint these teachers. Ultimately, with effect from 22.9.2000, the said Madrasah got the recognition as a High Madrasah in the sense that the earlier Junior Madrasah was upgraded as High Madrasah. The petitioners were not getting the approval though they claimed the status of the organizing teachers in this Madrasah and, therefore, they approached the Court by way of a writ petition. Their claim was opposed on the ground that their name was not found in the DLIT inspection made by the Department and, as such, they could not have claimed the status of the organizing teachers. It was also given out to begin with, that there were affidavits filed by the Secretary of the Managing Committee that these teachers were not appointed at all. This inspection seems to have taken place on 18.5.2000. Be that as it may, in their first round of litigation the petitioners succeeded, in the sense that in that writ petition being W.P. No. 3010 of 2000, the learned Judge M.H.S. Ansari, J., directed that the writ petition should be treated as a representation and for that purpose the copy of the writ petition should be placed by the writ petitioners before the concerned authorities and, thereafter, an inquiry should be made by the Director of School Education to find out as to whether the claim of the teachers was justified or not. In pursuance of that, the Director of School Education directed the Assistant Director of School Education to conduct the inquiry who went to the concerned School in February 2001 and recorded his findings on facts wherein he accepted the fact of the appointment of all the seven writ petitioners. It was seen that separate attendance registers were being maintained for the abovementioned petitioners and it also appeared from the verification of the attendance registers that they were serving continuously since their appointment from 3.5.1996. The attendance registers were also found to have been authenticated by the teacher-in-charge of the said Madrasah and that record was being maintained by the Madrasah management.

4. The Director of School Education on the basis of the report of assistant Director passed an order dated 26/27th of December, 2001, whereby he came to the conclusion that in spite of the aforementioned inspection conducted by the Assistant Director in view of a latest Circular of the State Government being No. 511-SE(S) dated 29.3.2000, the petitioners could not be considered as organizing staff of the Madrasah. It seems that the Director took a view that the appointments of the petitioners were illegal as according to the Director, no prior permission was taken for opening class. 9th and 10th from the competent authority and further, the aforementioned Circular No. 511 SE(S) was clear enough to exclude the persons, such as the petitioners.

5. This order came to be challenged before the learned single Judge of this Court by way of a writ petition being W.P. No. 49 of 2002. The learned Judge partly allowed this writ petition. He took the view that in the fresh inspection which was taken in the month of February, 2001, it was found that the petitioners were

present and were discharging their duties in the schools and the school authority also accepted them as the organizing staff. He also perused the appointment letters alleged given by the school authorities in pursuance of the resolution passed by the Managing Committee. He also observed that at the time of inspection, the school authority was compelled to file affidavit to the effect that there were no organizing teachers in this school. The learned Judge also took a great exception to the DLIT Inspection Report dated 12th February 2000, which was the first DLIT inspection wherein the petitioners were not found to be present and instead, the school authorities had given an affidavit that the petitioners were not the organizing teachers of the school on the ground that that report was not submitted before the learned Judge. The learned Judge then expressed that the organizing staff need not be appointed only at the inception of the school at the bottom level but can be appointed subsequently also. The learned Judge further observed that the organising staff could be appointed anytime before the recognition either at the inception or later on also. On these grounds, the order of the Director, School Education rejecting the prayers of the writ petitioners was set aside. The learned Judge gave the following direction:

The District Inspector of Schools is directed to force a DLIT Team to visit the School on working day upon notice to the all concerned within a week from the date of communication of the order. The team will inspect the matters and furnish a report within a period of two weeks from such date. Thereafter District Inspector of Schools will forward the report of the Director of School Education within one week thereafter. The Director of school Education will take all possible steps within one month from the date of forwarding the report.

6. The petitioners did not keep quiet and instead filed the review petition. In their review petition, they pointed out that in another writ petition being W.P. No. 2559(W) of 2001 Kamarunnessa and Ors. v. State of West Bengal and Ors., which case was identical on facts, the same Hon'ble Judge, Shri Justice Amitava Lala, by his Judgment dated 8th January, 2002 had directed the District Inspector of schools, Calcutta to grant approval to the service of the petitioners therein. It was also pointed out that in pursuance of that, the approval was also granted to the writ petitioners in that case. They, therefore, pointed out that there was inconsistency between the two Judgments of the same Hon'ble Judge and as such, the Judgment was liable to be reviewed and instead of directing an inquiry by sending another inspection team, a relief of approval straightway was liable to be granted.

7. The learned Judge then took up the matter on review and relying on a Judgment of the Supreme Court reported in Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, , Thane, Maharashtra and also relying upon the Division Bench Judgment of this very High Court reported in AIR 2000 Calcutta 73 State of West Bengal and Ors. v. Abdul Kuddus and Ors. accepted the application for review. The learned Judge also held that though the names of the petitioners were not present in the first inspection by

the DLIT, they were found to be present in the second inspection which was ordered by the Court and the facts were comparable to his earlier Judgment in Kamarunnessa's case (cited supra) and, therefore, the petitioners would be entitled to the same reliefs of approval and, therefore, he modified his Judgment by replacing the fifth paragraph at page 5 of his Judgment with the following paragraph:

The petitioners will be entitled for approval of the service and the same will be done by the District Inspector of Schools (S.E.) Calcutta or Hooghly under the strength of the order of the Court within a period of one month from the date of communication of this order.

It is this order, which is in appeal in the present case.

8. Sri Bhudev Bhattacharjya, the learned Counsel for the petitioners, contended that the order passed by the Director in keeping with the Circular No. 511-SE (S) was absolutely correct order and there was no question of interfering with the order either at the first instance or by way of a review of the first Judgment. The learned Counsel says that both the Judgments of the learned single Judge were completely erroneous and were without considering the Government Orders in the field. The learned Counsel took us to the various Government Orders and traced the history of the Government Order bearing No. 511-SE (S) dated 29.3.2000.

8.1. The learned Counsel further pointed out that even on the facts, the original writ petitioners had absolutely no case whatsoever.

9. As against this, Sri Amal Baran Chatterjee and Sri Kamalesh Bhattacharya also traced the history of various Government Orders and suggested that because of these Government Orders and more particularly, G.O. No. 918 - Edn (S) dated 23.10.1992, the petitioners were entitled to be treated as the organizing teachers and as such, were bound to be granted the approval and that the learned Judge was absolutely right in granting the approval.

10. It is not disputed that in the first inspection of DILT which took place in May 2000, the names of these teachers were conspicuously absent. There was no mention anywhere in that report that these teachers were the organizing teachers having been appointed to teach the 9th and 10th classes of the High Madrasah. We have seen the said report which has been counter-signed by the teacher-in-charge and the Secretary of the Managing Committee also. It is suggested therein that there were in all nine members of the Managing Committee and as many as eight staff members, six out of whom were the teaching members while two of them being the non-teaching staff. It is not disputed before us by the respondent original writ petitioners that at the time when this inspection was taken, an affidavit came to be sworn by the Secretary, Managing Committee that there were no other organizing teachers in the school. We are really not concerned with that affidavit because even otherwise the inspection report is extremely clear to suggest that beyond those whose

presence was since noted, there was no other teaching staff. It has to be remembered that this inspection was for the purposes of upgradation of the Junior Madrasah. The Madrasah though had started in 1975 was recognized only on 7.3.1996, whereafter immediately in the month of April 1996, an application was made by the Madrasah for upgradation. The inspection was for the sole purpose of upgradation of the Madrasah. The report suggests a thorough inspection not only of the records of the Madrasah, but it also suggests the mention of the particulars regarding the properties both moveable as well as immovable. The report also refers to the library and the records of the attendance of the students. It also gives the particulars of the approved staff and non-teaching staff. The report also speaks about the financial aspects of the Madrasah. On the backdrop of this, what is most significant is the total absence of the names of the petitioners as a part of the teaching staff of that Madrasah.

11. As compared to this inspection report, there is a second inspection report. The learned single Judge had directed in the earlier petition by his order dated 14.12.2000 to examine the claim of the petitioners and the Director, therefore, had by his order dated 8.1.2001 directed the A.D.S.E. to inquire. In pursuance to that, if seems that the A.D.S.E. actually visited the Madrasah and found the seven persons present, they being the teachers and the non-teaching staff also. It is mentioned in the report that there were separate attendance registers maintained for the said staff and that they have been continuously serving from 3.5.1996. It is then reported that the appointment of teaching and non-teaching staff was in violation of the Government rules. It is then revealed from the report that on being asked, the Managing Committee members stated that they were compelled to swear an affidavit that there was no organizing teacher and they had sworn the affidavit in consideration of the education of the girl students of the muslim community who would have been deprived of such education had the recognition not been granted for the High Madrasah. This second report appears to be an extremely suspicious document where a complete volte-face has been made about the existence of the teaching and non-teaching staff who are the petitioners herein.

12. Sri Bhattacharyya, appearing for the Government, invited our attention particularly to the very Government Order No. 511-SE (S) dated 29th March, 2000. He claimed that this was the last Government Order on the subject of the approval of the appellant of organizer teachers and non-teaching staff in Junior Madrasah and Junior High Madrasah upon their upgradation by the West Bengal Board of Madrasah Education. The learned Counsel was at pains to point out therefrom that this Government Order gives a complete history regarding the abovementioned subject. It will be better if that G.O. is reproduced:

Government of West Bengal School Education Department Secondary Branch

No. 511-SE(S)/4A-6/2000

Dated, Calcutta, the 29th March, 2000

MEMORANDUM

Sub: Approval of appointment of organizer teachers and non-teaching staff in Jr. Madrasah and Jr. High Madrasah upon their upgradation by the West Bengal Board of Madrasah Ed.

The question of according approval to the organizing teachers non-teaching staff of Jr. Madrasah and Jr. High Madrasah upgraded by the West Bengal Board of Madrasah Education on the recommendation of the State Government has been engaging the attention of the Government for some time past.

The teaching and non-teaching staff of upgraded recognized 4 class Jr. High School as have been previously permitted by the West Bengal Board of Secondary Education to send up examinees for Madhyamik Examination and who were serving at the school for non recognised Unit of Classes IX & X at the time of dissolution of those units by the West Bengal Board of Secondary Education. Circular No. 1/76 dated 31.1.1978 and who have been continuously serving at the school with proper educational qualification and who were within prescribed age limit at the time initial appointment have been allowed to be treated as organizer staff on fulfillment of some other conditions. But in case of Madrasah no such permission was given by West Bengal Board of Madrasah Education to any recognized 4-Class Jr. High Madrasah to send up examinees for Madrasah Examination. Naturally, authority of any recognized Jr. High Madrasah was not in need of opening any non-recognised units of class IX & X and consequently no person was required to be appointed by the authority to run those unrecognized units.

After careful consideration of the fact that no recognised 4-class Junior High School upon upgradation excepting a very specific and limited cases mentioned above has been allowed organizer staff and in absence of any order from the West Bengal Board of Madrasah Education allowing recognised Junior High Madrasah to send up examinees for Madrasah Education (at the end of class X) it is hereby clarified that existence of any organizer teacher or non-teaching staff in a 4 class Junior High Madrasah upon their upgradation by the West Bengal Board of Madrasah Education on the recommendation of the State Government is not considered acceptable and no person will be treated as organizing staff in a four class Junior High Madrasah upon upgradation by the West Bengal Board of Madrasah Education.

However, upon first recognition/upgradation of any recognised two-class Junior Madrasah to four class Junior Madrasah or upon first recognition of four class Junior High Madrasah the teaching and non-teaching staff as have been appointed by such Madrasahs in conformity with the following conditions for running unrecognized classes may be considered for approval provided that-

1. The names of such teachers and non-teaching staff are recorded in the Inspection Report of DLIT leading to such upgradation;

2. Such staff possess the minimum qualification for their respective posts on the date of their initial appointment as was existing on that date;
3. Such staff were within the prescribed age limit to the date of initial appointment as was existing on that date;
4. Such staff shall be approved in strict conformity to staff pattern. If it is found that in a particular group there are more staff than admissible in staff pattern, the senior one will be for consideration of approval.

This order issues in supersession of G.O. No. 918-Edn.(S) dated 23.10.92 and all other Government orders on the subject.

All concerned be informed accordingly.

Secretary Government of West Bengal.

(Emphasis Ours)

13. If we glance at this, it clearly reveals that there used to be recognised 4-class Junior High Schools and such high schools used to also hold classes for 9th and 10th which were unrecognized. Thus, the schools used to prepare students for Madhyamik Examination. Now because of the unrecognized status of the classes of 9th and 10th, a decision was taken by the West Bengal Board of Secondary Education that the students of such schools should be allowed to be sent up for the Madhyamik Examination. Because of this decision, a further decision was taken that such teachers who were teaching the unrecognized classes of 9th and 10th and were having the proper educational qualifications and were within the prescribed age limit at the time of initial appointment and who were continuously serving the school, should be given the benefit of approval as organizing teachers. However, no such permissions for sending the students for High Madrasah Madhyamik standard Examination was being given by the West Bengal Board of Madrasah Education and, therefore, such Junior 4-class Madrasah High School in reality had no necessity to run the 9th and 10th classes and, therefore, there was no question of there being any organizing teachers for such class and as such, a decision was taken that in case of such teachers who are claiming to be the organizing teachers and teaching 9th and 10th classes of High Madrasah, they should not be given the approval as organizing teachers. It is clear from the language of the Government Order that the Government refused to accept even the existence of such organizing teachers or non-teaching staff in a 4-class Junior School Madrasah upon their upgradation by the West Bengal Board of Madrasah Education on the recommendation of the State Government. The Government, therefore, has clearly declared in this G.O. that no person would be treated as organizing staff in a 4-class Junior High Madrasah upon its upgradation. According to the learned Counsel, the factual situation is exactly covered by this G.O. In the present case also, the present Madrasah though was claiming to be in existence from 1975, was recognised for the, first time in the year 1996 as a 4-class Junior Madrasah

and immediately thereafter, it was claimed by the petitioners that they joined the said Madrasah as the teachers claiming themselves to be the organizing teachers for the classes of 9th and 10th. The said Madrasah when upgraded in the year 2000, these petitioners claimed the status of organizing teachers of Madrasah and it is precisely this factual situation which is covered by the said G.O. against the petitioners. On this backdrop, we must record that in the first inspection of the school, there was not even a trace of these teachers.

14. It was tried to be argued that there was no column in the prescribed form for mentioning such information. We were taken through departmental instructions also by Sri Chatterjee. However, we must take note of the fact that firstly these teachers were not located. Secondly, no such record of their teaching or their appointment or their continuation as the teachers was ever produced and lastly, there was an affidavit by the Managing Committee that there was no organising teaching or non-teaching staff in the school. It is this precise situation which has been covered in the aforementioned Government Order. The organising status has been granted only to the 2-class Junior Madrasah on its first recognition/upgradation to the 4-class Junior Madrasah, but such benefit is not to be found in case of the 4-class Madrasah, being upgraded to High Madrasah. In our opinion, this Government Order should clinch the issue.

15. Sri Chatterjee tried to rely on the G.O. No. 918-Edn.(S) dated 23rd October, 1992. There can be no doubt that this G.O. No. 918 supports the petitioners. However, we cannot ignore the fact that the G.O. No. 511-SE(S) dated 29.3.2000 was issued in supersession of G.O. No. 918 Edn.(S) dated 23.10.1992 which is clear from the highlighted portion above. Once this position is clear, there could be no question of any reliance on G.O. 918. Unfortunately, the aforementioned Government Order has not been considered by the learned single Judge in his review Judgment as also the first Judgment. In both the Judgments, the learned Judge seems to have gone on the general principles that the teachers or the staff who have joined even subsequently after the inception of the school, could be termed as the organizer staff and once they are so held to be organizer staff, they would be automatically entitled for the regularization. Unfortunately, the learned Judge has not given any reasons as to why such teachers who have joined much later after the inception, should be firstly termed as an organizer staff and should be entitled to the benefit of regularization.

16. The concept of regularization of the organizer teachers though had emanated from this Memo No. 553-Edn(S) dated 26th April, 1978, ultimately we would have to fall back upon the last Memo No. 511 which pertains to the Madrasah education and which is the current Memo in the field. It will be seen in this behalf that the relief to the organizer teachers has come only from the Government Orders. No such relief is to be found in the provisions of the Secondary School Education Act.

17. A feeble argument was tried to be raised that these teachers having been employed in the year 1996, they should be allowed to be governed by Memo No.

918 dated 23rd October, 1992, which gave them the benefit of approval. The argument is clearly incorrect. The school itself became upgraded school after 29th March, 2000 and to be precise on 22.9.2000. It will be only after the upgradation, of the High Madrasah that the question of the consideration of organizer teachers" approval would come. On that date, the applicable Government Order was only 511 and not 918 which was superseded. Therefore, there would be no question of falling back upon the Memo No. 918 dated 23rd October, 1992 merely because these teachers were appointed in 1996. We have already expressed our doubts about these teachers working in reality right from 1996 because of their total non-mention in the inspection report on 18.5.2000. Under such circumstances, the petitioners could not have been given the benefit of approval as the organizing teachers. In fact, the concept of an organizing teacher in an upgraded High Madrasah is abhorrent to the Government which is clear from the language of the Memo No. 511 and the reluctance on the part of the Government to accept such teachers emanates from the fact that there is in reality no necessity of the 9th and 10th classes because if the students take admission in the 9th and 10th classes of such Madrasah, they cannot be sent for Madhyamik examination. Thus, the very purpose on the part of the students of joining such Madrasahs would be frustrated. In our opinion, the Government has taken a right stances in not accepting the existence of such classes being run by the Junior Madrasahs or the teachers, being the organizing teachers for such classes. Once the existence of classes itself is denied, naturally there would be no question of accepting the existence of organizing teachers who were supposedly engaged for teaching such classes.

18. Unfortunately, all these aspects were completely missed by the learned single Judge in his first Judgment as also in the Judgment for review.

19. We will not go into the question as to whether the learned Judge was entitled to review his Judgment and to grant a broader benefit of approval to the petitioners which he had not granted in the first Judgment, because, in our opinion, the learned Judge could not have granted any benefit whatsoever in the wake of G.O. No. 511 dated 29.3.2000. In our opinion, the learned Judge would have been justified in dismissing the writ petition instead. In the result, the appeal succeeds. The impugned Judgment is set aside and the writ petition is directed to be dismissed.

20. The analogous appeal turns on the identical facts. The learned Judge had also disposed of the writ petition filed by Sk. Asgar Ali and Ors., who were the writ petitioners and who are the concerned respondents in the appeal, by the common Judgment which we have already commented upon. The parties fairly agreed that there would be no necessity of going into the facts. In that view, we would choose to dispose of this appeal also.