
(2011) 04 CAL CK 0076
In the Calcutta High Court
Case No : F.M.A. No. 1182 of 2010

State of West Bengal

APPELLANT

Vs

Sikha Nandi

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Citation : (2012) 4 CHN 659

Hon'ble Judges : Kalyan Jyoti Sengupta, J;Asim Kumar Ray, J

Bench : Division Bench

Advocate : Joydeep Kar and Saikat Banerjee, for the Appellant;Subir Sanyal and Ratul Biswas, for the Respondent

Final Decision : Allowed

Judgement

Kalyan Jyoti Sengupta, J.—At the instance of the State-appellant, the present appeal has been filed impugning the judgment and order of the learned Trial Judge passed in connection with the writ petition being W.P 3034(W) of 1997. The learned Trial Judge while allowing the writ petition directed the Director of School Education to quash the Memo dated 20th August, 1988 issued by him and further directed the said authority to take immediate steps for according approval to the appointment of the writ petitioner in the concerned school as an Assistant Teacher in Bengali.

2. The admitted fact of the case is that the writ petitioner/respondent was appointed by the then Secretary of the School on 20th June, 1974 as an organizer teacher in the stream of Classes IX and X of the upgraded section of the school and to join on and from 1st July, 1974. On the date of issuance of the letter of appointment it appears that the writ petitioner/respondent did not complete her Hons. Graduation and as such, a resolution was adopted by the Managing Committee that as and when the writ petitioner would pass B.A (Hons.) Examination, she would be appointed permanent teacher of the said school. Subsequently, the writ petitioner passed B.A (Hons.) Examination and as such, she was engaged in the upgraded section of the school. She had been

working as organizer teacher on and from the date of appointment till 30th June, 1980. Thus, she had served continuously as an organizer teacher from 1st July, 1974 to 30th June, 1980 when she was asked by the then Managing Committee to discontinue her service till the school is granted recognition for upgraded section viz. Classes IX and X. It was also assured by the Managing Committee that the moment recognition is granted, she would be taken back in future. Thereafter the school was subsequently inspected by the District Level Inspection Team in March, 1986 and said Team prepared report of inspection wherein it was recorded that the writ petitioner had worked since 1st July, 1974 to 23rd December, 1978. Subsequently, two sections of the said school was recognized and teaching staff pattern of the school was also provided. In the recognition Memo the post of Bengali Teacher in which the petitioner was then serving and now is serving, is also created. On recognition being granted, the writ petitioner was allowed to resume her duty and since then she has been continuing in the service of the said school and holding the post of Assistant Teacher in Bengali. Consequent upon the recognition, follow up action was taken for granting approval to the appointment as organizer teachers. The writ petitioner/respondent's appointment was not approved, hence, dispute arose.

3. It appears that the writ petitioner filed above writ-petition asking for approval to her appointment as an organizer teacher consequent upon recognition having been granted. The said writ petition was dismissed on 2nd June 1998. However, on appeal the Division Bench by an order dated 15th May, 2002 set aside the order of dismissal of the writ petition and the matter was remitted for fresh hearing by the learned Trial Judge. The learned Trial Judge thereafter heard out the matter and passed the aforesaid impugned judgment and order.

4. In the Memorandum of Appeal various grounds have been taken to assail the judgment and order of the learned Trial Judge.

5. However, Mr. Jaydeep Kar, learned counsel, appearing for the appellant chose to argue on the limited grounds. He submits that the order directing to grant approval to the appointment of the writ petitioner is patently erroneous in the eye of law, as admittedly, the petitioner's service was discontinued on and from 1st July, 1980 long before the date of recognition even before date of inspection of District Level Inspection Team. Her previous service as an organizer teacher from 1974 to 1980 cannot be treated to be a reckoning factor for accepting her an organizer teacher. When she had decided to discontinue her service at the instance of the Managing Committee, she had done so at her own risk. Moreover, Mr. Kar contends that she did not have the requisite qualification at the time of appointment as an organizer teacher and admittedly on that date she did not qualify herself to be an honours graduate. Therefore, the judgment and order of the learned Trial Judge is not sustainable.

6. Mr. Subir Sanyal, learned counsel, appearing for the writ petitioner/respondent submits that admittedly the writ petitioner/respondent from 1st July, 1974 till 30th June, 1980 had rendered services as an organizer teacher and she

did not leave the school of her own. The school authority had asked her to discontinue services as at that point of time recognition was not granted and it was assured that when the recognition would be granted, she would be taken back in service. He further submits that writ-petitioner's services from 1st July 1974 till 1978 has been recorded in the report of the District Level Inspection Team. During this period the Board instead of taking steps for recognition permitted the school to send up students to take secondary examination. Her involuntary discontinuance from 1st July, 1980 does not disqualify her in getting approval to her appointment. Therefore, she cannot be penalised for the wrong decision having been taken by the Managing Committee. Immediately after recognition, she was taken back to the same school and in the same post. He drawing our attention to a circular issued by the Director of School Education, No. 2605(16)-Sc/S dated, Calcutta, the 20th December, 1984 submits with support thereof, that the period of discontinuance of above period is not disentitlement of the writ petitioner/respondent in getting approval of her appointment. He emphasises that by virtue of Government Circular No. 1224-Edn (S) 4A-53187 dated 5th December, 1987 his client because of rendering services of above period is entitled to be appointed organizer teacher on recognition being granted, automatically.

7. So far as the issue of under-qualification at the time of appointment is concerned, he contends that on the date of appointment she did not get the certificate of the result of B.A (Hons.) Part-II Examination but subsequent to joining she got the certificate in the "month of July, 1974. Hence, it cannot be said that she did not have qualification at the time of joining.

8. After hearing the learned counsels for the parties we find the issue which has fallen for consideration before us is whether the learned Trial Judge has rightly granted relief to the writ petitioner/respondent directing Director of School Education to accord approval to her appointment as an organizer teacher or not.

9. Mr. Kar submits that the period of discontinuance of service from 1st July, 1980 till the date of recognition, is fatal and it cannot be accepted at all and she should not have been allowed to resume her duty in the post for which recognition was granted, it should have been filled up by resorting to regular recruitment process as it was available then.

10. We are unable to accept above contention of Mr. Kar in view of the above notification which has been rightly drawn to our attention by Mr. Sanyal. Above period of discontinuance of the service of organizer teacher does not disqualify. In clause (iv) of the said circular dated 20th December, 1984, remedial measure is provided in case of discontinuance in certain circumstances. We, therefore, set out the relevant portion of the same:

.....In case of X-Class High Schools the cases of those teachers who were in service on the date of discontinuation of Class IX and/or X but not later than 10.3.79 vide Board's Notification issued in this regard from time to time should

be considered.

11. The learned Trial Judge, in our view, rightly having taken note of the aforesaid provision, has held that the period of discontinuance does not disqualify the petitioner as she was admittedly in service in the school prior to recognition of upgraded section on and from 1st July 1974 till 30th June, 1980. Even in the DLIT report in 1987 it is recorded that she served as organizer teacher from 1974 to 1978 in upgraded section and during this period the Board instead of taking decision for recognition thereon applied for in 1974 allowed the school to send up students to take Madhyamik examination. It is also admitted position as it appears from the records the Board discontinued the policy of permitting unrecognized High School to send up students from 1979. The Government by the said Memorandum dated 5th December, 1987 as referred to appropriately, by Mr. Sanyal, stipulated amongst other (at page 64 of the Paper Book) as follows:-

The qualified staff of recognized Junior High School which was granted special permission by the said Board to send up candidates for the Madhyamik/School Final Examinations may also be provided for appointment as organizer teacher or non-teaching staff consequent upon the schools being upgraded to a high school provided that: (a) the names of such teachers or non-teaching staff were recorded in the Inspection report leading to such recognition, (b) such teaching or non-teaching staff possess prescribed qualification for the posts including academic and age qualifications at the time of initial appointment, (c) such staff were appointed by the said school on or before 10.3.1979, (d) that such staff teaching and non-teaching conform to the staff pattern of a high school as laid down in G.O. No. 772-Edn (S) dated 8th July, 1974. (emphasis supplied by us)

12. We find it is un-controverted statement that the school applied for recognition of upgraded section of class IX and X in 1974 when the writ petitioner was appointed. It is not the case of the appellant that writ-petitioner's appointment does not conform to the staff pattern as prescribed by the Government as above.

13. In view of the above it has to be declared the writ petitioner is lawful organizer teacher, as her discontinuance in service has to be overlooked in view of above circulars, her previous workings prior to 1979 is reflected in DLIT report.

14. Besides the learned Trial Judge has taken note of the clarificatory Memo being No. 2232/SE dated 20th June, 1988 (at page 74 of Paper Book), and on reading all the said circulars the learned Trial Judge, in our view, rightly came to the conclusion that the petitioner's length of service is sufficient to qualify herself to be treated as an organizer teacher.

15. As far as the issue of under-qualification at the time of appointment is concerned, it appears that the petitioner was appointed initially on temporary basis on 1st July 1974 as her result in B.A (Hons.) Part-II Examination was not declared but when she was subsequently declared successful in Part II Hons.

Examination, and certificate was produced soon thereafter, the school authority by resolution dated 30th July 1974 made her permanent. Her appointment cannot be said to be invalid on the ground of non-submission of certificate on the date of initial appointment, which was contingent upon passing of B.A. (Hons) Part II Examination for on declaration of being passed later on, appointment should be given retrospective effect. Therefore, we are of the view that because of late submission of certificate, she cannot be held to be an under-qualified. Accordingly, this issue also has no substance. Moreover, this issue was not agitated before the learned trial Judge. We are, therefore, unable to accept the contention of Mr. Kar that direction for granting approval by the learned Trial Judge, to the appointment of the petitioner as an organizer teacher does not call for any interference and we uphold the same. However before granting approval the District Inspector of School concerned must examine the following aspect:

(i) whether the writ-petitioner has been continuously serving on and from January 1988,

(ii) whether her functioning as teacher within the sanctioned staff pattern or not.

16. There will be no order as to costs.

17. Since the appeal is allowed, time to carry out the judgment and order of the learned Trial Judge is extended for a period of six weeks from the date of communication of this order.

Asim Kumar Ray, J.

I agree.