
(2015) 12 TP CK 0011
In the Tripura High Court
Case No : WA No. 13 of 2015

Tapan Kanti Das

APPELLANT

Vs

Chaitali Sarkar and Others

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Citation : (2015) 12 TP CK 0011

Hon'ble Judges : Deepak Gupta, C.J. and S.C. Das, J.

Bench : Division Bench

Advocate : A.K. Bhowmik, Senior Advocate and A. Banik, Advocate, for the Appellant; S. Deb, Senior Advocate, S. Chakraborty, Addl. G.A., A.S. Lodh, P. Datta and T. Debbarma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.

1. This writ appeal is directed against the judgment dated 08.05.2015 delivered by a learned Single Judge of this Court, whereby he allowed the writ petition filed by Smti. Chaitali Sarkar, respondent No. 1 herein and quashed the appointment of the appellant Sri Tapan Kanti Das as Post Graduate Teacher (Bengali) in Golden Valley H.S. (+2 stage) School, Rajbari, Dharmanagar.

2. The admitted facts are that this school is a Government aided school. An advertisement was issued inviting applications for various posts. The case of the original writ petitioner was that the school did not follow the guidelines given by the Government for recruitment of teachers.

3. The Tripura Grant-In-Aid (Government Aided Schools) Rules, 2005 deal with the issue of aided schools. Rule 3 lays down the terms and conditions for having Grant-In-Aid status. Clause (c) of Rule 3 reads as follows:-

"Rule 3. TERMS AND CONDITIONS FOR HAVING GRANT-IN-AID STATUS:- xx xx
xx (c)-There should be required teachers including trained teachers as per the

guidelines applicable from time to time; xxx xxx xxx"

Therefore, according to these Rules the teachers should be as per the guidelines applicable from time to time.

4. Clause 4(a)(i) reads as follows:-

"4. ELIGIBILITY FOR PAYMENT OF GRANT-IN-AID:- (a) A school already granted the status of Grant-in-aid shall fulfil the following in order to become eligible for getting payment of grant-in-aid:

(i) Has faithfully complied all the official instructions, provision of rules in the matter of staff, academic affairs, accounts, financial requirement etc.; xxx xxx xxx"

5. The functions of the Managing Committees of the aided schools are laid down in Rule 5 and the relevant portions of this Rule 5(i) reads as follows:-

"5. FUNCTION OF THE MANAGING COMMITTEES:-

xxx xxx xxx

i) Appointment to all teaching & non-teaching employees including Headmaster/ Headmistress and Assistant Headmaster/Assistant Headmistress shall be made in accordance with the direction given by the Director of School Education and on the basis of the recommendation of the duly constituted Selection Board/ Departmental Promotion Committee (DPC). No appointment shall be made unless it is duly approved by the Director of School Education who shall obtain approval of the Education (School) Department including Finance Department wherever needed; xxx xxx xxx"

6. The State Government had laid down certain guidelines as to how the merit of the candidates should be assessed while conducting interviews in Government Aided Schools. The State Government issued a memorandum dated 02.01.2001, Annexure-3 to the writ petition. The relevant portion of the memorandum reads as follows:-

"No. F. 10(2-41)-DSE/2000

Government of Tripura Education Department (School Education)

Dated, Agartala The 2-1-2001

MEMO

It has been decided that henceforth the following guidelines should be followed for recruiting the staff in Govt. Aided Schools. This will be take effect from the date of issue of this memo.

xxx xxx xxx xxx

(2) Total marks in interview in respect of merit-cum-seniority will be 100 with the

following breakup.

xxx xxx xxx xxx

(3) DETAILS OF 70 MARKS TO BE ALLOTTED IN RESPECT OF ACADEMIC QUALIFICATION BASED ON PUBLIC EXAMINATION

N.B. (i) For recruitment of teacher in H.S.(+2 stage) school and Secondary/ Middle stage schools average of mark allotted for each Public Examination may be taken in to account.

(ii) For recruitment of teachers in H.S.(+2 Stage) Schools 2(two) marks may be given in respect of candidates possessing qualification of Master Degree with Honours subject to the condition that total marks allotted to academic performance should not exceed 70."

7. The grievance of the writ petitioner was that these instructions were not followed and average marks were not worked out. On the other hand the stand of the state was that since the selection was being made for appointment of Post Graduate Teachers only the marks in the last qualifying examination were taken into consideration.

8. The claim of the petitioner is that if the marks had been worked out in accordance with instruction, the writ petitioner would have scored higher marks than the writ appellant and should have been selected.

9. The Learned Single Judge found the allegations of the writ petitioner to be correct and came to the conclusion that the selection was unfair because the guidelines had not been followed. He, therefore, allowed the writ petition and set aside the appointment of the respondent No. 7, who is the writ appellant. Aggrieved by the said judgment the appellant has filed the present appeal.

10. Sri A.K. Bhowmik, learned senior counsel, has argued that the selection is not unfair because the writ petitioner was awarded much higher marks in the interview. He also urges that the guidelines are only guidelines and these are directory in nature and even if the same have been violated the appointment of the appellant should not have been struck down.

11. The stand of the Managing Committee of the school is that though the guidelines were not followed the school followed a proper system and evaluated the marks on the basis of the marks obtained in the last qualifying examination.

12. Sri Bhowmik, learned senior counsel, has placed reliance on the judgment of The Apex Court in Rubber House Vs. Excellsior Needle Industries Pvt. Ltd., , wherein the Apex Court held as follows:-

"26. xxx xxx xxx "Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the

object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or validity: if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good.""

13. He submits that since the guidelines do not lay down the consequences for non-compliance of the guidelines the appointment of the writ appellant should not have been set aside. He also contended that the appellant has been working for more than 6 years and, therefore, it would not be fair to set aside the appointment.

14. As far as the last argument is concerned we are not in agreement with the same. The writ petitioner filed the writ petition in the year 2009. She approached this Court at the earliest. She has not delayed the matter and just because the case has dragged on for many years is no ground to deny relief to her.

15. On the merits of the case, the Government Aided Rules referred to above clearly indicate that in order to claim Grant-In-Aid, the aided schools must follow the guidelines, instructions, rules laid down by the State and if the same are violated, the school would be dis-entitled from claiming any Grant-In-Aid.

16. It was also urged by Mr. Bhowmik, learned senior counsel that in the note in Clause (i) below to Clause 3 of the Memo dated 02.01.2001, the word "may" have been used and this means that the guidelines are only directory and not mandatory.

17. We are not at all in agreement with this submission. The guidelines clearly lay down how marks are to be allotted for various examinations, and with respect to recruitment of teachers who are to teach in H.S.(+2 stage) School, the average of marks obtained in each public examinations may be taken in record. In our opinion this may has to be read as "shall" because otherwise there can be no average for all the public examinations. If we were not to give this interpretation then the interview board could follow any system which would not be conducive to fair selection. We are in total agreement with the learned Single Judge that the guidelines are binding on schools and merely because the word "may" has been used does not mean that the guidelines are not to be followed.

18. If the guidelines are not followed then there may not be any proper evaluating of the result of the candidates in various examinations. In the present case, it is true that according to the school it has made selections on the basis of the marks obtained in the qualifying examinations. That may mean there is uniformity in the process but we are clearly of the view that though there may be uniformity in the process of selection and their may not having been any bias for or against the writ petitioner, there has been violation of the salutary guidelines which amounts to unfairness in selections. Therefore, we feel that the learned Single Judge was fully justified in allowing the writ petition.

19. In view of the above discussion, we do not find any merit in the appeal,

which is, accordingly, dismissed. No costs.