
(1991) 06 CAL CK 0038
In the Calcutta High Court
Case No : F.M.A.T. No. 3594 of 1990

The Chairman, Ad Hoc Committee

APPELLANT

Vs

Jitendra Nath Chatterjee and Others

RESPONDENT

Date of Decision : 05-06-1991

Acts Referred:

Bengal (Rural) Primary Education Rules, 1930 — Rule 3D
West Bengal Primary Education (Amendment) Act, 1973 — Section 60(1)

Citation : (1991) 2 CALLT 201 : 95 CWN 754

Hon'ble Judges : Nagendra Prasad Singh, C.J.; Tarun Chatterjee, J

Bench : Division Bench

Advocate : Arun Prakash Sircar and Debaprasad Mukherjee II, for the Appellant; Ranajit Mukherjee, for Respondent Nos. 1, 2 and 3, P.C. Dutta and Bikash Ranjan Bhattacharyya, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, C.J.—This appeal has been filed on behalf of the Chairman, Ad hoc Committee, District Primary School Council, Burdwan (hereinafter referred to as "the Council"), for setting aside an order dated November 23, 1990 passed by a learned Judge of this Court on a writ application filed on behalf of the writ petitioners-respondents. The writ application had been filed on behalf of the said respondents alleging that they had organised a primary school in the District of Burwan as early as in the year 1973 and they have been working in the said school as Organiser Teachers. It was also alleged that in spite of several representations made on their behalf neither the School in question was recognised by the then District School Board, nor the appointments of the Organiser Teachers were approved.

2. The learned Judge after hearing the counsel for the parties has directed the Director of the School Education, West Bengal Primary Branch, and other respondents to the writ application to accord approval to the School with effect from 1st January, 1991 and to appoint the Organiser Teachers and to approve

the appointment of the Organiser Teachers with effect from the date of such recognition of the School.

3. On behalf of the appellant an application for interim relief has been filed. During the hearing of the said application both parties agreed, including the writ petitioners-respondents, that the appeal itself be treated as on today's list and be disposed of along with the application for interim relief. Accordingly, the appeal was heard on merits.

4. Rules have been framed in exercise of the power under Sub-section (2) of Section 66 of the Bengal (Rural) Primary Education Act, 1930. Rule 3D as it originally stood was as follows:-

"Notwithstanding anything contained in Rule 3, Rule 3A or Rule 3B, but subject to the provision of Rule 3C, a qualified person serving as organiser-teacher in a Primary School, ever since that school was established, may be appointed, with the prior approval of the Director of Public Instruction, West Bengal, as an assistant teacher of the school at the time it is granted recognition".

5. In view of the aforesaid statutory Rule 3D, a qualified person serving as Organiser-Teacher in a Primary School, ever since that School was established, could be appointed, with the prior approval of the Director of Public Instruction, West Bengal, as an Assistant Teacher of the School at the time of recognition granted to such School.

6. It was brought to our notice that the aforesaid Rule 3D was substituted by another Rule 3D by a Notification dated 11th September, 1980 issued in exercise of the power under Sub-section (2) of Section 66 of the Bengal (Rural) Primary Education Act, 1930. The amendment aforesaid is as follows :-

"3D. Notwithstanding anything contained in Rule 3, Rule 3A or Rule 3B, but subject to the provisions of Rule 3C, a ward of a primary teacher who dies in harness may be appointed, with the approval of the Director of Public Instruction, West Bengal, as an assistant teacher against regular vacancy irrespective of whether the available vacancy is to be reserved for trained or untrained candidates, provided that he/ she fulfils the minimum qualifications for such appointment".

7. In view of the amendment and substitution of Rule 3D by the aforesaid Notification dated September 11, 1980, now there is no provision enabling the authorities concerned to appoint a qualified person serving" as an Organiser-Teacher in a Primary School as an Assistant Teacher of the School at the time the recognition is granted.

8. Now, only the question of recognition of such School can be considered in accordance with the provisions of Section 60(1)(I) of the West Bengal Primary Education Act, 1973 which has come into force after repeal of the West Bengal (Rural) Primary Education Act, 1930. Although the West Bengal (Rural) Primary Education Act 1930 has been repealed, the Rules framed u/s 66(2) of the said

Act with amendments and substitution are yet in force. It may be mentioned that now the District Education Board has been substituted by Primary School Council and it is the duty of such Primary School Council to consider the question of grant of recognition to Primary Schools in exercise of the power u/s 60(1) (I) of the West Bengal Primary Education Act, 1973, which is as follows:

"Section 60. Duties of the Primary School Council.-

(1) It shall be the duty of every Primary School Council-

* * * * * (I) to grant recognition to primary schools with or without conditions or to withdraw recognition and to grant financial aid to any such primary schools or to withdraw such aid, in such manner, as may be prescribed;

* * * * *

9. There should not be any dispute that for recognition of any Primary School, application for recognition has to be made in the prescribed manner on behalf of the school in question. But in view of the fact that old Rule 3D which provided for the appointment of an organiser teacher at the time of the recognition of the school has been deleted as early as 11th September 1980, now it is not possible for this Court to direct appointment of Such teacher while granting recognition of the school.

10. Taking all facts and circumstances into consideration, we direct the organisers of the school in question to file an application in the prescribed manner for recognition of the school before the District Primary School Council within six weeks from today. If any such application is filed, the District Primary School Council shall get the school inspected within one month from the date of making of such application and thereafter an appropriate order in accordance with law shall be passed in respect of recognition of the school in question within one month from the date of holding the inspection. As observed earlier, now there is no question of approving the appointment of any organiser teacher under the changed circumstances. If the school in question is recognised, it will be open to any organiser teacher to apply for his name to be included in the panel to be prepared in accordance with the provisions in the Rules. If any such application for inclusion of name in the panel is made, the same shall be considered in accordance with law.

11. The appeal is allowed. The judgment under appeal is set aside. The application for interim relief is also disposed of.

Tarun Chatterjee, J.

12. I agree.