

(2007) 02 CAL CK 0050
In the Calcutta High Court
Case No : F.M.A. No. 411 of 2002

The Chairman, District Primary School Council	APPELLANT
Vs	
Smt. Santa Roy (Singh)	RESPONDENT

Date of Decision : 01-02-2007

Acts Referred:

Citation : (2007) 2 CALLT 198

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Tulsidas Maity, for the Appellant; Subir Sanyal and Sutirtha Das, for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal is directed against the Judgment and order dated 20th November, 2001 passed by the learned single Judge in CO. No. 7797(W) of 1991 whereby and whereunder the said learned single Judge disposed of the writ petition by directing the concerned authority to take all possible steps for the purpose of approving the service of the writ petitioner.

2. The writ petitioner was appointed as Assistant Teacher initially against the normal vacancy created due to resignation of one Sri Surendranath Singh, an approved Assistant Teacher of Shree Nehru Vidyalaya and thereafter, pursuant to the subsequent written communication of the said school authorities, the said petitioner was informed about her appointment against additional post w.e.f. 19th November, 1974. The writ petitioner prayed for a direction upon the respondents to approve the service of the petitioner.

3. Considering the submissions of the learned Counsel of the respective parties learned single Judge disposed of the writ petition with the following directions:

Therefore, taking into totality of the facts and circumstances of the case I find that the petitioner has a positive case of regularisation of service. As a result thereof the authority concerned either District Inspector of Schools or superior

authority being the Director of School Education or the Primary School Council who has stepped in the shoes of the erstwhile School Board is hereby directed to call for the records and the school authority is also directed to produce the same if not already submitted within a period of two weeks from the date of communication of this order and the authority concerned will take all possible steps for the purpose of approving the service of the petitioner within a period of one month thereafter.

Thus, the writ petition stands disposed of. However, no order is passed as to costs.

4. The Chairman, District Primary School Council, Calcutta preferred the instant appeal being aggrieved by and dissatisfied with the said Judgment and Order dated 20th November, 2001 passed by the learned single Judge on various grounds mentioned in the Memorandum of Appeal.

5. Mr. Subir Sanyal, learned Advocate of the writ petitioner/ respondent No. 1 raised a preliminary objection regarding maintainability of this appeal at the instance of the appellant herein on the ground that the said appellant is not a party aggrieved pursuant to the direction of the learned single Judge. Mr. Sanyal urged before this Court that the appellant was never asked to discharge any duty by the order under appeal nor even the said appellant is required to discharge any duty under the provisions of Act. Mr. Sanyal referred to and relied upon the following decisions in support of his arguments:

1. Cyril E. Fernandes Vs. Sr. Maria Lydia and Others,

2. AIR 2002 Rajasthan 200 State of Rajasthan and Ors. v. Balaji Industries [Paragraph 12]

6. Mr. Sanyal further submits that the concerned authority who was directed to take necessary steps for the purpose of approving the service of the writ petitioner did not choose to prefer any appeal and the appellant herein preferred the instant appeal even though no direction was issued by the learned single Judge to the said appellant. Mr. Sanyal also submits that the Chairman, District Primary School Council, Calcutta is neither competent nor authorised to approve the service of the petitioner.

7. Mr. Tulsidas Maity, learned Counsel of the appellant submits that the learned single Judge should not have directed the appellant/ petitioner herein to take all possible steps for approval of appointment of the writ petitioner in violation of the rules for appointment on the sole ground that the said writ petitioner has been continuously working in the concerned school. Various other issues have also been raised on behalf of the appellant questioning the validity and/or legality of the directions issued by the learned single Judge in the order under appeal. Mr. Maity, however, fairly submits that if the appellant is not required to take any step pursuant to the direction of the learned single Judge then his client has nothing to say in respect of the order under appeal.

8. On examination of the order under appeal we find that the learned single Judge directed the District Inspector of Schools or the superior authority being the Director of School Education or the District Primary School Council who has stepped in the shoes of the erstwhile School Board to call for the records in respect of the petitioner from the school authority and directed the authority concerned to take all possible steps for the purpose of approving the service of the writ petitioner. The learned single Judge never directed the appellant herein, namely, the Chairman, District Primary School Council, Calcutta to take any step for approving the service of the petitioner nor even directed the said Chairman, District Primary School Council to call for any records in respect of the petitioner from the school concerned.

9. The District Primary School Council did not prefer any appeal presumably due to the reason that the said Council was not aggrieved by the direction of the learned single Judge whereby and whereunder the said Council was only asked to call for the records in respect of the petitioner from the school authorities and no mandatory direction was issued for taking any step for the purpose of approving the service of the petitioner.

10. Mr. Maity submits that the District Primary School Council, Calcutta was not a party to the writ petition and therefore, the appeal was preferred by the Chairman.

11. We are not inclined to accept the aforesaid submission as the Chairman of the Council cannot be equated with the organisation, namely, the District Primary School Council, Calcutta. The District Primary School Council, Calcutta could prefer an appeal with the leave of the appellate Court if the interest of the said Council was prejudicially affected by the Judgment under appeal.

12. The Constitution Bench of the Supreme Court in the case of Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., specifically observed as hereunder:

3. ...It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the Judgment.

13. Scrutinising the Judgment under appeal we are satisfied that the learned single Judge did not issue any direction upon the Chairman, District Primary School Council, Calcutta, the appellant herein, and therefore, the appellant herein cannot be aggrieved and/ or directly affected by the Judgment under appeal.

14. In the case of Cyril E. Fernandes Vs. Sr. Maria Lydia and Others, , Hon''ble Supreme Court specifically observed as hereunder:

4. ...The scope of the appeal is limited to what the Judgment contains by which the appellant can be said to be aggrieved. A person can claim to be aggrieved if his legal rights are directly affected....

15. The Division Bench of the Rajasthan High Court in the case of State of Rajasthan v. Balaji Industries and Ors. reported in AIR 2002 Rajasthan 200 specifically held that the State Government not being an aggrieved party cannot be said to have locus to file the writ appeal. Paragraph 12 of the aforesaid Judgment is quoted hereunder:

12. So far as the State of Rajasthan is concerned, none of its orders or authority to be exercised by it under the Act or any such power which it can legitimately exercise is subject-matter of this writ petition. It cannot be considered as an aggrieved party. Therefore, the State Government too cannot be said to have locus to file this appeal.

16. For the aforementioned reasons, we are constrained to hold that the appellant herein cannot be said to be an aggrieved party as by the order under appeal learned single Judge did not issue any direction to the appellant herein and therefore, the appellant is not directly affected by the said Judgment under appeal.

17. In the aforesaid circumstances, we hold that the appellant herein has no locus to file the instant appeal and therefore, the instant appeal is not at all maintainable at the instance of the appellant herein. Accordingly, this appeal is liable to be dismissed on the ground of maintainability alone and the same is, therefore, dismissed.

18. However, we make it clear that we have not decided any other issue raised in this appeal on merits.

There will be, however, no order as to costs.

Let urgent xerox certified copy of this Judgment and order, if applied for, be given to the learned advocates of the parties on usual undertaking.

Arunabha Basu, J.

19. I agree.