

(1999) 12 CAL CK 0037

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction, M.A.T. No. 2594 of 1998

The Director of Public Instruction, West Bengal

APPELLANT

Vs

Dr. Krishna Prasad Ghosh and Another

RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Calcutta University First Statutes, 1979 — Section 101
Constitution of India, 1950 — Article 14, 16, 19, 21, 226
West Bengal College Service Commission Act, 1978 — Section 7, 7(1), 8
West Bengal College Teachers (Security of Service) Act, 1975 — Section 2(7)

Citation : (2000) 2 CALLT 141 : (2000) 1 ILR (Cal) 256

Hon'ble Judges : Satyabrata Sinha, J; Mahemmed Habeeb Shams Ansari, J

Bench : Division Bench

Advocate : Mr. Sumit Kr. Panja and Ms. Sukla Kabir, for the Appellant; Mr. B.R. Bhattacharjee, Ms. Nandini Mitra and Ms. Chaitali Chatterjee, Mr. Monish Sen, for the Respondent

Judgement

S.B. Sinha. J.

1. This appeal is directed against a Judgment and order dated 29th June, 1998 passed by a learned single Judge of this Court in W.P. No. 20256(W) of 1997 whereby and whereunder the writ application filed by the respondent herein was allowed and directions were issued to regularise the services of the writ petitioner in the post of Principal with consequential benefits.

2. The writ petitioner-respondent has filed the aforementioned writ application, inter alia, on the ground that he had been appointed in the permanent vacancy in the post of Principal in Sri Ram Krishna Sarada Vidya Mahapith with effect from 14-5-83. As in the said College he has been serving as Teacher-in-Charge" for about 14 years, his services should be regularised and confirmed with effect from the date of appointment.

3. The fact that the writ petitioner was appointed as a "Teacher" in the said College is not in dispute. It is also not in dispute that he was merely appointed as

a Teacher-in-Charge" and not as a Principal. It is further not in dispute that the post of Principal has to be filled up in terms of provision of the College Service Commission Act as also the Statute framed under the Calcutta University Act and no such procedure had been followed in the case of the writ petitioner.

4. Mr. Sumit Panja, the learned counsel appearing on behalf of the appellant has raised various contentions in this appeal. The learned counsel firstly submitted that the writ petitioner is guilty of suppression of fact. He has further submitted that the writ petitioner is also guilty of filing P.hd. Degree from a fake University. In any event, contends the learned counsel that only by reason of continuous service the petitioner could not have been directed to be absorbed. In support of the said contention reliance has been placed on Smt. Debirani Bhattacharjee & Anr. v. District Inspector of Schools (S.E.), Burdwan & Ors. reported in 1996 (2) CHN 415, Managing Committee. Dinhata High School v. Sri Ram Chandra Saha & Ors., reported in 1997 (1) CHN 105, Director of Public Instructions of W.B. & Ors. v. Dr. Ashish Pal & Ors.. reported in 1998 (2) CHN 241 and Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, . It was further submitted that in the fact of the matter no writ of Mandamus could be issued. Strong reliance in this connection has been placed on Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, , J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., and State of U. P. and others Vs. Harish Chandra and others, .

5. Mr. Bikash Ranjan Bhattacharjee, the learned counsel appearing on behalf of the respondent, on the other hand, submitted that the case of the writ petitioner Is governed by the West Bengal College Teachers (Security of Service) Act, 1975 (hereinafter referred to as 1975 Act). The learned counsel contends that the provision of section 7 of the College Service Commission Act, 1978, keeping in view the definition of "Principal" as contained in 1975 Act shall not stand as a bar.

6. The appellant herein did not file any affidavit-in-opposition, before the learned trial Judge. In this situation, it is difficult for us to look into any documents which had been filed for the first time before this court.

7. However, in our opinion, the appeal can be disposed of on a question of law. It is an admitted fact that the writ petitioner in the petition has not contended that he was appointed upon following the procedures laid down under the statutes.

8. The only question which, therefore, arises for consideration is as to whether the impugned Judgment in such a situation could have been passed.

9. The legislature of the State of West Bengal enacted the West Bengal College Teachers (Security of Service) Act. 1975 for the security of service of teachers of affiliated, Constitution and Government Sponsored Colleges in West Bengal. The security of service of the petitioner as a lecturer is not in jeopardy. It is true that the word Principal in terms of section 2(7) of the 1975 Act means "the head of a College by whatever name called "but the aforementioned definition was only for

the purpose of the said Act unless the context otherwise require. The said Act does not postulate that a teacher-in-charge who had not been appointed as a Principal upon following the procedure laid down statute would still be a principal for the purpose of continuation in service as a "Principal".

10. The Legislature of the State of West Bengal further enacted the West Bengal College Service Commission Act, 1978 (hereinafter referred to and called for the sake of brevity as the 1978 Act). Section 7 of the 1978 Act which is material for the purpose of this case reads thus :--

"Section 7(1) : Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Commission to select persons for appointment to the posts of Teachers of a College:

Provided that -

(i)

(ii) for selection of person for appointment to the post of Principal, the Commission shall be aided by the Vice-Chancellor of the University to which such College is affiliated or his nominee and a nominee of the Chancellor of such University.

(2) it shall also be the duty of the Commission to advise the Chancellor or the State Government on such matter as may be referred to it by either of them."

11. A bare perusal of the clause (ii) of proviso appended to section 7(1) would clearly show that although the writ petitioner was a teacher, the 1978 Act postulates a different procedure for appointment of a Principal. Such a procedure admittedly has not been followed. Moreover, section 101-A of the Calcutta University First Statutes, 1979 clearly states that appointment of teachers of College, whole-time or part-time including Principals, of affiliated Colleges other than Government Colleges shall be made in accordance with the provisions of the West Bengal College Service Commission Act, 1978 and the rules made thereunder. The said provisions are, therefore, mandatory in nature.

12. In the aforementioned situation, the writ petitioner could not have been directed to be absorbed as his appointment was merely ad-hoc in nature made by the Governing Body of the College and not by the competent authority upon obtaining the recommendations of the College Service Commission. The writ petitioner, thus, was not appointed as a "Principal" upon following the statutory requirements.

13. In *Sm. Debtrani Bhattacharjee & Anr. v. District Inspector of Schools (SE), Burdwan & Ors.* reported in 1996 (2) CHN 415, a Division Bench of this Court of which one of us (S.B. Sinha, J.) was a member, held :--

The Apex Court has further stated the law clearly that those who enter through the back door must go by that door. Reference in this connection may also be

made to the decision reported in *State of U.P. and others Vs. U.P. State Law Officers Association and others*, . The submission of Mr. Roy to the effect that the action of the respondents in terminating the service of the petitioner would be hit by the doctrine of acquiescence is stated to be rejected, in as much as such procedural rules cannot have any application whatsoever when the same against a mandatory provisions of the statute. It is not in dispute that the Director of School Education in exercise of his Jurisdiction conferred upon him under the provisions of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 have laid down the recruitment rules. A teaching or a non-teaching staff must be appointed in an aided school strictly in accordance with the provisions of the said recruitment rules. On the petitioner's own showing. he filed an application before the Managing Committee and the said Committee appointed him. This Court in a recent decision in *Ram Saran Shasti v. State of West Bengal* reported in 1995 (1) CHN 419 categorically held that appointment de hors the statute is a nullity and no contract of employment can be enforced by taking recourse to the writ jurisdiction of this Court when the service of such a person granted to him by the Managing Committee of the school is not protected by any statute."

14. It was further held ;

"The third submissions of Mr. Roy that even in equity, the petitioner is entitled to get an employment can not be acceded to for more than one reasons. Although we have all the sympathies for the petitioners in the event their assertions are correct, it is now well known that a sympathy cannot override the rule of law."

15. In *Managing Committee. Dinhata High School v. Sri Ram Chandra Saha & Ors.*, reported in 1997 (1) CHN 105, a Division Bench of this Court upon taking into consideration a large number of decisions held that any appointment made in violation of the statutory provisions would be ultra vires. It was further held that a continuous service by itself do not give rise to the claim of regularisation.

16. In *Director of Public Instructions of W.B. & Ors. v. Dr. Ashish Pal & Ors.*, reported in 1998 (2) CHN 241, this Court upon taking into consideration the provisions of sections 7 & 8 of the 1978 Act as also the provision of Clause 101-A of the Calcutta University First Statute, Inter alia, held :-

1. Regularisation cannot be a mode of recruitment.

2. High Court has no jurisdiction to issue an order directing regularisation of service contrary to mandatory provisions of the relevant statute.

3. An appointment made in violation of recruitment rules is Illegal and is violative of Articles 14 & 16 of the Constitution of India.

17. This aspect of the matter has also been considered by a Division Bench recently in *State of West Bengal & Ors. v. Ashoke Ranjan Chandra & Ors.* reported in 1999 (2) CHN 387 wherein strong reliance had been placed on J and K. *Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, ,

and State of Madhya Pradesh and Another Vs. Dharam Bir, . Similar view has also been taken in The Calcutta Tramways Company (1978) Limited & Ors. v. Ramesh and 17 Ors., reported in 1999 (1) CHN 513, Ziaul Islam with 202 Ors. v. State of West Bengal & Ors., reported in Cal LT 1999(1) HC 509 and a Full Bench decision of this Court in Debosish Dutta v. State of West Bengal, reported in 1998(2) Cal. LJ 1.

18. In State of U. P. and others Vs. Harish Chandra and others, , the Apex Court has clearly held that no mandamus can be issued to direct Government to refrain from enforcing the provision of law or to do something contrary to law.

19. By reason of the impugned judgment the learned trial Judge has, thus, clearly erred in directing absorption of the writ petitioner which is in clear violation of the statutory provisions. As can be seen from the Judgment under appeal to learned trial Judge was handicapped in this matter by the failure of the Education Department to produce before the Court the relevant Regulations.

20. In Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal and Others Vs. Dr. S.R. Mehrotra and Others, , It has clearly been held that regularisation of University Teachers must only be made in accordance with the produce laid down under the University Laws and not otherwise.

21. For the reasons aforementioned we are of the opinion that the learned trial Judge erred in passing the impugned Judgment and order which is accordingly set aside.

This appeal is, therefore, allowed and the writ petition of the respondent herein shall stand dismissed. No order as to costs.

M.H.S. Ansari. J.

22. I agree.

23. Appeal allowed