

(2010) 09 CAL CK 0074

In the Calcutta High Court

Case No : F.M.A. No. 328 of 2010 and C.A.N. No. 4426 of 2010

The Secretary, Mass Education Extension Department and
Others

APPELLANT

Vs

Sudhir Kumar Bhattacharya

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2010) 4 CALLT 49 : (2011) 130 FLR 616

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Tapabrata Chakraborty, for the Appellant; Md. Yamin Ali, for Respondent Nos. 1, 3-6, 8-11, 13-16 and 18-22 and Animesh Mookherjee, Madhusudan Sarkar and Subrata Bhattacharya for Respondent Nos. 2, 7, 12, 17, 23 and 24, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of the State and is directed against an order dated 9th September, 2009 passed by a learned Single Judge of this Court by which His Lordship disposed of a writ-application filed by the respondents by setting aside the order impugned in the writ-application with the direction upon the State to give similar benefits to the respondents which it offered to three different individuals, viz. Phani Bhusan Dey, Kamalnayan Bhattacharjee and Shyamapada Biswas, in the past.

2. Being dissatisfied, the State has come up with the present mandamus appeal.

3. In the writ-application, the writ-petitioners challenged an order dated 23rd September, 1997 passed by the Secretary, Mass Education Extension Department, Government of West Bengal. By the said order, the prayer for permanent employment made by the writ-petitioners was rejected on the ground that the writ-petitioners, appointed on temporary basis, were not given any promise by the State to confer them with permanent status of employees and as

such, they were not entitled to get such declaration. It was pointed out that they could be absorbed in the permanent service only in accordance with the procedure provided in the West Bengal Public Library Act, which came into operation in the meantime.

4. The writ-petitioners, twenty-four in number, had worked as teachers in different Adult Education Centres at a monthly remuneration of Rs. 75/- with additional sum of Rs. 25/- as contingency for each Centre pursuant to the scheme formulated by the State vide Order No. 31-Edn(SE)/SE IP-3/73 dated 12th January, 1974 by which a consolidated Pilot Project Scheme was introduced from 1st February, 1974. According to the above Project, new Adult Education Centres were required to be established in place of the then various existing Centres. In the said Government Order, it was further stated that the Teachers appointed and the accommodation for the Old Centres would be utilised for running rural libraries as the following up measures and the Governor was pleased to sanction of 475 Adult Education Centres under the said order.

5. Pursuant to the said order, the writ-petitioners were appointed as Adult Education Teacher in those Centres by the District Social Education Officer, Nadia with effect from various dates. It was, however, made clear in the appointment letters that such appointment would not confer upon the appointees the status of government servant.

6. In the year 1989, the writ-petitioners were served with an order issued by the District Social Education Officer, Nadia vide Letter No. 234/1(172) dated 16th January, 1989 whereby it was communicated that the Adult Education Centres under the consolidated Pilot Project Scheme should not function from 1st July, 1989 until further instruction.

7. After the aforesaid order, the writ-petitioners made representation to the concerned authority for withholding the said order of discontinuation of the activities of the Centres but the said representation having failed to yield any fruitful result, the writ-petitioners along with others moved their first writ-application before this Court challenging the letter dated 16th June, 1989.

8. The said writ-application was finally disposed of by a learned Single Judge on 18th August, 1993 thereby directing the concerned authority to consider the case of the petitioners in proper perspective in accordance with the scheme.

9. Subsequently, the writ-petitioners filed another writ-application under Article 226 of the Constitution of India praying for considering their prayer of appointment as Rural Librarians in their respective unit and such application was disposed of by another learned Judge of this Court on 8th January, 1996 by which His Lordship directed the Secretary, Mass Education Department, Government of West Bengal, to treat the said writ-application as a representation of the writ-petitioners and to dispose of the same in accordance with law by a speaking order after giving an opportunity of hearing to the writ-petitioner No. 1 as the representative of all the writ-petitioners.

10. Pursuant to such direction given by the learned Judge, the respondent No. 1 by the order dated September 23, 1997 disposed of the representation of the writ-petitioners by rejecting the same.

11. Being dissatisfied, the writ-petitioners filed their third writ-application. The learned Single Judge by the order impugned having disposed of the same, as indicated earlier, the State has come up with the present mandamus appeal.

12. After hearing the learned Counsel for the parties and after going through the materials on record, we find that all the writ-petitioners were appointed purely on temporary basis on fixed honorarium during the pendency of the scheme framed by the government. The government decided to suspend the scheme as the object of the project was not found to be fruitful and as such, the services rendered by the writ-petitioners were no longer required.

13. Thereafter, there were three rounds of litigation between the parties, as indicated above, and the present Mandamus Appeal is preferred against the order passed by the learned Single Judge on the third writ-application of the writ-petitioners.

14. In the writ-application out of which the present Mandamus Appeal arises, the grievance of the writ-petitioners was two-fold. First, they challenged the order of the concerned respondent rejecting their representation as illegal and secondly, they prayed for direction for appointing them in the posts of Rural Librarians in the District of Nadia.

15. So far as the order of the concerned respondent challenged in the present proceeding is concerned, we find that the writ-petitioners having been appointed purely on temporary basis pursuant to a particular scheme framed by the government on a fixed honorarium, it was rightly decided that by virtue of such appointment, the writ-petitioners were not entitled to get any relief of being absorbed as a permanent government servant.

16. The learned Single Judge has also accepted such position of law. But His Lordship was impressed by the submission of the learned Advocate of the writ-petitioners based on their contention in the affidavit-in-reply that three of the similarly placed persons with that of the writ-petitioners got the job of Rural Librarian and as such, the case of the writ-petitioners should be considered in the same way those three persons were treated by the State.

17. Mr. Chakraborty, the learned Counsel appearing on behalf of the appellant has drawn our attention to the materials indicating that out of those three persons, two got the job of Rural Librarian after appearing at the written tests and followed by the procedure prescribed in the West Bengal Public Libraries Act and the regulations framed thereunder and the third one got the job of a group D post after complying with the procedure of recruitment.

18. We, therefore, find that the observation of the learned Single Judge that those three persons were specially treated by the State was not correct.

Moreover, if the writ-petitioners have no legal right to be appointed in the post of Rural Librarian, even if we assume for the sake of argument, that those three persons were illegally appointed, such fact cannot give right to the writ-petitioners to approach the writ-court praying for a direction upon government to pass further wrong order of their appointments in violation of law as it did in case of those three persons.

19. It is now settled law that by taking aid of Article 14 of the Constitution of India, one cannot approach a writ-court contending that as somebody, similarly placed, has been illegally appointed in violation of recruitment rules, the Court should issue a mandamus directing the State to appoint the writ-petitioner by committing the same wrong. In other words, a writ-court cannot issue a mandamus directing the State to do an illegal act. Such person, however, by approaching a writ-court, by taking aid of Article 14 of the Constitution, can pray for cancellation of illegal appointment of such person similarly placed. However, to maintain such a writ-application, the person who has been given illegal appointment must be made a party. In this writ-application, those three persons being not made parties, there is even no scope of considering the legality or otherwise of their appointments.

20. At this stage, we may profitably refer to the decision of the Supreme Court in the case of State of West Bengal and Others Vs. Monirujjaman Mullick and Others, where the decision of the Division Bench of this Court granting the persons appointed under the present scheme the same scale of pay of that of a primary teacher based on the principles of "equal pay for equal works" was set aside. In that context, the Supreme Court on considering the scheme in question described the status of the persons appointed under this Scheme as follows:

We may briefly state the facts of the case. Government of India introduced a scheme in the year 1974-75 for imparting non-formal education to the children in the age group of 9/11 years who were either school drop-outs or did not go to school. The scheme provided for the opening of non-formal education centers (part-time) by the State Government with the help of Central Government grant. West Bengal Government took a policy decision on December 8, 1978 to implement the scheme. Subsequently the State Government formulated a new scheme regarding non-formal education, which became operative with effect from October 4, 1989. The non-formal centres were part-time institutions. The instructors were given a fixed honorarium of Rs. 105/- per month at the primary level and Rs. 125/- per month at the upper primary level. Persons with a motivation to serve the community particularly the weaker sections - were appointed instructors. They were required to teach the children for two hours a day. The centres were run by the Panchayat Samities in rural areas and by the Municipal Committees/Corporations in urban areas. There were no specific buildings or sites for the centers. The instructors could use any site or building belonging to a social organisation or a local authority.

21. After observing about the status of the persons appointed under the present

scheme, the Apex Court took note of the observations of the said Court in the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, and set aside the decision of the Division Bench by making the following observations:

Those employed under the scheme, therefore, could not ask for more than what the scheme, intended to give them. To get an employment under such scheme and to claim on the basis of the said employment a right to regularisation, is to frustrate the scheme itself. No court can be a party to such exercise. It is wrong to approach the problems of those employed under such scheme with a view to providing them with full employment and guaranteeing equal pay for equal work. These concepts in the context of such schemes are both unwarranted and misplaced. They will do more harm than good by depriving the many of the little income that they may get to keep them from starvation. They would benefit a few at the cost of the many starving poor for whom the schemes are meant. That would also force the State to wind up the existing schemes and forbid them from introducing the new ones, for want of resources.

We are of the view that the non-formal educational centers cannot be equated with the primary schools which are regularly run by the Education Department of the State Government. Apart from the basic qualitative differences between the two institutions even the nature of work of the non-formal instructors and the primary school teachers is not identical. The method of appointment, the source of recruitment, method of teaching, hours of teaching and the mode of payment are entirely different. In the facts and circumstances of this case the High Court fell into patent error in applying the principle of "equal pay for equal work."

(Emphasis supplied by us)

22. We, therefore, find that the learned Single Judge erred in law in passing direction upon the appellant to treat the writ-petitioners in the same footing with those three persons mentioned in the order impugned notwithstanding the fact that the writ-petitioners failed to establish any right to be so appointed.

23. Although Mr. Mukherjee, the learned Advocate appearing on behalf of the writ-petitioners/respondents, tried to impress upon us that at the time of hearing of the first writ-application filed by his clients assurance was given on behalf of the State to absorb them as permanent government servants, after going through the said judgment we do not find any such assurance recorded in the said order. It appears that the learned Single Judge simply directed the concerned respondent to consider the case of the petitioners and no direction was given for absorbing them. Even when the writ-petitioners moved their second writ-application, no direction was given for absorbing them and the writ-petitioners have accepted such orders by not preferring any appeal against those decisions. We, therefore, find no substance in the aforesaid contention of Mr. Mukherjee.

24. We, consequently, set aside the order impugned and dismiss the writ-

application by holding that by virtue of the appointments of the writ-petitioners on fixed honorarium on temporary basis no right has accrued in their favour to be absorbed as Rural Librarians without complying with the requirements of the essential qualifications for the posts and procedure of recruitment to those posts.

25. In the facts and circumstances, there will be, however, no order of costs.

Sambuddha Chakrabarti, J.

26. I agree.