

(2014) 11 CAL CK 0083
In the Calcutta High Court
Case No : W.P. 17791 (W) of 2007

Tozammul Haque

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 CAL CK 0083

Hon'ble Judges : Sahidullah Munshi, J

Bench : Single Bench

Advocate : Amal Baran Chatterjee and Manwar Ali, Advocate for the Appellant;
A. Lahiri and Amar Mitra, Bratati Roy Chowdhury and Sufi Masih Aftab, Advocate
for the Respondent

Judgement

Sahidullah Munshi, J.—In this writ petition the petitioner has made out the following case :

"a) That the petitioner has passed B.Ed. examination from a recognized University and he is a permanent resident of village Palashpur within Mukundabagh Gram Panchayat in the district of Murshidabad. In support of such statement the petitioner has annexed his residential certificate as Annexure P-1 which shows that he belongs to the gram Panchayat Mukundabagh and he is a resident of village Palashpur.

b) That the District Magistrate concerned issued a circular for Sarbo Siksha Abhijan and Zilla Prathamik Siksha Prakalpa for which the advertisement was made in a daily newspaper inviting application for appointment to the post of para-teacher in several primary and secondary Institutions. He has annexed a copy of the said advertisement published on 10th September, 2004 as Annexure P-2 to the writ petition. In one of the criteria in respect of an applicant for high school he has to be a resident of the concerned gram Panchayat where the school is situated.

c) The petitioner submitted application for appointment to the post of para-

teacher in History of Mukundabagh High School and on the basis of the said application respondent authorities verified the documents and, ultimately, an interview was held on 4th October, 2004 for selection of a suitable candidate to the post of para-teacher in History of the said school. According to recruitment rules a panel was prepared for the said post and the petitioner stood first in the panel. After such panel was prepared the respondent authority sent the panel to the competent authority for according approval. A copy of the said panel has been annexed to this writ petition as Annexure P-3. Annexure P-3 discloses the name of the petitioner Md. Tozammul Haque at the first position, Prasanta Das at the second position and one Biren Kumar Ghosh at the third position.

d) The said panel was approved by the respondent No. 2 for engagement of para-teacher in History of Mukundabagh High School, Murshidabad. The school authority issued engagement letter in favour of the petitioner and directed to join as para-teacher in the said school. The petitioner duly joined the school in the month of July 2006 as a para-teacher in the said school. The engagement letter has been annexed as Annexure P-4.

e) After July 2006 the respondent No. 2 called the petitioner for a hearing in respect of an allegation made by the respondent No. 5, Prasanta Das, to the effect that the petitioner is not a permanent resident of the concerned Gram Panchayat area within which the school is situated and that he did not furnish any document to prove that he is a permanent resident of the area concerned. The said Prasanta Das, the respondent No. 5 prayed for cancellation of the petitioner's engagement as a para-teacher. A writ petition being W.P. No. 17928(W) of 2006 was filed in the Hon'ble High Court at Calcutta and in pursuance of direction issued in the said writ petition the District Project Officer, Sarbo Siksha Mission (hereinafter to be called S.S.M.) Murshidabad, took a hearing and passed an order. The District Project Officer, by his order dated 30th October, 2006, observed that the petitioner failed to prove that he was a resident of Mukundabagh Gram Panchayat where the school is situated and, accordingly, he is not entitled to get engagement as additional para-teacher in Mukundabagh High School as per norms of Sarbo Siksha Abhijan (hereinafter to be called S.S.A.). The District Project Officer, accordingly, directed that the panel be recast cancelling the candidature of the writ petitioner and he directed that the panel be revised and approved and, thereafter, it would be sent to the school authority directing to issue letter of engagement in favour of the first candidate in the approved panel."

2. Aggrieved by the said order of the District Project Officer directing to recast the panel and cancelling the engagement of the petitioner, the petitioner filed a writ petition being W.P. No. 26483 (W) of 2006. On the said writ petition an order was passed on 28th February, 2007 and His Lordship, the Hon'ble Justice Debasish Kar Gupta was pleased to quash and set aside the impugned order dated 30th October, 2006, passed by the District Project Officer, S.S.M., Murshidabad, and directed to consider the original certificate issued in favour of

the petitioner by the Pradhan of the concerned Gram Panchayat and also in terms of the order dated 4th August, 2006, passed in W.P. No. 17928 (W) of 2006 (Prasanta Kumar Das v. State of West Bengal & Ors.)

3. In terms of the aforesaid order dated 28th February, 2007, the District Project Officer passed a reasoned order on 15th May, 2007 which is quoted below :

"I heard the statement of all the parties with due seriousness applying my mind very carefully. In considering the whole issue in view of the terms and conditions laid down in the "Advertisement" made in the Ananda Bazar Patrika and other provisions as communicated by the SPD, PBSSM with regard to the engagement of Additional Para Teacher and after careful consideration the issue is disposed of as follows:

I verified all the papers and decided that as per Voter List, 2004 the material time for submitting application for post of Addl. Para Teacher Md. Tojammul Hoque fails to prove that he was the resident of Mukundabagh Gram Panchayat where the school situated. Hence, Md. Tojammul Hoque is not entitled to get engagement as Additional Para Teacher in Mukundabagh High School as per norms of SSA.

It is observed that the concerned panel be recast cancelling the candidature of Tojammul Hoque and the revised panel be approved and set to the school authority directing to issue engagement in favour of the first candidate in the approved panel and report compliance within 7 days from receipt of the approved panel. All concerned be informed accordingly."

4. The said reasoned order has been challenged by the writ petitioner in the present writ petition. It is the submission of the writ petitioner that while there was a direction upon the concerned authority to consider the original certificate issued in favour of the petitioner by the Pradhan of the concerned Gram Panchayat but the District Project Officer, instead of considering the same, has insisted upon the petitioner that he could not produce voter's list of 2004 to substantiate his claim that he is a resident of the Gram Panchayat area concerned. According to the writ petitioner, the District Project Officer has erroneously passed the order and has failed to act in terms of the order passed by this Hon"ble Court passed on 28th February, 2007. It is the submission of the writ petitioner that in view of such lapses on the part of the District Project Officer the order should be quashed.

5. Mr. Chatterjee, learned counsel appearing on behalf of the petitioner has submitted a memorandum issued by the S.S.M., Murshidabad and in Clause "Ga" thereof it has been mentioned that certificate of the concerned Pradhan of the Gram Panchayat is of sufficient proof in support of the residence of the petitioner and he further submitted that Clause "Ga" also illustrates that in case of any objection with regard to residential certificate then ration card, tax receipt and employment exchange card may be considered to be a valid document if one's name is not included in the voter's list. The said memorandum is taken on

record.

6. From the writ petition it appears that the writ petitioner has already annexed the residential certificate issued by Mukundabagh Gram Panchayat on 26th August, 2004 (page 17 of the writ petition) which shows that the writ petitioner is a permanent inhabitant of the said Gram Panchayat. The writ petitioner has also annexed a copy of the ration card (page 19 of the writ petition) which also shows that he is a resident of village Palashpur within the Gram Panchayat, Mukundabagh. The writ petitioner has also annexed a tax receipt issued by Mukundabagh Gram Panchayat (page 21 of the writ petition). These documents show that the writ petitioner is a permanent resident of the Gram Panchayat concerned where the school is situated but the District Project Officer held that the writ petitioner could not produce the voter list at the material time for submitting application for the post of additional para-teacher and, therefore, he was of the opinion that candidature of the writ petitioner as an additional para-teacher in the school cannot, and/or may not be substantiated in terms of the norms of S.S.A., Murshidabad district at the prescribed time. He has further held that the panel has sent to the school authority be cancelled as the life of the panel has already ended. The said order, however, appears to be not in conformity with the order passed by this Hon"ble Court in W.P. No. 26483 (W) of 2006. The petitioner has rightfully questioned the legality and validity of the impugned order passed by the District Project Officer.

7. The State respondents have been represented by Mrs. Bratati Roy Chowdhury. She supports the order passed by the District Project Officer. She submits that the order is a reasoned order and it was passed upon opportunity being given to the parties. The Headmaster appeared through his counsel Mr. Amit Lahiri appearing with Amar Mitra. Mr. Lahiri submitted that the selection was completed as per the guidelines of Sarbo Siksha Mission and there was no irregularity in the method of selection of additional para-teacher in the concerned school. He submits that there was no anomaly in the constitution of the selection committee either and that the selection was made in accordance with the recruitment guideline. The petitioner was engaged in terms of the approved panel and, accordingly, he should be allowed to continue as an additional para-teacher in the school. He submits that claim of the petitioner cannot be ignored as he was engaged on the basis of approved panel and the claim of the petitioner cannot be refused on the ground that the panel has expired during the pendency of the legal proceeding. He has relied upon a judgment reported in Nirupama (Roy) Barman Vs. State of West Bengal, with Daya Sarkar (Das) - Vs.- State of West Bengal & Ors.}. He relies upon the principle laid down in the said decision that the claim of the petitioner cannot be frustrated even though life of the panel comes to an end during the pendency of the legal proceeding.

8. Record reveals that the petitioner was able to substantiate his case that he is a permanent resident under the concerned Gram Panchayat and sufficient documents were produced by him and if those documents are taken into account

it would appear that the petitioner cannot be held to be disqualified on the ground of his permanent residence. Therefore, the so called reasoned order passed by the District Project Officer, S.S.M., cannot be sustained. The said order cannot be sustainable also on the ground that although, His Lordship, the Hon"ble Justice Debasish Kar Gupta directed the authority to consider the certificate issued by the Pradhan but in contravention thereof the concerned authority has insisted upon the petitioner to produce voter list in order to prove that he is a permanent resident of the concerned area. It is, however, to be pointed out that since the private respondent has disputed the residential certificate issued by the Gram Panchayat, it is his onus to prove that the document was not either a genuine document or to prove that the said document has got no application. But, in the present case, the situation is otherwise. The private respondent could not prove that the certificate which was issued by the Panchayat was not a genuine document. That being so, it can be held that the petitioner has sufficiently proved that he is a permanent resident of the area and the disqualification sought to be alleged cannot be accepted. Accordingly, the impugned order dated 15th May, 2007 and consequently the order dated 2nd August, 2007 passed by District Project Officer, S.S.M., Murshidabad under his Memo No. 135/5/SSM/07 (Annexure R-1, supplementary Affidavit) cannot be sustained and those are hereby set aside. As a result of which the petitioner's engagement in the post of additional para-teacher should continue in accordance with law and in terms of his engagement earlier made as an additional para-teacher in Mukundabagh High School.

9. Having heard the parties and after considering their respective contentions I hold that the petitioner has made out a good case to continue in the post of additional para-teacher. At the fag end of the hearing Mr. Sufi Masih Aftab, learned advocate appears for the respondent No. 5 and submits that there was an interim order passed by this Court on 29th August, 2007 and his client joined the post before the interim order was communicated. According to him, the private respondent No. 5 joined the post on 1st September, 2007 and he continued till 13th April, 2009. Since the private respondent has got another job, he joined there and left the school of his own after 13th April, 2009. He, accordingly, claims that since he worked during the period from 1st September, 2007 to 13th April, 2009, he should be paid for the said period. Such submission has not been opposed either by the petitioner, the respondent Headmaster or the State. The petitioner, however, agreed that such payment may be made by the concerned authority.

10. With the above observation the writ petition is disposed of.

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

12. Urgent Photostat certified copy of this judgment, if applied for, be delivered to the learned counsel for the parties, upon compliance of all usual formalities.