

(2009) 12 CAL CK 0009
In the Calcutta High Court
Case No : F.M.A. 2397 of 2005

Uday Kumar Chattopadhyay	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

West Bengal School Service Commission Act, 1997 — Section 9

Citation : (2010) 2 CALLT 300

Hon'ble Judges : Kalidas Mukherjee, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Animesh Mukhopadhyay, for the Appellant;

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—Both appeals involve identical question of fact and law and as such, are disposed of by this common judgment and order.

2. Uday Kumar Chattopadhyay, the appellant in F.M.A. No. 2397 of 2005 was appointed as a non-teaching staff (clerk) in Bahiri Braja Sundari Higher Secondary School in the district of Birbhum in 1982. The District Inspector approved his appointment with effect from November 19, 1982. Uday had post-graduate qualification in history from Burdwan University. He applied for being appointed as an Assistant Teacher of the said school. The school approached the District Inspector to include his name in the roster kept for the purpose of upgrading the non-teaching staff to the post of assistant Teacher having eligible qualification. The school asked Uday to take classes even in the higher secondary section in absence of a proper teacher in history.

3. Pranab Kumar Chattopadhyay, the appellant in F.M.A. No, 2388 of 2005 was also having post-graduate qualification in Bengali as also B. Ed, qualification in Physical Education. He was appointed a non-teaching staff (clerk) in Brahmankhanda B.P. High School vide letter of appointment date of October 4, 1980. The District Inspector approved his appointment on November 11, 1980.

Pranab also taught the students up to class X in absence of a regular teacher. The District Inspector enrolled his name in the roster maintained for the purpose of upgrading.

4. In November 1997, The West Bengal School Service Commission Act came into force. Section 9 of the said Act of 1997 obligates all schools receiving governmental aid to appoint teachers only through School Service Commission.

5. In this backdrop Pranab and Uday approached the learned single Judge with a prayer that they should be recommended to the School Service Commission so that they got appropriate recommendation from the Commission to be appointed as teacher.

6. The learned single Judge vide judgment and order dated May 15, 2001 disposed of both the writ petitions by two identical judgments and orders. His Lordship was of the view that after the said Act of 1997 coming into force Rule 28 of the Management Rules did not have any application as the said Rule was substituted by the said Act of 1997. Pertinent to mention, Rule (4)(e) of the Recruitment Rules framed under Rule 28 of the Management Rules provided that all District Inspectors would maintain a roster to record the name of qualified, eligible, approved non-teaching staff for being eligible for interview along with the sponsored candidates from the Employment Exchange for appointment to the post of teaching and non-teaching staff. Relying on the said Rule both Uday and Pranab claimed regularisation which His Lordship denied on the ground that such Rule did not have any role to play after November 1, 1997 when the said Act of 1997 came into force. His Lordship was of the view, the procedure for selection as framed under the Act of 1997 abrogated the Rule 4(e) of the Recruitment Rules. Being aggrieved, Uday and Pranab filed the above two appeals which were heard by us on the above-mentioned date.

7. Mr. Animesh Mukhopadhyay, learned counsel appearing in support of the appeals contended before us that once the roster was maintained by the District Inspector which included the name of Uday and Pranab a right accrued in their favour to be considered for appointment as a teaching staff having eligible qualification. The Act of 1997 could not have any role to play, taking away the right of Uday and Pranab which accrued in their favour by dint of such inclusion in the roster. Mr. Mukhopadhyay, to elaborate his contention submitted that once the name was included in the roster the candidates were entitled to be called for interview along with the sponsored candidates. Because of the laches and negligence on the part of the school authority as well as the District Inspector, the process could not be completed before 1997. Hence, subsequent enactment of the said Act of 1997 could not debar them from being considered for the post having no fault of them. Mr. Mukhopadhyay further contended that Rule 4(e) did not specifically direct appointment in the post of teaching staff. It only gave opportunity to the eligible candidates for being considered for up gradation along with regular candidates sponsored by the Employment Exchange. Hence, in the changed circumstance they should be allowed to participate in the selection

process along with the eligible candidates in a selection process conducted by the School Service Commission under the said Act of 1997.

8. Mr. Mukhopadhyay referred to and relied on two Apex Court decisions in the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and in the case of R.S. Raghunath Vs. State of Karnataka and another, .

9. We have considered the case made out by Uday and Pranab before the learned single Judge in the writ petition as well as the submissions made by Mr. Mukhopadhyay before us. We have also perused the judgment and order impugned in the above appeals. If we look to Rule 28 of the Management Rules we find that such Rule was enacted by the State by virtue of the power conferred upon it by the legislature under the West Bengal Board of Secondary Education Act, 1963. Section 45 of the said Act of 1963 empowers the State to make Rules in the matter of composition, powers and functions of the Managing Committee of the recognised institutions. Accordingly, the Management Rules of 1969 were framed which included Rule 28. The State also framed guidelines for recruitment which included Rule 4(e), by exercising power under Rule 28(1) of the Management Rules. On a plain reading of the Recruitment Rules it appears that the said Rule prescribed a detailed procedure with regard to recruitment of teaching and non-teaching staff. Such process included the process of up-gradation in the manner as discussed above. Section 9 of the said Act of 1997 made it clear that notwithstanding anything contained in any law no school receiving aid from the State was entitled to appoint a teacher and now a non-teaching staff (which was included by way of a subsequent amendment) without being recommended by the School Service Commission. The said Act of 1997 also empowers the State to frame Recruitment Rules. Accordingly Rules have been framed School Service Commission has been established. A detailed selection procedure has been enumerated in the said Act of 1997 read with the Rules framed thereunder. No procedure has been prescribed either in the said Act of 1997 or in the Rules framed thereunder making a like provision being Rule 4(e). Hence, the learned Judge was right in rejecting the writ petitions.

10. Matter may be viewed from another angle. Assuming Rule 4(e) is still in existence, it only empowers the Managing Committee to consider a non-teaching staff along with the sponsored candidates in the matter of selection of an Assistant Teacher. Such very power of the Managing Committee was taken away by the subsequent Act of 1997. Hence, Rule 4(e), even if exists today, is nugatory and has no consequence at all.

11. It is for the legislature to make appropriate provision for the candidate who are working as approved non-teaching staff for being upgraded as a teaching staff, if they so feel fit and proper. The Court of Law cannot enter into their domain directing the School Service Commission to consider the candidates from the roster maintained by the District Inspector prior to 1997.

12. The appeals fail and are, hereby, dismissed.

There would be no order as to costs.

Urgent xerox certified copy will be given to the parties, if applied for
Kalidas Mukherjee, J.

13. I agree.