

(2011) 01 CAL CK 0006

Calcutta High Court

Case No: Writ Petition No. 12307 of 2010, W.P. No. 6926 of 2010 and W. P. No. 7079 of 2010

West Bengal Primary Teachers"
Association

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Jan. 5, 2011

Acts Referred:

- Constitution of India, 1950 - Article 83
- West Bengal Primary Education Act, 1973 - Section 37, 42, 42(1), 42(2), 60
- West Bengal Primary School Teachers Recruitment Rules, 2001 - Rule 7

Citation: (2011) 4 CHN 697

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Bimal Chatterjee and Sou men Kumar Dutta, for the Appellant; Kalyan Bandyopadhyay, P.S. Deb Barman for the petitioner in W.P. 6926 of 2010 and W.P. 7079 of 2010, Tarun Roy, Saikat Banerjee for the State, Tulsidas Maity for the Howrah, Kolkata, Purba and Paschim Medinipur Councils, Sk. Kamal Uddin for the Hooghly Council, Kallol Basu, Md. T.M. Siddiqui for the South 24-Parganas Council, Jayanta Mitra for the respondent Nos. 2, 4, 5, 7, 44 and 46, Subir Sanyal, Sumita Sen for the respondent No. 8, Amales Ray, Rakheswar Dey Sarkar for the respondent No. 11 and Taraprasad Haider for the respondent Nos. 23, 25, 56 and 58, for the Appearing Parties

Final Decision: Dismissed

Judgement

Biswanath Somadder, J.

The instant writ petition is taken up for final disposal along with two other writ petitions, being W.P. No. 6926 (W) of 2010 and W.P. No.7079 (W) of 2010, since the issues sought to be raised in the three matters are more or less similar.

2. In the instant writ petition, the petitioner No.1 is a registered association by the name of West Bengal Primary Teachers' Association. The petitioner No. 2 is stated to be the Secretary of the petitioner No.1. The instant petition has been primarily grounded on a point of law which centers around interpretation of some of the provisions of the West Bengal Primary Education Act, 1973 (hereinafter referred to as the said Act), more specifically, section 42 read with section 37 of the said Act.

3. The instant writ petition appears to have been filed immediately after issuance of several notices for election of members to the various District Primary School Councils of West Bengal. It has been contended by Mr. Bimal Chatterjee, the learned Senior Counsel representing the writ petitioners in W.P. No. 12307 (W) of 2010, that even before the notifications for holding of elections to the various District Primary School Councils were published, the Councils had become virtually defunct and those members who were either elected or nominated or appointed to the various Councils were continuing to hold their office, although they had no power to deal with any policy matters, such as initiation of recruitment process for the purpose of granting appointments to primary teachers. The situation was similar to the situation of an interim Government during the election process.

4. Learned Senior Counsel further submitted that if the elections were held in due time, then the same could have ensured free, fair and just selection process for recruitment of primary teachers. Elaborate arguments were advanced with regard to interpretation of section 42 of the West Bengal Primary Education Act, 1973. It was specifically contended that the intention of the legislature specified a time period relating to the tenure of the Council, so that after expiry of the statutory time period, the council can get a democratic body in place. Reference was also made to section 37 of the West Bengal Primary Education Act, 1973, and it was submitted that members of the various Councils who were appointed or nominated or elected virtually lost their mandate to continue in office due to non-holding of elections after the expiry of the time period specified in section 42(1) of the West Bengal Primary Education Act, 1973. As such any exercise of their right as a member to be a part of the selection process for recruitment of primary teachers, being a matter relating to policy, stood nullified due to non-holding of election within the statutory time period, as prescribed u/s 42(1).

5. The learned Senior Counsel relied on a Division Bench judgment rendered in the case of Ranjit Bose & Ors. vs. E & N F Railway Credit Co-operative Society Ltd. & Anr. reported in 2009 (1) CLJ (Cal) 823 to buttress his submission.

6. Mr. Kalyan Bandyopadhyay, learned Senior Counsel representing the writ petitioners in W.P. No. 6926 (W) of 2010 and W.P. No.7079 (W) of 2010, in addition to the submissions made by the learned Senior Counsel appearing in the instant writ petition, submitted that according to the relevant provisions of the Recruitment Rules governing the recruitment process for appointment of assistant primary teachers, it would be clear that the selection process could not be continued in the

absence of quorum of members of the selection committee, since there were no appointed or elected or nominated members in the District Primary School Council as the term of their membership had already expired. In this regard he has drawn this Court's attention to Rule 7 of the West Bengal Primary Teachers Recruitment Rules, 2001, and submitted that so far as the recruitment process initiated by the District Primary School Councils of Paschim Medinipur and Bankura are concerned, the same stood vitiated due to such lack of quorum of members of the selection committee.

7. On the other hand, Mr, Tarun Roy, learned Senior Counsel representing the State has drawn this Court's attention to the various statements made by the School Education Department, Government of West Bengal, in its affidavit-in-opposition, which was affirmed on behalf of the respondent Nos. 1 and 60 in respect of W.P. No. 12307 (W) of 2010. A preliminary point of maintainability of the instant writ petition and lack of locus standi have also been raised in the said affidavit-in-opposition. Learned Senior Counsel for the State has also drawn this Court's attention to the various clauses u/s 37(2) as also section 60 of the said Act. He also referred to Article 83 of the Constitution of India. He submitted that the Central Act which was the subject-matter for consideration in the judgment referred to by the learned Senior Counsel for the writ petitioners in W.P. No. 12307 (W) of 2010 was quite different from the West Bengal Primary Education Act, 1973. He also submitted that the duties of a Primary School Council, as specified u/s 60 of the West Bengal Primary Education Act, 1973, were quite distinct from the powers and functions as defined under sections 49 and 52 of the Multi-State Co-operative Societies Act, 2002, being the central statute under consideration in the judgment relied on by the learned Senior Counsel.

8. After considering the submissions made on behalf of the parties and upon perusing the three writ petitions, on a conspectus it appears that the moot question which requires consideration is whether upon expiry of the "term of office of members", as defined u/s 42(1) of the West Bengal Primary Education Act, 1973, the various District Primary School Councils, functioning as "bodies", became defunct, which, in turn, vitiated the selection process for recruitment of primary school teachers in the various Districts of West Bengal.

9. The scope of sections 42(1) and (2) of the West Bengal Primary Education Act, 1973, came up for consideration before this Court in an earlier writ petition, being W.P: No.22745 (W) of 2009. On 24th February, 2010, this Court, in that matter observed, inter alia, to the effect that the scheme of section 42 of the West Bengal Primary Education Act, 1973 as a whole, provided a time limit in respect of holding of office by a member of a Primary School Council (emphasis supplied); It was further observed that although such time limit was statutorily fixed for four years, as specified under sub-section (1) of section 42, the introduction of sub-section (2) in the statute book allowed continuance of office by a member of a Primary School

Council even upon expiration of its four year term (emphasis supplied).

10. The above observations of this Court in that writ petition, makes it abundantly clear that the "body" of a District Primary School Council, comprising of members appointed or elected or nominated (emphasis supplied) continue to hold their office even after expiration of the four years term as specified under sub-section (1) of section 42, by virtue of sub-section (2) of section 42 of the said Act. However, such office cannot be held by a member of a Primary School Council (emphasis supplied) for an indefinite period of time, as this would surely frustrate the scheme of section 42 of the West Bengal Primary Education Act, 1973, when read as a whole and render it nugatory.

11. Reference to the judgment rendered by a Division Bench of this Court in *Ranjit Bose & Ors. (supra)* does not provide much assistance to the writ petitioners in the context of the present matter. The issue therein was with regard to interpretation of the provisions of the Multi-State Co-operative Societies Act, 2002, as well as a comparative analysis with the Old Act of 1984.

12. A plain reading of section 60 of the West Bengal Primary Education Act, 1973, which sets out the duties of the Primary School Council demonstrates its clear distinction from the powers and functions of the board, as defined u/s 49 of the Multi-State Co-operative Societies Act, 2002. There is no question of any similarity between the two statutes. The West Bengal Primary Education Act, 1973, has been brought into force to make better provision for the development, expansion, management and control of primary education with a view to making it universal, free and compulsory. On the other hand, the Multi-State Co-operative Societies Act, 2002, is a central statute which has a totally different set of objects and reasons which reads as follows:-

An Act to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people's institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto.

13. A comparative analysis of the objects and reasons of the two statutes will reveal the stark contrast between the two and that the interpretation given to the various provisions of Multi-State Co-operative Societies Act, 2002, in *Ranjit Bose & Ore. (supra)* does not in any manner aid interpretation of the provisions of West Bengal Primary Education Act, 1973.

14. The contention of the learned Counsel appearing on behalf of the writ petitioners in W.P. No. 6926 (W) of 2010 and W.P. No.7079 (W) of 2010 that the selection committee lost its quorum due to expiry of the tenure of members of the committee who were elected or nominated or appointed cannot be sustained or

accepted. If one has to accept such I contention, then no purposive or meaningful construction can be given to the statutory provisions of sub-sections (1) and (2) of section 42 of the West Bengal Primary Education Act, 1973. Section 42 of the West Bengal Primary Education Act, 1973, prior to 2004, provided for a fixed term only for a member of a Primary School Council (emphasis supplied). Now it also provides for an extension of term of any Primary School Council (emphasis supplied), upon expiry of its original term, until the newly formed Primary School, Council (emphasis supplied) enters upon its office. This has been made possible due to introduction of sub-section (2) u/s 42 in the statute book by virtue of the West Bengal Primary Education (Amendment) Act, 2004. Although the words, elected, nominated or appointed member of a Primary School Council are missing in subjection (2) of section 42 of the West Bengal Primary Education Act, 1973, no purposive or meaningful construction can be given to the statutory provisions of sub-sections (1) and (2) of section 42 of the West Bengal Primary Education Act, 1973, when read as a whole, if it is held otherwise. The introduction of sub-section (2), thus, allows continuance of holding of office by a member of a Primary School Council, elected, nominated or appointed (emphasis supplied), even upon expiration of their four year term.

15. The Selection Committee comprising, inter alia, of members of the Council who have been appointed or elected or nominated (emphasis supplied) cannot be said to have lost its quorum simply because of expiry of the four year term of such members. As observed hereinbefore, such members continue to hold office even upon expiry of the four year term, by virtue of sub-section (2) of section 42 of the West Bengal Primary Education Act, 1973. The statutory mandate ensures that the Selection Committee does not lose its quorum.

16. For reasons stated above, I do not find any merit in the three writ petitions and the same are liable to be dismissed and is hereby dismissed.

17. Since the substantial question of law raised by the writ petitioners in all the three matters has been considered and answered and the writ petitions stand dismissed, the issue relating to maintainability of the instant writ petition filed by the West Bengal Primary Teachers' Association or lack of locus standi of the Association to institute the writ proceeding are not gone into.

Urgent xerox certified copy of the order, shall be given to the learned Advocates for the parties, as expeditiously as possible.