

(2004) 09 CAL CK 0001

Calcutta High Court

Case No: M.A.T. No's. 1415 and 1416 of 2004 and C.A.N. No's. 3861, 3863, 7830 and 7829 of 2004

State of West Bengal and Others

APPELLANT

Vs

Sukhbinder Kaur and Others and
Chandana Das (Malakar) and
Others

RESPONDENT

Date of Decision: Sept. 23, 2004

Acts Referred:

- Constitution of India, 1950 - Article 26, 30, 30(1)

Citation: (2005) 3 CHN 604

Hon'ble Judges: Barin Ghosh, J; Alok Kumar Basu, J

Bench: Division Bench

Advocate: R.L. Moitra, Tapabrata Chakraborti and Saikat Banerjee, Sardar Amjad Ali and Subroto Mukherjee, for the Appellant; Sardar Amjad Ali and Subroto Mukherjee, R.N. Das and S. Panda for the respondent No. 3, for the Respondent

Final Decision: Allowed

Judgement

1. It does not appear from the records that the writ petitions were contested or supported by the School at the trial stage. The learned Counsel appearing on behalf of the Headmistress of the School submitted that the School had no knowledge of institution of the writ petitions and, accordingly, his client had no occasion to appear at the writ stage. We need not go to investigate whether the School had been served or had not been served.

2. In Paragraph 6 of the writ petitions it was the contention of the writ petitioners that Khalsa Community a Punjabi religious minority community, solely with the funds contributed by the members of that religious minority community established the School for the purpose of promoting their culture and religious tenets and imparting the same to the pupils belonging to their community. It was then added

that the institution has been granted recognition and the Managing Committee is enjoying Special Constitution as contemplated in Rule 8(3) of the Rules for Management of Recognised Non-Government Institutions (Aided and Unaided) 1969 (hereinafter referred to as the said Rules). The State Government filed affidavits-in-opposition to the writ petitions but did not deny the above assertion of the writ petitions. In the writ petitions, the petitioners contended that since they have been appointed by the School and since they have been rendering service for a long time, their appointments should be regularised and the State Government should pay their salaries in the form of grant-in-aid to the School. There is no dispute that the School is not only a recognised institution but is also an aided institution. A recognised aided institution in terms of Rule 28 of the said rules can appoint a teacher in a permanent vacancy provided such teacher has been recommended for such appointment by the School Service Commission. It cannot appoint anyone else. Admittedly, there is no recommendation in favour of any of the writ petitioners on the basis of the pleadings as above. It was impressed upon the learned Judge and His Lordship accepted that the School is a minority community institution. The question is on the basis of such plea, as above, the Court could come to a conclusion that the institution was a minority institution.

3. Article 30 of the Constitution of India grants a fundamental right to all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice.

4. Article 30(1) of the Constitution debars the State from making any law which takes away or abridges such rights of minorities. In terms of Rule 6 of the said rules, a recognised Managing Committee must have composition as has been prescribed thereunder. An exception to that is permissible under Sub-rule (3) of Rule 8 of the said rules. However, while making such exception, the authority concerned is bound to bring in the Managing Committee four guardians of the institution, three teaching and one non-teaching staff and one person to be nominated by the Directors Members of such Managing Committee. The fundamental right enshrined under Article 30 does not stop after establishment of an institution, it continues while the institution is to be administered. It is the minority community who is to administer the School. It is not necessary that the Administrator must be a member of the minority community. But what is necessary is the choice must be that of absolute choice vested absolutely in the community. It alone should enjoy that fundamental right. The moment there is an imposition, the choice no longer remains a choice and the fundamental right is thus abridged. In such view of the matter, a Constitution permitted under Sub-rule (3) of Rule 8 of the said rules cannot be in relation to minority community institutions. That has been amply cleared by framing Rule 33 in the Management Rules which specifically deals with institutions entitled to protection of Articles 26 and 30. It authorises the State Government to make special rules for constitution of the Managing Committee of such institutions. The moment a minority community applies for a Special Constitution under Sub-rule

(3) of Rule 8 of the said rules it represents to the State Government that it is not claiming the status of minority community at least at the time when such application is made. In such view of the matter, on the basis of the pleadings contained in the writ petitions the learned Judge could not come to the conclusion that the School was a minority institution and accordingly, in the matter of appointment of teachers the Rule 28 of the said rules will not stand in the way.

5. We are of the view that the institution having not claimed to be a minority institution and having not asked for preservation of its right to administer the institution established by it, on the basis of the pleadings it was impermissible on the part of the writ petitioners, who are mere employee of such an institution to come up and contend that the institution was a minority institution.

6. There is no dispute that the institution in which the petitioners have been appointed is an aided recognised institution, and, accordingly, the Managing Committee of that institution is bound by the mandate contained in Rule 28 of the said rules, and in terms thereof, it can only appoint in permanent post, persons, who have been recommended by the School Service Commission. Even at the time when the writ petitioners were appointed, they were appointed de hors the provisions contained in the then Rule 28 of the said rules. Even at that time an institution as that of the said institution is concerned was not entitled to appoint any one beyond the sanctioned strength and admittedly the petitioners were appointed beyond the sanctioned strength at the relevant time. Furthermore, all appointments in teaching post were controlled at that time by the directions issued by the Director of School Education, Government of West Bengal issued from time to time, which directions have been held to be mandatory by a Special Bench of this Court. Such directions did not permit any appointment without a prior permission. Admittedly before the petitioners were appointed, no such prior permission was obtained.

7. In those circumstances, we allow the appeals and treating the same as on days" list with the consent of the parties and we set aside the judgments and orders under appeals. In such view of the matter, we dismiss the writ petitions.

8. There shall be no order as to costs.

9. Let xerox plain copy of this order duly countersigned by the A.R. (Court) be handed over to the learned Counsel for the parties on their usual undertaking.