

**(2009) 07 CAL CK 0003**

**Calcutta High Court**

**Case No:** F.M.A. 229 of 2009

Smt. Shila Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** July 13, 2009

**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Kishore Kumar Prasad, J

**Bench:** Division Bench

**Advocate:** Subir Sanyal Mr. Ratul Biswas, for the Appellant; Murari Mohan Das and Ms. Tanusri Pal Chowdhury for the State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Pranab Kumar Chattopadhyay, J.

This appeal has been preferred at the instance of the writ petitioner assailing the judgment and order dated July 24, 2008 passed by a learned Single Judge of this Court whereby and whereunder the said learned Judge finally disposed of the writ petition on merits.

2. The appellant herein filed the writ petition challenging the order being Memo No. 75/LC-IC-1091-LS/03 dated 22nd June, 2007 passed by the Director of School Education, West Bengal pursuant to an order passed earlier by another learned Single Judge of this Court while deciding the previous writ petition being W.P. No. 18361(W) of 2003 filed at the instance of the appellant herein.

3. It is the case of the appellant that she was initially appointed as organiser teacher of the school concerned and the organising Managing committee of the said school at its meeting held on 24th May, 1983 appointed the appellant herein as Headmistress of the school. The school was initially granted recognition provisionally for three years as 4-class junior high school with effect from 1st May, 1997.

4. The District Inspector of Schools (SE), Barrackpore thereafter by the office order dated March 30, 1998 approved the appointment of the teaching and non-teaching

staff of the school including the appellant/writ petitioner as Teacher-in-charge temporarily for two years w.e.f. 1st May, 1997. Thereafter, by subsequent Memo dated 23rd June, 1999, the said District Inspector of Schools approved the appointment of the teaching and non-teaching staff of the said school including the appellant/writ petitioner as Teacher-in-charge permanently on usual terms and conditions w.e.f. 1st May, 1999.

5. The appellant/writ petitioner is not only M.A. in History but also passed B.Ed. examination. The Director of School Education, West Bengal pursuant to the direction passed earlier by this Court in another writ petition considered the claim of the writ petitioner for approval of her appointment to the post of Headmistress of the school and ultimately rejected the same by the order dated June 22, 2007.

6. The learned Single Judge also affirmed the aforesaid decision of the Director of School Education, West Bengal and assailing the aforesaid decision of the learned Single Judge, the present appeal has been preferred.

7. We are now to consider whether the appointment of the appellant/writ petitioner was required to be approved by the concerned respondent as Headmistress of the concerned school instead of Teacher-in-charge in terms of the provisions of law as were made applicable at the relevant time.

8. According to the respondents, requisite qualification for appointment to the post of Headmaster/Headmistress in a Junior High school has been specifically mentioned in the Notification No. 14-SE dated 8.1.1998 wherein it has been specifically mentioned that for appointment to the post of Headmaster/Headmistress in a Junior high school, five years continuous teaching experience in approved service in a Higher Secondary school/High school/Junior High school is required.

9. In the instant case, the appellant possessed Masters Degree from a recognised University although she is lacking five years teaching experience in approved service in a Higher secondary school/High school/Junior High school. The appellant acquired the five years teaching experience in approved service admittedly, on 1st May, 2002.

10. The appellant/writ petitioner undisputedly, served the school as organiser teacher before approval of her appointment continuously for a period of more than five years but according to the Learned Counsel representing the respondents, aforesaid teaching experience in the unapproved school cannot be taken into consideration by the competent authority while approving the appointment to the post of Headmaster/Headmistress in a recognised school in terms of the Notification No. 14-SE dated 8.1.1998.

11. Mr. Sanyal, Learned Counsel representing the appellant, however, referred to the enclosures to the circular issued by the Director of School Education, West

Bengal under Memo 2605(16)-Sc/S dated 20th December, 1984 relating to the approval of appointment of organiser teacher and non-teaching staff of the newly recognised Junior High School. The relevant portions from the said enclosures are set out hereunder:

"Approval of appointment of organiser teachers and non-teaching staff of the newly recognised junior high schools and upgraded secondary schools.

(1) Services of the teachers and non-teaching employees of the newly recognised upgraded 4-class junior high/X-class high schools & newly recognised junior high schools should be approved as such with effect from the date of recognition/upgradation provided that:-

(i) they possess the prescribed minimum educational qualifications as per requirement of the school;

(ii) they have the prescribed age on the date of appointment in the school;

(iii) they were appointed prior to the date of final inspection of the school, made in connection with its recognition;"

12. Mr. Sanyal urged before this Court that even from the inspection report of the District Level Inspection Team headed by the then District Inspector of Schools, it would appear that the appellant/writ petitioner herein was appointed as Headmistress of the organising school on 10th February, 1976 and has been working since then till the said organising school was granted formal recognition by the Board. The Learned Counsel of the appellant referring to the aforesaid enclosures to the circular issued by the Director of School Education, West Bengal dated 20th December, 1984 submitted that the respondent authorities should have approved the appointment of the appellant/writ petitioner as Headmistress of the Junior High school while approving the appointment of the organiser teachers and non-teaching staff of the school in question as newly recognised Junior High school with effect from the date of recognition since the appellant/writ petitioner possessed the requisite educational qualifications for the said post and fulfilled other eligibility criteria.

13. Mr. Sanyal further submitted that five years teaching experience in approved service in a Junior High School in terms of procedure mentioned in the Notification No. 14-SE dated 8.1.1998 would be made applicable while filling up any vacant post of Headmaster/Headmistress in a Junior High school by the Regional School Service Commission and the said Notification No. 14-SE dated 8.1.1998 cannot be made applicable while approving the appointment of the organiser teachers including the Headmaster/Headmistress of the newly recognised Junior High school provided they fulfil the minimum educational qualifications as per requirements of the school and have the prescribed age on the date of appointment in the school and furthermore, they should be appointed prior to the date of final inspection of the school made in

connection with its recognition. Mr. Sanyal also submitted that in the present case, the appointment of the appellant should have been approved as Headmistress in the aforesaid newly recognised Junior High school from the date of recognition since the appellant was appointed to the said post of Headmistress long before the date of final inspection in the school as would reveal from the inspection report submitted by the District Level Inspection Team and admittedly, the appellant possessed the prescribed minimum educational qualifications as per requirements of the school.

14. The Director of School Education, West Bengal, however, refused to approve the appointment of the appellant/writ petitioner even after 1st May, 2002 on two-fold grounds:

Firstly, there is no vacancy in the teaching post in the said school and secondly, if the appellant/writ petitioner desired appointment as Headmistress of the said school, then the said appellant/writ petitioner should have been recommended by the School Service Commission since the West Bengal School Service Commission Act, 1997 came into force since 1.1.1997 and appointment of Headmistress in any junior school is to be made through Regional School Service Commission in terms of the Notification No. 14-SE/S dated 8.1.1998.

15. Mr. Murari Mohan Das, Learned Counsel representing the State-respondents supported the stand taken by the Director of School Education, West Bengal and submitted before this Court that the appellant herein did not obtain five years teaching experience as an approved teacher in a recognised H.S./High school/Junior High school. Mr. Das also submitted that the appellant is not entitled to be appointed as Headmistress of the school concerned unless her name is recommended by the School Service Commission. Mr. Das further submitted that the appellant herein acquired five years' teaching experience as an approved teacher of a recognised junior high school in May, 2002 and the West Bengal School Service Commission Act, 1997 came into force with effect from 1st November, 1997 i.e. within six months after grant of temporary recognition to the school concerned and approval of the appointment of the appellant which was initially for a period of two years w.e.f. 1st May, 1997. According to Mr. Das, claim of the appellant for approval of her appointment to the post of Headmistress cannot be approved by the Government in view of the provisions of the West Bengal School Service Commission Act, 1997.

16. The school in question was granted recognition by the competent authority in accordance with law and there is no dispute in this regard. Approval of appointments of the teachers/non-teaching staff were also granted by the competent authority in accordance with law consequent upon such grant of recognition to the school concerned and Regional School Service Commission Act had no manner of application in the matter of granting approval of appointment to the teaching staff of the said school. Undisputedly, the respondent authorities also

did not consider any provision of the West Bengal Regional School Service Commission Act, 1997 while approving the said appointments of the teachers including the appellant herein.

17. The School Service Commission can recommend for the post of Headmistress of the school in the event there is a vacancy. The Director of School Education, West Bengal has rightly held that for a 4-class Junior High school like the present one, only six posts of teaching staff can be approved and in the present case, all the six teaching posts have been approved and filled up by the organiser teachers. The appellant herein has been approved as the Teacher-in-charge of the school concerned. Therefore, the school will not get a Headmistress since there is no vacant teaching post in the said school.

18. The appellant herein although was appointed as Headmistress by the organising Managing committee of the school w.e.f. May 25, 1983 and such functioning of the said appellant/writ petitioner as Headmistress has been mentioned in the inspection report submitted by the District Level Inspection Team on the basis whereof the recognition was granted to the school in question, the concerned respondent refused to approve the appointment of the appellant/writ petitioner as Headmistress of the concerned school ignoring the specific provision for approval of appointments of organiser teachers and non-teaching staff of the newly recognised junior high school mentioned in the enclosure to the circular dated 20th December, 1984 issued by the Director of School Education, Government of West Bengal.

19. It has been strongly argued on behalf of the State-respondents that the appointment of the appellant to the post of Headmistress could not be approved due to lack of teaching experience as per prescribed procedure mentioned in the Notification No. 14-SE dated 8.1.1998 issued by the School Education Department, Government of West Bengal.

20. If we accept the aforesaid contentions of the State-respondents then an organiser teacher at the time of approval of the initial appointment will never get an opportunity to be appointed to the post of Headmaster/Headmistress for want of requisite period of continuous teaching experience in approved service in H.S./High School/Junior High School. A teacher having continuous teaching experience in approved service in an H.S./High School/Junior High School is not expected to join any organising school as organiser teacher. On the other hand, it can be said that an organiser teacher inspite of having requisite academic qualifications and continuous teaching experience for more than the requisite period will be denied approval of appointment in the post of Headmaster/Headmistress, as has been done in the instant case, if the requisite qualifications for appointment of Headmaster/Headmistress in terms of the procedure mentioned in the Notification No. 14-SE dated 8.1.1998 are made applicable while approving the appointment to the post of Headmaster/Headmistress in the newly recognised Junior High school.

21. In any event, the procedure prescribed under Notification No. 14-SE dated 8.1.1998 cannot be made applicable for approval of appointment of the organiser teachers including the Headmaster/Headmistress of newly recognised junior high school. The procedures prescribed under Notification No. 14-SE dated 8.1.1998 are meant for recruitment by selection (direct) in consultation with the West Bengal Regional School Service Commission of the concerned region. It has also been mentioned in the said notification that for the post of Headmaster/Headmistress of junior high school, candidate concerned should have five years teaching experience in approved service on the date of advertisement.

22. Undisputedly, no advertisement is required for approving the services of organiser teachers and their services are approved consequent upon the grant of recognition of the concerned organising school by the competent authority. The procedures prescribed under Notification No. 14-SE dated 8.1.1998 for filling up the post of Headmaster/Headmistress of junior high school are set out hereunder:

GOVERNMENT OF WEST BENGAL

School Education Department, Secondary Branch

Notification No. 14-SE(S)/1S-6/97

Dated 8.1.1998

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B. Headmaster/Headmistress of Junior High School/Junior High Madrasah.

(I) Method of Recruitment : By selection (direct) in consultation with the West Bengal Regional School Service Commission of the concerned region.

(II) Eligibility : Citizen of India.

(III) Qualifications : (i) Master Degree with degrees in Bachelor of Teaching/Bachelor in Education/Post-Graduate Basic Training from any recognised University or any training recognised by the Government of West Bengal as equivalent to Bachelor of Teaching/Bachelor of Education/Post-Graduate Basic Training;

(ii) 5 years" continuous teaching experience in approved service in a Higher Secondary School/High School/Junior High School/High Madrasah/Junior High Madrasah/Senior Madrasah recognised by the West Bengal Council of Higher Secondary Education, the West Bengal Board of Secondary Education/West Bengal Board of Madrasah Education on the date of advertisement.

(IV) Desirable : For the post of Headmaster/Headmistress of Junior High Madrasah - knowledge of Islamic studies and culture;

(V) Age : There shall be no restriction of upper age for appearing at examination for selection for appointment to the above posts.

23. The method of recruitment for the post of Headmaster/Headmistress of junior high school as provided in the procedures prescribed under Notification No. 14-SE dated 8.1.1998 are not at all applicable for approving the services of organiser teachers since appointment of organiser teachers of newly recognised junior high school are to be approved in terms of the provisions mentioned in the enclosure to the circular dated 20th December, 1984 issued by the Director of School Education, West Bengal and the subsequent circular dated 24th February, 1995 issued by the Secretary, School Education Department, Secondary Branch, Government of West Bengal.

24. Scrutinising the criteria mentioned in the enclosure to the aforesaid circular No. 2605(16)-Sc/S dated 20th December, 1984 issued by the Director of School Education, West Bengal and the subsequent circular dated 24th February, 1995 issued by the Secretary, School Education Department, Secondary Branch, Government of West Bengal regarding approval of appointments of organiser teachers and non-teaching staff of the newly recognised 4-class junior high school, we do not find any provision regarding experience in order to approve the appointments of the organiser teachers particularly, Headmaster/Headmistress of newly recognised junior high school. The competent authority of the Government of West Bengal consciously did not provide any condition relating to experience in the aforesaid circulars since the approval of the appointments are accorded to the organiser teachers in appreciation of their continuous services rendered to the concerned school prior to the date of final inspection made in connection with its recognition.

25. In any event, pursuant to the clear provision mentioned in the enclosure to the circular dated 20th December, 1984 services of the teachers including the appellant of the newly recognised upgraded 4-class junior high school should be approved as such with effect from the date of recognition. The appellant herein was appointed as Headmistress of the school by the organising Managing committee in the month of May, 1983 and, therefore, the said appointment of the appellant was required to be approved as such i.e. as Headmistress in terms of the provision mentioned in the enclosure to the circular dated 20th December, 1984.

26. Furthermore, the school authority cannot move the School Service Commission for recruitment of the Headmistress of the school as in view of the staff pattern, all the six teaching posts have admittedly, been filled up. In the aforesaid circumstances, the school will have to function without a Headmistress. The Director of School Education, West Bengal also realised the difficulties to run a school for an indefinite period without a Headmistress and, therefore, directed the school authorities by the order dated 27th June, 2007 to select a suitable and qualified Assistant Teacher amongst the teaching staff of the school including the

appellant/writ petitioner to run the school smoothly for the stopgap.

27. We fail to understand how the aforesaid direction can be given at this stage when the appointment of the writ petitioner was admittedly, approved by the District Inspector of Schools concerned by the Memo dated 23rd June, 1999 as Teacher-in-charge on permanent basis. However, the school authorities cannot take any step for recruitment to the post of Headmistress of the school since all the six teaching posts have already been filled up.

28. The Teacher-in-charge can run a school in absence of Headmistress only as a stopgap measure but not for an indefinite period. The Director of School Education, West Bengal by his order dated 22nd June, 2007 directed the school authorities to allow the Teacher-in-charge to function for the stopgap but could not throw any light how the school will get its Headmistress in near future.

29. In such situation, when the appellant/writ petitioner was appointed by the organising Managing committee as Headmistress of the concerned school and at the time of approving such appointment the said appellant/writ petitioner fulfilled the eligibility criteria in terms of the circular dated 20th December, 1984, there can be no valid reason to deny approval of appointment to the appellant herein in the post of Headmistress. The provisions of West Bengal School Service Commission Act have no manner of application in approving the appointment of the appellant to the post of Headmistress of the school concerned since in terms of the circular dated 20th December, 1984, appointment of the appellant as Headmistress of the school concerned should have been approved as such.

30. Having heard the Learned Counsel appearing for the parties and considering the various circulars of the Department of Education, Government of West Bengal issued from time to time and mentioned hereinbefore, we are of the opinion that the Director of School Education, West Bengal should have appreciated that the appointment of the appellant/writ petitioner was required to be approved as Headmistress and not as Teacher-in-charge specially when the said appellant fulfilled the eligibility criteria for approval of her appointment as Headmistress of the concerned school in terms of the circular dated 20th December, 1984 issued by the Director of School Education, West Bengal and a newly recognised school cannot be allowed to run without a Headmistress.

31. The said Director of School Education, West Bengal should have also considered that the competent authority of the Government of West Bengal approved the appointment of the appellant to the post of Teacher-in-charge on permanent basis under office Memo dated 23rd June, 1999 and thereby unusually permitted the newly recognised Junior High school to function under the Teacher-in-charge and not under a regular Headmistress ignoring the fact that the said Teacher-in-charge had been working in the said school as Headmistress since 25th May, 1983 and the same has also been mentioned in the inspection report submitted by the District



Level Inspection Team for the purpose of granting recognition to the school concerned apart from the fact that the said Teacher-in-charge namely, the appellant/writ petitioner herein fulfilled the eligibility criteria in terms of the circular dated 20th December, 1984 which is applicable for approval of appointment of organiser teachers and non-teaching staff of newly recognised Junior High school.

32. For the aforementioned reasons, the decision of the Director of School Education, West Bengal dated 22nd June, 2007 cannot be sustained in the eye of law and the same is, therefore, quashed.

33. The learned Single Judge, in our opinion, should not have approved the decision of the Director of School Education, West Bengal for the reasons mentioned hereinbefore and for the identical reasons, the judgment and order under appeal passed by the learned Single Judge cannot be sustained and are set aside accordingly.

34. The respondent authorities herein are directed to approve the appointment of the appellant/writ petitioner as Headmistress of the school w.e.f. 1st May, 1997 and grant all financial benefits as are legally admissible to the said post of Headmistress. The respondent authorities are further directed to issue appropriate office order in this regard approving the appointment of the appellant/writ petitioner in the post of Headmistress of the school in terms of this order at an early date but positively within a period of two weeks from the date of communication of this order and calculate the admissible financial benefits in respect of the said appellant/writ petitioner within a period of four weeks from date and disburse the same to the writ petitioner within four weeks thereafter.

35. With the aforesaid observations and directions, this appeal stands allowed.

36. In the facts and circumstances of the present case, there will be no order as to costs.

37. Let urgent Xerox certified copy of this judgment, if applied for, be given to the learned Advocates of the parties on completion of usual undertaking.

Kishore Kumar Prasad, J.

38. I agree.