

**(2011) 12 CAL CK 0010**

**Calcutta High Court**

**Case No:** M.A.T. 682 of 2008 With C.A.N. 7589 of 2008

Shrimati Mitali Jana

APPELLANT

Vs

Kamdevnagar Biswanath Balika

RESPONDENT

Vidyalaya and others

**Date of Decision:** Dec. 21, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules, 2007 - Rule 18

**Citation:** (2012) 1 CHN 601

**Hon'ble Judges:** Subhro Kamal Mukherjee, J; Kalidas Mukherjee, J

**Bench:** Division Bench

**Advocate:** Gouri Sankar De and Mr. Rudranil De, for the Appellant; Kalyan Bandopadhyay and Mr. Soumen Kumar Dutta For the School authorities, Mrs. Santi Das and Mr. Saibal Kumar Acharya For the State respondents and Mr. Tapabrata Chakraborty and Mr. Kumaresha Dalal For the School Service Commission, for the Respondent

### **Judgement**

Subhro Kamal Mukherjee, J.

This is an appeal against order dated August 13, 2008 passed by the Hon'ble Single Judge in W.P. No. 16647 (W) of 2008, inter alia, directing maintenance of status quo, as of that date, in so far as the respondent no. 6 and 7 were concerned, in connection with an application filed under Article 226 of the Constitution of India ("the writ petition" in short) by Kamdevnagar Biswanath Balika Vidyalaya ("the said school" in short) and the Secretary of the said school.

2. The respondent no. 7 in the said writ petition is the appellant before this Court.

3. Some facts are needed for deciding as to whether the Hon'ble Single Judge rightly exercised his discretion in directing maintenance of status quo by passing the impugned order.

4. On December 19, 2003, the West Bengal Regional School Service Commission, Western Region, recommended the candidature of the said respondent no. 7 in the writ petition, who is the appellant before this Court, for appointment in the post of assistant teacher of the said school in science group. The respondent no. 6, in the said writ petition, namely, Shrimati Soma Roy, is, also, an assistant teacher in the said school in the language group.

5. On January 12, 2004, the appellant joined in the said post of assistant teacher in the said school. The appellant was approved as an assistant teacher in the said school with effect from January 12, 2004. The approval was communicated by the Additional District Inspector of Schools (Secondary Education), Contai Sub-division, District - Purba Medinipur, by memo no. 1331 - C/2 dated March 9, 2004.

6. The appellant applied afresh before the School Service Commission, as the school where she is presently posted is far off from her home. Therefore, she wanted to avail the opportunity to get an appointment in a nearby school. Her candidature was accepted on January 22, 2008. She appeared in the written test. She became successful. She was asked to appear for the personality test.

7. The appellant on July 11, 2008 informed the Secretary of the said School that she had passed the School Service Commission examination and, therefore, requested the said Secretary to issue an experience certificate to her. Very peculiarly the School authorities declined to issue the experience certificate. It was contended that she did not take "No Objection Certificate" from the School authorities before her appearance in the fresh School Service Commission examination.

8. The School authorities addressed a letter to the Chairman, the West Bengal Central School Service Commission and to the Chairman/Secretary, the West Bengal Regional School Service Commission, Western Region, for cancellation of the candidature of the said two assistant teachers.

9. It was contended that the said two assistant teachers withheld material information and furnished false information by not enclosing the employer certificates along with their applications although such certificate was a mandatory condition laid down in the booklet of the Commission and, also, in the prescribed form.

10. The School authorities did not stop there. They moved the said writ petition, *inter alia*, seeking a mandamus on the authorities to take a decision on the basis of such application of the School authorities. In such writ petition, the impugned ad interim order of injunction in the form of status quo was passed.

11. We are of the considered opinion that the whole approach of the School authorities is *mala fide*, callous and heartless. There is no provision under the West Bengal School Service Commission Act, 1997, and in the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Teachers) Rules,

2007, earmarking such requirement towards submission of employer's certificate to be mandatory for selection and recommendation of a candidate. Rule 18 of the said Rules of 2006 only provides that the Regional Commission shall not recommend the name of a person, who, at the time of submission of application or after submission of application, is appointed to the post of a Teacher in a school or madrasah on the basis of recommendation made by the said Commission and continues his service as such Teacher, but has not completed three years" approved service in the said post and who, while in-service, having obtained required degree for being considered for the post applied for fails to submit before the Regional Commission the requisite document of his approved study leave, or any kind of leave for the purpose of relevant higher studies, or permission from the appropriate authority for prosecuting the studies for the said degree.

12. The requirement towards submission of the employer's certificate, as incorporated under Serial no. 21 of the application form for candidate applied for appointment in the post of assistant teacher, was only to ascertain the date of joining and the name and address of the school where the applicant was in service, status of service of the applicant and particulars of the teaching subject with copy of approval memorandum and the length of service. Such requirement towards submission of such employer's certificate is not a mandatory pre-condition for consideration of the candidature of in-service candidate inasmuch as the essence of such requirement is simply informative in nature.

13. Rule 18 of the said Rules does not provide that recommendation of the candidate can be withheld or cancelled in the absence of an employer's certificate. The said School is an aided institution. It is bound by the provisions of the said Act and the said Rules. The said School cannot decline to issue an employer's certificate to an in-service teacher. The in-service school teacher has a legal right to participate in a fresh selection process. The denial by the School authorities to issue employer's certificates to this appellant and the respondent no. 6 in the writ petition is wholly mala fide and illegal.

14. The School cannot force a teacher to teach in the school when he or she gets a better opportunity.

15. By refusing to issue employer's certificate, the School authorities acted wholly mala fide and the Hon'ble Single Judge did not apply His Lordship's discretion properly in passing an interim order in a writ petition of this nature.

16. Therefore, the order impugned stands set aside.

17. The appeal and the connected applications, thus, stand disposed of.

18. We, however, make no order as to costs.

19. Urgent xerox certified copy of this judgment, if applied for, is to be given to the learned advocates for the parties.

Kalidas Mukherjee, J.

I agree.