

(2013) 08 CAL CK 0005

Calcutta High Court

Case No: F.M.A. No. 111 of 2011

State of West Bengal and Others

APPELLANT

Vs

Arup Kumar Ganguly and Others

RESPONDENT

Date of Decision: Aug. 2, 2013

Citation: (2013) 5 CHN 87 : (2014) 1 WBLR 975

Hon'ble Judges: Subhro Kamal Mukherjee, J; Murari Prasad Shrivastava, J

Bench: Division Bench

Judgement

Subhro Kamal Mukherjee, J.

This is an appeal against the judgment and order dated June 11, 2010 passed by the Hon'ble Single Judge in W.P. 18265 (W) of 2007. By the order impugned the respondent authorities were directed to regularise the service of the writ petitioner as an Assistant Teacher in Kundala K.S.G.C. High School, District: Birbhum within a period of four weeks from the date of communication of the order.

2. The writ petitioner was appointed on purely ad hoc basis in the morning section of the said school by the headmaster-cum-secretary on May 20, 1994. The writ petitioner joined the school as an Assistant Teacher on ad hoc basis with a consolidated salary of Rs. 100/- (Rupees one hundred) only per month.

3. The morning shift of the school, however, was approved subsequently by the District Inspector of School. Although the writ petitioner was appointed as on ad-hoc basis in the morning shift, he was transferred in the secondary section on the retirement of one Brojo Mohan Mukherjee.

4. Prior to such purported transfer appointment no leave was obtained from the District Inspector of Schools. No recruitment procedure was followed. The writ petitioner was not appointed against any declared vacant post with the approval of the authorities. It is a case of pure illegal appointment.

5. The writ petitioner came to High Court on several occasions. The Hon"ble Single Judge, by order dated July 19, 2005, directed the authorities to consider if the petitioner could be regularized when allegedly certain similarly circumstanced teaching and non-teaching staff were regularized.

6. The matter went back to the Director of School Education. The Director of School Education in the order dated April 03, 2007, came to the findings of fact that no prior permission was obtained from the District Inspector of Schools (Secondary Education) Birbhum declaring the vacancy in question. The recruitment procedure was not followed and, therefore, service of the writ petitioner could not be regularized.

7. The process of selection was not followed when the writ petitioner was appointed either in the morning or in the day section of the school concerned. Merely because the writ petitioner continued for considerable length of time, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of Such continuance when the original appointment was not made as envisaged by the relevant rules. When rules have been framed, the only fair means to adopt is to make appointments based on the rules so framed. Since the petitioner has no enforceable legal right, a mandamus could not be issued in favour of the writ petitioner directing to make him permanent.

8. Therefore, the Hon"ble Single Judge, in our view, was not correct in directing the authorities to regularize the appointment of the writ petitioner;

9. Mr. Jiban Ratan Chatterjee, learned senior Advocate appearing for the writ petitioner/respondent No. 1, strenuously, argues that similarly circumstanced persons were regularized. They were, also, appointed against the posts, which were not declared vacant. No prior permission was obtained from the authority, but they have been regularized.

10. The law is settled in this regard. One wrong cannot be remedied by another wrong. This well known maxim has been reiterated and approved by the Constitutional Bench of the Supreme Court of India in the case of [A.R. Antulay Vs. R.S. Nayak and Another](#), .

11. Although we have got fullest sympathy for the writ petitioner, but we are unable to give any relief to him in the facts and circumstances of the case.

12. The appeal is, thus, allowed. The order dated June 11, 2010 passed by the Hon"ble Single Judge stands set aside. The writ petition is dismissed.

13. However, we direct the parties to bear their respective costs. Urgent photostat certified copies of this order shall be given to the parties, if applied for.

Murari Prasad Shrivastava, J.

I agree.