

(2009) 01 CAL CK 0006

Calcutta High Court

Case No: M.A.T. No. 979 of 2008, W.P.C.R.C. No. 8045 (W) of 2005

District Inspector of Schools (SE)

APPELLANT

Vs

Tapas Kumar Bera and Others

RESPONDENT

Date of Decision: Jan. 28, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100A
- Constitution of India, 1950 - Article 136
- Contempt of Courts Act, 1971 - Section 19
- Government of India Act, 1915 - Section 108

Hon'ble Judges: Pratap Kumar Ray, J; Manik Mohan Sarkar, J

Bench: Division Bench

Advocate: Tarun Roy and Saikat Banerjee, for the Appellant; Kashi Kanto Maitra and Sujit Rath, for the Respondent

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates appearing for the parties.

2. In view of the very nature of the stay application, we are of the view that the stay application and the appeal both could be heard analogously. Since all the parties are appearing, service of notice of appeal and other formalities stands dispensed with.

3. A preliminary point has been taken for maintainability of the appeal relying upon the judgment reported in [Nurul Hoda and Others Vs. Amir Hasan and Another](#), . By the impugned order under appeal, the learned trial Judge directed the District Inspector of School concerned to accord approval of the other four teaching staff. From the very nature of the order under appeal, we are of the view that the rights and liabilities of the parties was determined by the said order on adding District Inspector of School in the contempt proceeding, not as the alleged contemnor, which otherwise was not permissible in a contempt proceeding. Though the appeal has been cropped up from the order passed in a contempt proceeding, we are of

the view that the appeal is maintainable, in view of the settled law that statutory provision of appeal u/s 19 of the Contempt of Courts Act is applicable when punishment is imposed to the alleged contemnor but for other orders where there is no punishment imposed, intra-court appeal is permissible and maintainable. This legal position determined by the Apex Court in the case reported in [Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others,](#)). The relevant portion of Midnapore Peoples" Companyop. Bank Ltd. (supra) reads such:-

"Any direction issued or decision made by the High Court in contempt proceeding, on the merits of a dispute between the parties unless incidental to or inextricably connected with the order punishing for contempt held is not in exercise of jurisdiction to punish for contempt and, therefore, not appealable u/s 19 of the Contempt of Court Act. However, the said order can be challenged in intra-court appeal (if the order was of a Single Judge and there was a provision for intra-court appeal, namely, Clause 15 of Letters Patent & Ors.) or by SLP under Article 136 to the Supreme Court of India."

4. The intra-Court appeal is maintainable against any order irrespective of the nature of jurisdiction is the view of Apex Court passed in the case reported in [Umaji Keshao Meshram and Others Vs. Radhikabai and Another,](#) of the said judgment reads such :-

"The position which emerges from the above discussion is that under Clause 15 of the Letters Patent of the Chartered High Courts, from the judgment (within the meaning of that term as used in that clause) of a Single Judge of the High Court an appeal lies to a Division Bench of that High Court and there is no qualification or limitation as to the nature of the jurisdiction exercised by the Single Judge while passing his judgment, provided an appeal is not barred by any statute (for example, Section 100A of the Code of Civil Procedure, 1908) and provided the conditions laid down by Clause 15 itself are fulfilled. The conditions prescribed by Clause 15 in this behalf are: (1) that it must be a judgment pursuant to Section 108 of the Government of India Act of 1915, and (2) it must not be a judgment falling within one of the excluded categories set out in Clause 15."

5. On a reading of Contempt of Courts Act, 1971 and the Rules framed by the High Court at Calcutta, it appears that in the Rules as framed by the High Court at Calcutta, there is an appeal provision under Rule 35. The relevant Rule is named and styled as Calcutta High Court Contempt of Court Rules, 1975. Rule 35 of the said Rule reads such:-

"Rule 35.- In respect of appeal from the orders of any Judge or Bench of the Original Side the rules of the Original Side relating to appeals and in respect of appeals from the order of any Judge or Bench of the Appellate Side, the Rules of the Appellate Side shall apply mutatis mutandis."

6. From the Appellate Side Rules as framed by the High Court, the appeal is maintainable under Chapter-VIII wherein it is provided that in terms of Clause 15 of Letters Patent, Appeal is maintainable. Having regard to such legal position, we are of the view that the appeal is maintainable. The order passed by the learned trial Judge is the judgment under Clause 15 of said Letters Patent in the sense that the other new four teachers have been directed to be approved by elevating their status from organizing staff to permanent appointee.

7. Challenging the order dated 1st October, 2008 passed in a contempt proceeding being W.P.C.R.C. No.8045 (W) of 2005 along with a clarification application being C.A.N. No. 488 of 2008, this appeal has been preferred. The impugned judgment under appeal reads such:-

"Thus, the District Inspector of Schools as a matter of last chance is again directed to approve the appointments of the remaining four teachers of the school in question positively within a period of three weeks from the date of communication of this order. This matter is directed to appear on 14th November, 2008 when the report of compliance will be placed by the District Inspector of Schools.

Needless to mention since this order is made upon the present District Inspector of Schools, for the sake of convenience the present District Inspector of Schools is added as a respondent - alleged contemnor to the contempt petition and the cause - title of the contempt petition be amended accordingly forthwith.

It is also to be noted that the application made by the concerned District Inspector of School for clarification or modification is thoroughly misconceived and amounts to utter Contempt of Court as by making this application he has, in fact, challenged the order in question which was affirmed by the Appeal Court much earlier and which was never questioned by the State-respondents at any point of time.

For the sake of convenience of all concerned and for compliance of this order, it is made clear that this order not only binds the District Inspector of Schools but all concerned including the Director of School Education, West Bengal. According to the petitioner, the District Inspector of Schools, who is the competent authority, has committed further breach of the order in question. If any breach has been committed, the same will be considered on the next date of hearing when the District Inspector of Schools files the report of compliance on the next date i.e. 14th November, 2008.

The application C.A.N. No. 488 of 2008 is thus disposed of."

8. It is the stand of the appellant District Inspector of Schools concerned that the judgment dated 30th January, 2004 passed in W.P. No. 7780 (W) of 2001 was duly complied with by regularizing the services of six organizing teachers and two non-teaching staffs by the decision dated 2nd March, 2006 and as such, there is no scope to accord approval of other four organizing staff as per Rule, but the learned

trial Judge by the impugned order under appeal directed to accord approval. It is the further contention of the appellant that amongst the four organizing staff, who have been allowed to be absorbed by regularization, two amongst them even were not parties in the writ petition as well as in the contempt petition. This appeal has been opposed by the respondents/writ petitioners who were the applicants in the contempt application. To adjudicate the issue involved herein, the order passed in the writ application whereby direction was given to recognize the organized school by the West Bengal Board of Secondary Education and, thereafter, to accord approval of appointment of teaching and non-teaching staff as per Rule is required to be considered. The order passed in the writ proceeding on 30th January, 2004 disposing of the writ petition is set out herein below:-

"In this writ application, the petitioners have essentially sought for a mandatory order upon the concerned respondents herein, for recognition of Uttar Khasda Ideal Academy, a IV Class Junior High School, at Contai in the District of Purba Midnapore.

The petitioners herein, it appears are the teaching and non-teaching staff and also the members of the ad-hoc Managing Committee of the said School. The said School, which is a IV Class Junior High School, as aforesaid, is located on adjacent plots, being numbers 583 and 553 at Contai, in the District of Midnapore, now known as Putba Midnapore. There was no other school within the area of about six kilometers when the said school was first established in the year 1970.

In pursuance of a resolution of the Managing Committee dated 30th December, 1969, submitted by the Learned Counsel, appearing on behalf of the petitioner, the said school commenced its function as Class V and VI Junior High School on & from 9th January, 1970. At the time when the said resolution was taken there were about 14 members in the said Managing Committee and. there were about forty-six students for Class V and about 26 students for Class VI of the said school.

An application, however, was made to the concerned authority, namely, the concerned District Inspector of School, in the District of Midnapore, now known as Purba Midnapore, for necessary recognition. Pursuant to the said application, an inspection was, however, made by the Asstt. Inspector of Schools (S.E.) Midnapore. The report of the said Inspector, however, noted that there was no Junior High School within the radius of about 3 miles and the natural barrier created by Contai-Coast Canal in the east and Orissa Post Canal in the north had made the locality quite detached from any education institution for higher studies.

In the year 1972, Class VII & VIII were introduced in the said school and a further inspection was made by the Asstt. Inspector of Schools, Midnapore, now known as Purqa Midnapore. There are altogether four classes of the said school namely Classes -V, VI, VII & VIII. Pursuant to that second visit, however, a further inspection report was also submitted by the said Asstt. Inspector of Schools. The said report, dated 27th January, 1975, is Annexure-B to the writ application, appearing at pages

44 of 47 thereof.

It was submitted on behalf of the petitioners that the said report of the concerned Asstt. Inspector was also in favour of the petitioners herein. In spite of two favourable reports the School was not given the necessary recognition and in consequence thereof the petitioners, on 28th January, 1986, moved a writ application in this Hon"ble Court, being C.O. No. 1223 (W) of 1986.

Justice P. K. Majumdar, (as His Lordship then was) granted liberty to the petitioners to make fresh application for grant of recognition of the said school, the President of the West Bengal Board of Secondary Education, was also directed to dispose of the said application within a specified time from the date of receipt of, the said application, by, needless to mention, a speaking order and in accordance with law.

Pursuant to the said direction the second petitioner herein, being the founder member and the Secretary of the said School, made a fresh application for recognition of the said school to the President, West Bengal Board of Secondary Education.

It was submitted on behalf of the petitioner that on 4th March, 1986, the said application of the petitioners was forwarded by the Secretary, West Bengal Board of Secondary Education to the Deputy Secretary, Govt. of West Bengal, Education Department, with a request to favour the Board with the recommendation of the Education Department.

It was also mentioned in a letter, addressed to the Deputy Secretary, Education Department dated 4.3.86 - "That there was statutory obligation on the part of the Board to have an inspection report and recommendation of the Education Department, Govt. of West Bengal, before the Recognition Committee and, the Executive Committee considered the matter of recognition/upgradation of any school."

On or about 11th April, 1986, the Deputy Secretary, Education Department, Govt. of West Bengal, addressed a letter to the Director of School Education, West Bengal, requesting him to send the inspection report which was made pursuant to the order of the Hon"ble High Court at Calcutta, namely, the said order of Justice Prabir Kumar Majumder on 28th January, 1986.

On or about 8th May, 1986, the concerned Asstt. Inspector of Schools, from the Office of the concerned District Inspector of Schools (S.E.), paid a surprise visit to the school and made a report to the District Inspector of Schools concerned recommending recognition of the said Junior School.

Pursuant to another letter dated 3rd June, 1986, from the District Inspector of Schools (S.E.), Midnapore, to the school authority, the District Level Inspection Team against visited the said school on 24th June, 1986 and submitted a report recommending recognition of the said school of the petitioners herein, it was

submitted.

In spite of these repeated recommendations for recognition of the said school the concerned respondent or respondents, however, failed to grant recognition to the school concerned run by the petitioners herein. The petitioners, however, thereafter, moved yet another writ petition, being C.O. No. 8096 (W) of 1992.

In the meantime another group of people initiated a writ proceeding being C.O. No. 19352 (W) of 1992, claiming recognition of a school in the same name as "Uttar Khasda Ideal Academy" allegedly run by them as well.

The writ petition of the petitioners, however, was disposed of by an order dated 27th February, 1997, by Justice Shyamal Kr. Sen (as His Lordship then was) directing the Director of School Education, West Bengal, to consider the question of granting recognition to the school run by the petitioners herein on the basis of the report of the Asstt. Inspector of Schools, dated 12th May, 1986 and to take appropriate steps for such recognition in accordance with law within six weeks from the date of communication of that order.

Three appeals were, in fact, preferred by the rival group against the order of Justice Shyamal Kr. Sen dated 27th February, 1997 and after hearing the said appeals the Director of School Education was directed by the Appeal Court to arrive at a finding, upon consideration of materials-on-record, which were produced by the contending parties as to which school was a genuine one.

The decision of the Director of School Education was to be made, however, after giving an opportunity of hearing to both the contending parties, namely, the petitioners herein and the said rival group, and upon production of all materials in support of the respective claims of the petitioners and the said rival group. The Director of School Education was also given the liberty, for the purpose of ascertaining the correctness of the claim of the contending rival parties, to inspect both the schools by the Director himself or by a competent officer of his office to do the same and to submit the report to the Director of School Education.

Once such a decision was taken, the Director of School Education was to consider the matter of grant of recognition of the school on the basis of the report of the District Level Inspection Team which was forwarded to him. The said judgment of the Appeal Court is Annexure ◆G to the writ application, appearing at pages 69 to 75 thereof.

Pursuant to the said order of the Appeal Court, dated 15th May, 1998, an enquiry was made on 9th March, 1999, by the Deputy Director of School Education (H.S.), for ascertainment of the true position as to the claims of the contending parties regarding the recognition of the school in question.

A report was submitted by the said Deputy Director to the Director of School Education, West Bengal, who after hearing all the parties, gave his report on 29th

March, 2001, the said report appears at pages 78 to 85 of the writ petition. The Director of School Education, however, came to the conclusion in his said report that the school which was originally set up at Plot No. 583 and thereafter shifted to Plot No. 553 by the petitioners group and the school set up by another or the said rival group led by one Hemanta Kr. Jana, was shifted to Plot No. 259.

The Director of School Education in his said report held that in every probability the school run by the petitioners herein at Plot No. 553 was a genuine one considering the proximity of the two plots, namely, Plot No. 583 and Plot No. 553. This was, however, subject to further verification by inspection through District Level Inspection Team.

In the year 2001, the said rival group initiated a writ proceeding, being Writ Petition No. 5879 (W) of 2001, challenging the said report of the Director of Education on the ground that the said report was not a conclusive one. On 17th April, 2002, His Lordship Justice Bhaskar Bhattacharya was pleased to direct the Director of School Education to intimate the Court which one of the two schools was a genuine one.

During the pendency of the above writ proceeding initiated by the said rival group, the petitioners also moved the present writ petition on 23rd May, 2001, seeking recognition of the said school run by them on the basis of the said Inspection Report and the Report of the District Inspector of Schools concerned.

The District Level Inspection Team, headed by the Inspector of School (S.E.) Midnapore East, paid a surprise visit to the school and submitted a report on 9th October, 2002, in which recommendation was made that the school run by the petitioners herein was genuine one.

On 10th October, 2002, a corrigendum was issued by the Director of School Education to the said report of the District Level Inspection Team headed by the said Inspector of Schools, Midnapore. These facts are mentioned in the supplementary affidavit used on behalf of the petitioners herein as was pointed out on behalf of the petitioners.

On the basis of the above facts it was submitted on behalf of the writ petitioners that the concerned respondents now came to a final conclusion, in pursuance of the judgments of both the Appeal Courts dated 15th May, 1998 and the order of His Lordship Justice Bhaskar Bhattacharya dated 17th April, 2002, that the said school run by the petitioners was the original and genuine school, named Uttar Khasda Ideal Academy, led by the second petitioner herein, R. N. Pati.

The petitioners and all other concerned, it appears, have been able to run the said school so far since its inspection in the month of January 1970, till date, smoothly and effectively though the school and its organizers namely the petitioners herein have so far been deprived of getting the recognition of the said school and in the process both the schools and the teaching and non-teaching staff thereof had and

have suffered and are suffering immensely. Considering the facts that there is no other school within a reasonable distance, there cannot be any impediment to the recognition of the said school and as a natural consequence of such recognition the regularizations or approvals of the appointments of its teaching and non-teaching staff.

After having heard the facts and the circumstances of the entire case, and considering the submissions made by the Learned Counsel on behalf of the petitioners and also taking into account the stand of the concerned respondents herein and the relevant documents mainly the Inspection Reports of the authority or authorities concerned I have no hesitation that the school of the petitioners or the school run by the petitioners herein should be recognized by the concerned respondents immediately. As a natural consequence of the recognition of the said school of the petitioners, needless to mention, being the teaching and the non-teaching staff thereof are all entitled to be approved or regularized as teaching and non-teaching staff of the said school and again as a matter of natural consequence of the said order of approvals and/or regularizations of their service namely, the services of the said teaching and non-teaching staff of the said school, the said staff will also be entitled to receive their financial benefits such as, their salaries and other allowances, if any, from the authority concerned as a matter of course.

Thus, the President of West Bengal Board of Secondary Education, being the head of the recognition committed of the Board, the 4th respondent herein, is directed to grant recognition to the said school of the petitioners herein, Uttar Khasda Ideal Academy, at Contai, in the District of Midnapore, now known as Purba Midnapore, as Class-IV Junior High School run by the second petitioner along with the other petitioners herein, with effect from 15th May, 1998, being the date of the Judgment of the Hon"ble Appeal Court, within a period of three weeks from the date of communication of this order.

Needless to mention, however, that as a natural consequence of this order or rather this mandatory order directing the concerned respondents to recognize the said school of the petitioners herein, the teaching and the non-teaching staff of the said school are also entitled to be approved or regularized as teaching and non-teaching staff of the said school and they shall be paid all financial benefits such as, salaries and other allowances, if any, in accordance with the relevant rules with effect from the date of recognition of the said school as teaching and non-teaching staff thereof.

The third respondent therefore, namely, the concerned District Inspector of Schools, is directed to take all necessary steps after the school in question is recognized by the concerned authority in terms of this order, for the purpose of approval or regularizations of the appointments of both the teaching and non-teaching staff of the said school in accordance with the relevant rules within a reasonable time and in

any event within a period of four weeks from the date of recognition of the said school in terms of the order made herein."

9. It appears from the said order that the learned trial Judge in the writ application directed the concerned authority to accord approval of appointment by regularization of the organizing staff as per the relevant rules. The relevant portion of the order reads such:-

"Needless to mention, however, that as a natural consequence of this order or rather this mandatory order directing the concerned respondents to recognize the said school of the petitioners herein, the teaching and the non-teaching staff of the said school are also entitled to be approved or regularized as teaching and non-teaching staff of the said school and they shall be paid all financial benefits such as, salaries and other allowances, if any, in accordance with the relevant rules with effect from the date of recognition of the said school as teaching and non-teaching staff thereof.

The third respondent therefore, namely, the concerned District Inspector of Schools, is directed to take all necessary steps after the school in question is recognized by the concerned authority in terms of this order, for the purpose of approval or regularizations of the appointments of both the teaching and non-teaching staff of the said school in accordance with the relevant rules within a reasonable time and in any event within a period of four weeks from the date of recognition of the said school in terms of the order made herein."

10. Initially a contempt application was moved on the allegation that despite the judgment passed on 30th January, 2004, the concerned authority, i.e. the said Board did not recognize the school as Junior High School. During the pendency of the contempt proceeding, however, the West Bengal Board of Secondary Education accorded recognition of the school when by filing a supplementary affidavit in the contempt proceeding the applicants to the contempt application prayed for regularization of service of other four organizing teachers though the District Inspector of Schools concerned in the meantime accorded approval of other six organizing staff following the Rule.

11. Recognition of a school organized privately and approval of organizing staff therein is controlled by the Circular Letters issued by the Education Department, Government of West Bengal and Directorate of Secondary Education, Government of West Bengal at different point of time. In a Junior High School as per staff pattern framed in terms of the Circular Letters dated 4th September, 1989 annexed at Page-35 of the stay application it appears that there should be six teaching staff in a Junior High School, i.e. in a school where there is Class-V to Class-VIII and there will be two non-teaching staff amongst which one will be the clerk and another would be the Class-IV staff. The staff pattern on the basis of the subject of teaching of the respective teaching staff accordingly has identified the different teachers of

different groups, namely, for language group two teachers, for science group two teachers, amongst which one of Pure Science and another of Bio-Science subject and in Social Science group two teachers, one of history subject and another is of geography subject. The staff pattern aforesaid reads such:-

"Government of West Bengal Education

Department Secondary Branch.

No. 670-SE (S) Calcutta,

Dated, the 4th September, 1990

From: Shri Kalidas Bhattacharyya,

Deputy Secretary to the Govt. of West Bengal, Calcutta - 73.

To

The Director of School Education, West Bengal, Calcutta -73.

Sub : Pattern and teaching and non-teaching staff in the recognized Non-Govt. Junior High School.

The undersigned is directed to say that in terms of G. O. No. 772◆Edn.(S) dated 8.7.74 the pattern of teaching staff admissible to a school having Classes-V to X with only one section in each class was issued and that was given effect from 1.7.74. But there was no staff pattern exclusively for Junior High School.

After careful consideration of the matter the Governor is now pleased to direct that with effect from 1.5.89 the number of teaching posts admissible to a Junior High School having either 2 Classes, or 4 classes with only one section in each class shall be follows:

1. 2-Class Junior High School

Language Group -1

Science Group -1 (Pure Science)

Social Science Group 1

Total 3

2.4-Class Junior High School

Language Group -2 (including 3rd language)

Science Group -2 (1 Pure Science and 1 Bio Science)

Social Science Group -2 (1 History and 1 Geography).

Total 6

There shall be no non-teaching staff for a 2 Class Junior High School. For a 4 Class Junior High School, 1 Clerk and 1 Class-IV staff shall be admissible.

One additional post of teacher may be sanctioned for each additional section provided such additional section has prior approval of the DSE, WB. The first of such additional post shall be for Physical Education/Work Education.

The further additional posts shall be, by rotation, to Language, Science and Social Science Group.

The Pay Scale of the teaching and non-teaching staff of the Junior High School will be guided in terms of G. O. No. 372-Edn. (B) dated 31.7.81.

All concerned may be informed accordingly

Sd/-

Deputy Secretary."

12. By the Circular Letter dated 5/9th December, 1987, issued by the Secondary Branch, Education Department, Government of West Bengal under Memo No.1224-Edn.(S)/4A-53/87, the procedures for regularizing the services of organizing staff of such type of Junior High School newly recognized has been prescribed. The relevant portion of the said Circular reads such:-

"Under this circumstances the following principles are reiterated for strict adherence in the matter of granting approval to the appointment of teaching and non-teaching staff in a non-Govt. aided Secondary School recognized by the West Bengal Board of Secondary Education on being granted such recognition (1) the existing teaching and non-teaching staff of a unrecognized Junior

High School which applied to the said Board before 1975 in due process may be approved for appointment as organizer teacher or non-teaching staff upon the school being recognized by the said Board provided (a) such teaching or non-teaching staff has the required educational and age qualifications at the time of appointment, (b) they were present and were recommended to be so present during the authorized inspection based on which such institution was granted recognition by the said Board and (c) that there will be only six teachers in a 4 Class Junior High School including one with academic qualifications to teach Bio-Science and another to teach Pure Science. It should be noted that if such qualified teaching staff was not available during the said inspection these 1/2 posts will remain vacant for being appointed through the normal process."

13. There from it also appears that in a Junior High School having four class units, there will be only six teachers who could be regularized to a permanent staff elevating their status from organizing staff. Hence, as per Rules of Regularization of the services of organizing staff, it appears that in a Junior High School when such school is recognized, only six teachers could be appointed in a sanctioned vacancy

on the basis of their seniority as organizing staff vis-a-vis their subject of teaching by fitting them in the staff pattern as introduced with effect from 4th September, 1989. The Circular letter is the relevant guideline and procedural law herein in the absence of any specific statutory rule and it has full force of applicability thereof.

14. From the approval decision in terms of the order of Court, it appears that the District Inspector of School concerned on 2nd March, 2006 accorded approval of six teaching staff from the Organising Staff in the following manner, namely, in Language Group Srideb Jana, B.A. and Sourindra Nath Pati, B.A in Science Group, Sri Srimanta Kumar Bhunia, B.Sc. (Pure), Sri Sudipta Pahari, B.Sc. (Bio) and in Social Science Group Sri Tapas Kumar Bera, M.A. (Hist.) B.Ed. and Bishnupada Bera, B.Com. Two non-teaching staffs also were regularized, viz., Ram Krishna Maity and Biswaranjan Giri.

15. From the Annexure at Page 34 of the affidavit-in-opposition to the stay application filed by the respondents being the letter of the District Inspector of Schools concerned dated 6th January, 2006 it appears that the school authority submitted papers claiming approval of appointment of ten organizing teachers and three non-teaching staff, though the District Inspector of School concerned in this letter observed that in the District Level Inspector Team's report there were only eight teaching staff as Organizing staff.

16. The learned trial Judge in the order under appeal directed approval of service of other four teachers without indicating the name, but obviously that will be as per the claim of the school authority, as it appears from the letter of District Inspector of School concerned as well as from the letter of the learned Advocate. The names of such teaching staffs are as follows:-

(1) Sri Swadesh Ranjan Giri - B.Sc.(Pure)

(2) Sri Basudeb Prodhan - B.A.

(3) Sri Sutanu Pati - M.Com.

(4) Sri Sinchan Kanti Panda - B.A. B.Ed.

17. Having regard to such state of affairs, we are of the view that since under the Rules, particularly the Circular letter which is the guiding circular in the absence of any statutory rule to regularize the service of organizing staff, as there is no scope to regularize the services of more than six teaching staff on the basis of their seniority and teaching subject, the District Inspector of School concerned did not violate the order passed in the writ proceeding whereby the Court directed to accord approval of service of teaching and non-teaching staff as per the Rules. Hence we are of the view that Rule has been followed and there is no breach of the order for which any direction could be passed directing the District Inspector of School concerned to accord approval of other left out teachers, i.e. four in number.

18. However, from the approval order of six teaching posts, it appears that one candidate was absorbed, viz., Bishnu Pada Bera qualified with the qualification B.Com. degree. In the Junior High School there is no subject of teaching which could be imparted by any Commerce Graduate. The Circular letter being Memo No. 815-SE (S) dated 23rd November, 1994 accordingly was issued by the Education (School) Department, Secondary Branch, Government of West Bengal by contending inter alia, thereto that no teacher should be appointed in a Junior High School, who is qualified with B.Com/M.Com degree on the ground that there is no subject of teaching in the curriculum and syllabus of secondary level as well as in the junior level. The Circular dated 23rd November, 1994 reads such:-

"No. 815-SE(S)-

(I) No recognized non-Govt. aided/sponsored Secondary School/Madrasah (Jr. High or High) in this State shall henceforth, be permitted to appoint candidates with B.Com/M.Com degrees to any teaching post on the strength of these degrees. Teachers having B.Com./M.Com degree may, however, be appointed in a Secondary School in normal section within sanctioned strength provided Business Method and Correspondences and/or Book Keeping are/is taught as additional subject in that particular school in the normal section. Teachers with B.Com (Hons.) or M. Com. Degree may be appointed in Higher Secondary Section of the schools if such schools are permitted to introduce Commerce stream subjects by the West Bengal Council of Higher Secondary Education."

19. However, it appears that in Clause (II) of the said Circular there is a rider that if the Rule permits, then a teacher qualified with B.Com degree could be regularized in the permanent post by elevating his status from organizing staff. From the staff pattern, however, it appears that there is no scope of any appointment of a teacher qualified with B.Com degree as under the staff pattern out of total six teaching posts, two teaching posts will be for teachers of language group, namely the teachers, who would be able to teach the language Bengali and English as well as the third language, if any. Two posts would be for Social Science group for the teaching staff, who would be capable to teach the subject History and Geography respectively and the rest two posts will be marked for two teachers qualified for Science subject, one is Pure Science, i.e. B.Sc. with Physics, Chemistry and Mathematics subjects and another with Bio-Science, viz., Zoology, Botany and Physiology subject to teach life science papers.

20. Having regard to such position, we are of the view that inclusion of Sri Bishnu Pada Bera whether was legal or not requires adjudication by the District Inspector of School concerned afresh. We are not deciding the issue as because no lis has been raised before us on that point. District Inspector of School will decide the issue and in the event he considers that Shri Bera's name should not be included for permanent appointment from the organizing staff under such state of affairs, he is at liberty to choose the next junior organizing staff than Shri Bera who is qualified to

teach the subject Geography and in the event of non-availability of such, the post should be declared as vacant which to be filled by a candidate recommended from the School Service Commission. For such reason, the District Inspector of School also will be entitled to cancel the appointment of Shri Bera by giving an opportunity of hearing to him. He is directed to act accordingly within two months from this date.

21. Considering all the legal aspect of the matter and factual point, we are of the view that the impugned order under appeal is not legally sustainable. It is accordingly set aside and quashed. The appeal is, therefore, allowed. The recalling application being C.A.N. No. 392-2009 stands dismissed and the application for Stay being C.A.N. No. 41 of 2009 stands disposed of on the aforesaid finding.

Manik Mohan Sarkar, J.

22. I agree.

Later : After the judgment is delivered, Learned Counsel for the respondents, prays for stay of operation of the judgment. The said prayer is considered and refused.