

(2010) 11 CAL CK 0010

Calcutta High Court

Case No: W. P. No. 22517 (W) of 2010

Nabin Kumar Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Nov. 26, 2010

Citation: (2011) 4 CHN 291

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Soumen Kr. Dutta, for the Appellant; Sakti Pada Jana, for the Respondent

Final Decision: Dismissed

Judgement

Dipankar Datta, J.

The petitioner was appointed as Assistant Teacher in Physical Education Group in the school in 1985. His service has since been approved. He is enjoying post-graduate scale of pay. Incidentally, he is the holder of Bachelor of Commerce and Bachelor of Physical Education degrees.

2. Since there was a vacancy in the post of Assistant Teacher in Commerce Group in the Higher Secondary Section of the school, the school utilized the service of the petitioner. Simultaneously, the department was approached for granting approval so that the petitioner can be shifted to the Commerce Group from the Physical Education Group. Mr. S. K. Ghosh, the Assistant Secretary to the Government of West Bengal, School Education Department on being directed, requested the Director of School Education vide memo dated 10th July, 2007 to send a concrete proposal to the department for further processing of the matter. The District Inspector of Schools (SE), Paschim Medinipur was requested by the Director of School Education, West Bengal vide memo dated 8th August, 2007/21st August, 2007 to submit necessary records. Pursuant thereto, the District Inspector vide memo dated 4th June, 2010 recommended shifting/transfer of the petitioner in the Commerce Group from the Physical Education Group. The Director of School Education by the impugned memo dated 31st August, 2010/9th September, 2010

has regretted his inability to consider the recommendation of the District Inspector and has requested him to instruct the school to take steps for filling up the concerned vacancy on the basis of the recommendation of the Regional School Service Commission having jurisdiction. This order forms the subject matter of challenge in the present petition.

3. I have heard Mr. Dutta, learned Advocate for the petitioner. He submits that the matter may be remitted back to the Assistant Secretary for consideration of the proposal of the District Inspector, since he had no occasion to consider the issue.

4. I find no reason to grant the prayer of the petitioner.

5. Power of judicial review of a Court of Writ, while deciding whether an order passed by an administrative authority should be upheld or not, is not confined to a scrutiny of the reasons assigned in support of the impugned order. If the Court is of the view, upon consideration of the entire materials before it, that the conclusion reached by the administrative authority could be sustained on the basis of reason(s) other than that contained in the impugned order, nothing prevents the Court to arrive at its own conclusion after extending opportunity of hearing to the parties. In the process, if the Court considers that the impugned order may be sustained on the basis of the reasoning which could be assigned by the Court, there is no reason as to why a remand should be directed upon quashing of the impugned order. The Court, in such circumstances, would be perfectly competent to sustain the impugned order by providing the reason(s) therefore.

6. On and from the date the West Bengal School Service Commission Act, 1997 has been enforced i.e. 1st November, 1997 appointment of any teacher cannot be made except on the recommendation of the Regional School Service Commission having jurisdiction. If at all the post of Assistant Teacher in Commerce Group in the Higher Secondary Section in the school is vacant and the petitioner has been asked to render service for the greater interest of the students that is entirely a private arrangement between the school and the petitioner. The petitioner cannot claim that by reason of rendering service in the Higher Secondary Section in the school, he should be allowed to be shifted to the Commerce Group. There is no statutory provision which empowers the department to shift/transfer a teacher from one group to the other and thereby fill up a vacant post of teacher; therefore, the proposal that was sent by the Assistant Secretary is of no consequence at all. The Assistant Secretary, I presume, issued the concerned memo merely on the direction of his superior without consulting the statutory provisions, for his action is not supported by any such provision. He must realize that issuance of memo like the one dated 10th July, 2010 is likely to generate hope in the minds of teachers like the petitioner and thereby encourage them to approach the Writ Court for redress which, ultimately, does not ensure to their benefit. The Assistant Secretary would be well advised to make himself aware of the statutory provisions and desist from issuing such memo as the one under consideration in future.

7. The further submission of Mr. Dutta that the reasons assigned by the Director of School Education in the impugned memo are invalid has also not impressed me.
8. The reason given by the Director for the conclusion he reached is correct. On the basis of a Bachelor's degree in Commerce, the petitioner cannot claim that he should be allowed post graduate scale of pay, if he is shifted/transferred to the Commerce Group. The post of Assistant Teacher in the Commerce Group, as has been rightly observed by the Director, should be filled up from candidates considered by the Regional School Service Commission having jurisdiction.
9. I find no reason to interfere with the impugned order of the Director. The writ petition stands dismissed without any order for costs.
10. A copy of this order shall be furnished by the office to the Assistant Secretary at once for his guidance.
11. Urgent xerox certified copy of this order, if applied for, be supplied to the parties, as early as possible.