

(2002) 07 CAL CK 0008

Calcutta High Court

Case No: Writ Petition No. 24674 (W) of 1997

Emajuddin Ahmed

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: July 2, 2002

Citation: (2002) 2 ILR (Cal) 321

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: Asok De and Indran Pal, for the Appellant; Anjan Chakraborty, for Council and Seba Roy, for State, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.

Heard the learned Advocates for the parties.

2. In this application, the Petitioner has prayed the following relief(s):

(a) A Writ in the nature of mandamus commanding the Respondent No. 3, to appoint the ward of the Petitioner in his place within a certain time ;

(b) A Writ in the nature of Mandamus commanding the Respondent No. 3 to allow the ward of the Petitioner for appointment in his place and also to give all ether benefit? to the Petitioner within a certain time.

(c) A writ in the nature of certiorari calling upon the Respondents and/or their men or agents to produce the records of the case before this Hon"ble Court so that concessionable justice may also be rendered;

(d) A writ in the nature of Prohibition prohibiting the Respondents and/or their men or agents from giving any effect or further effect of the order dated 18th August, 1997 passed by the Respondent no, 3 in any manner whatsoever till disposal of this application.

3. The facts leading to the writ application are as follows:

Petitioner while was working as Head teacher of a Primary School, due to his illness submitted an application on March 19, 1996 praying Voluntary Retirement on the ground of physical incapacity. An application for appointment of Petitioner's son also was filed on the same date. On March 22, 1996, concerned Sub-Inspector of Schools referred the matter to the Chairman for consideration. Chairman, Ad hoc Committee of concerned District Primary School Council held the enquiry on October 14, 1996 but no result was communicated to the Petitioner. Petitioner moved this Court in Writ Petition No. CO. 18462 (W) of 1996 praying necessary direction for holding a Medical Board to declare him physically incapacitated to work and thereby to provide relief namely appointment of his son. By the order dated December 24, 1996 this writ application was disposed of by S.R. Mishra, J. (as His Lordship then was) directing the Chief Medical Officer of Health of the concerned District to examine the Petitioner within 7 days and submit his report within three days to the Council. Primary School Committee also was directed to refer necessary papers under the rules for disposal of the Petitioner's grievance. By the letter dated May 22, 1997, Medical Officer directed the Petitioner to appear on June 2, 1997 for Medical Test and on that day Petitioner was declared as unfit to work further. On August 18, 1997, Chairman, Ad hoc Committee of the concerned District rejected the prayer for appointment of the ward of the Petitioner though accepted the declaration of Voluntary Retirement of the Petitioner in view of the Medical Report. On August 26, 1997 Petitioner made a representation before the Chairman of the Primary School Council but nothing was responded, hence this writ application.

4. After hearing the parties, direction was given to submit the report of Medical Board and other relevant papers. This writ application has been opposed by filling of Affidavit-in-Opposition by the concerned Primary School Council contending, inter alia, that under Rule 14(b) of the Leave and Recruitment Rules applicable to the Primary Teachers as introduced with effect from the year 1991, since the declaration of Medical Board declaring the Petitioner physically incapacitated to work was made when Petitioner already crossed 58 years of age, no relief could be granted for appointment of the Petitioner's son under the said Rule.

5. The aforesaid; point as argued by the learned Advocate for the Primary School Council has already been finally adjudicated by the Division Bench of this Court in the case Anil Ch. Majhi v. State of West Bengal and Ors. Unreported by the judgment and order dated April 20, 2001 passed in F.M.A. 178/1999. It has been held in the said unreported judgment that due to the negligence and fault of the authorities concerned to set up a Medical Board and to complete the Medical Examination of an ailing teacher for declaration that teacher was physically incapacitated to work before the teacher crosses 58 years of age, the teacher concerned cannot suffer from the benefit as granted under aforesaid Rule 14(b). It is further held that provision 14(b) of the said Rule was introduced as a social justice measure to

provide appointment to the ward of the ailing teacher, who due to ill health could not complete service of 60 years. It has been further held that had there been a constitution of Medical Board in right time when concerned teacher applied, surely the declaration would have been, available for effective steps to consider the matter under Rule 14(b) and there would have been no embargo of crossing the age of 58 years as was urged by the learned Advocate in the said case. Considering the matters, the Division Bench held that if any teacher applies to declare himself as incapacitated to work prior to reaching the age of 58 years and due to delay of holding the Medical Board, a declaration is passed declaring the teacher as physically incapacitated to work even after crossing the age of 58 years, the teacher concerned would be entitled to have the benefit under Rule 14(b). In this case also, the fact depicts that the teacher concerned not only applied prior to the age of 58 years for necessary declaration that he was physically incapacitated but due to delay of holding Medical Board, Petitioner came to this Court for necessary order directing to constitute the Medical Board when S.R. Mishra, J. allowed the prayer directing to complete the examination by Medical Board.

6. Having regard to the fact of the case and having regard to the Medical report of the concerned Board, it appears that the reason for voluntary retirement as set up. in the application filed by the concerned teacher while he was below 58 years of age was accepted by the Medical Board when examination was conducted by them, even if the teacher concerned crossed 58 years of age. Hence, in the instant case, the judgment of the Division Bench Anil Ch. Majhi(Supra) is squarely applicable. In view of such state of affairs the impugned decision passed by the Primary School Council refusing to send the proposal of appointment of the ward of the teacher to the Director of School Education on the ground that the teacher concerned crossed 58 years of age on the date when he was declared permanently incapacitated is hereby set aside and quashed. For the purpose of providing appointment to the ward of the teacher and sending the proposal it will be deemed for all purposes that the Petitioner retired from the date when he submitted the application praying voluntary retirement on the ground that he was physically incapacitated, which in the instant case is March 19, 1996 when admittedly concerned teacher was 57 years 24 days i.e. below 58 years of age. On the application dated March 19, 1996 under Column-12 it was stated by the concerned teacher that he was suffering from Ankylosing Spondylitis, Cervical Spondylitis, Epigastric Pain, Diabetes cum Urinary uncontinence. From the report of the Medical Board, it appears that the same reasons regarding ailments of the concerned teacher was mentioned while declaring the teacher as physically incapacitated to work.

7. Hence, having regard to the judgment of the Division Bench, it is declared that Petitioner would be entitled to have the consideration of a decision regarding appointment of his son under Rule 14(b) of the aforesaid Rule. The Respondents Primary School Council concerned is directed to consider the prayer for appointment of the ward of the Petitioner in terms of Rule 14(b) and to send

necessary proposal in accordance with law regarding appointment of the ward of the Petitioner in the post of teacher of a Primary School to the concerned Director of School Education, West Bengal for necessary approval.

8. It is submitted by the learned Advocate for the Primary School Council that no application Was filed by the son of the Petitioner praying appointment as primary school teacher but his candidature was considered with reference to the application filed by his father, i.e. the present Petitioner which was rejected only on the ground that Petitioner crossed the age of 58 years when he was declared physically incapacitated. It is further submitted that since the Court has declared that age bar issue under. 14(b) aforesaid would not be a bar to consider the issue of appointment Petitioner's son as Primary School Teacher, an application by the Petitioner's son under the law is required to be filed.

9. Having regard to the contentions as made by the learned advocate for the primary school council, it is directed that in terms of the judgment of this Court the son of the Petitioner will apply for his appointment in the post of Assistant Teacher and such application to be deemed as filed with retrospective effect from the date when the Petitioner's father prayed necessary declaration by a Medical Board that he was physically incapacitated. In that view of the matter, leave is granted to file the application by the son of the Petitioner within 4 weeks from this date and as a follow up action Primary School Council will send the proposal for appointment to Director of School Education, West Bengal concerned with 4 weeks thereafter, who in turn will decide the issue of approval of appointment within 4 weeks from the date of receipt of papers as would be send by Primary School Council in the form of proposal for appointment. Writ application is accordingly allowed.