

**(2012) 09 CAL CK 0026**

**Calcutta High Court**

**Case No:** Writ Petition No. 11878 (W) of 2007

Swadesh Kumar Gayen

APPELLANT

Vs

The State of West Bengal and  
Others

RESPONDENT

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**Date of Decision:** Sept. 19, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (2013) 136 FLR 445 : (2012) 4 LLJ 839

**Hon'ble Judges:** Indira Banerjee, J

**Bench:** Single Bench

**Advocate:** Indrajit Dasgupta and Mr. Sukumar Pal, for the Appellant; Tulsidas Maity, Advocate for the State, for the Respondent

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### **Judgement**

Indira Banerjee, J.

In this writ petition, the petitioner has, inter alia, challenged an order being Memo No. 23/1 (6) LC dated 19th March, 2007 passed by the Director of School Education pursuant to an order dated 30th June, 2005 passed by His Lordship the Hon"ble Justice Aniruddha Bose in W.P. No. 2732 (W) of 2002 (Ms. Swadesh Kumar Gayen Vs. State of West Bengal and Others). By the order impugned, the Director of School Education has rejected the claim of the petitioner for regularization of his service as Organizing Clerk of Narayanpur Lakshminarayan Madhyamik Vidyalaya, hereinafter referred to as the school.

2. By a Memo No. 10781/G dated 12th November, 1974 Narayanpur Lakshminarayan Madhyamik Vidyalaya, hereinafter referred to as "the school", was recognized as a two Class Junior School. In 1989 the Managing Committee decided to upgrade the school as a four Class Junior High School and start Classes VII and VIII.

3. The petitioner has alleged that for the purpose of up-gradation, the school engaged teachers and staff. According to the petitioner, the respondent no. 6, Tapan Kumar Pradhan and one Buddhadeb Sasmal were appointed as Assistant Teachers and the petitioner was engaged as clerk with effect from 1st May, 1989. The petitioner has stated that he had been discharging duty without any pay.

4. It is pleaded that on 20th June, 1990, the Administrator of the school took a resolution being Resolution No. 20 dated 20th June, 1990, which is set out herein below:-

It appears for the statement of the Headmaster of the School that according to the decision of the former Managing Committee Class VII and Class VIII are showing in the School without affidavit of the competent authority and according to this advice of the Local well wishers of the School the undersigned has allowed the Voluntary teachers viz 1. Sri Tapan Kr. Pradhan B.Com and 2. Sri Buddhadev Sasmal B.Sc. (Bio) and one Voluntary Clerk viz Sri Sadesh Kr. Gayen (Madhyamik) to continue the extra two classes mentioned above and for clerical works of the school respectively and they are serving satisfactory since 1.5.89 without any remuneration.

Hence, reserved that if either the school be upgradation or any Add. Post or normal vacancies be created by the competent authority the above named volunteer Asst. Teachers and clerk may be allowed to be appointed against the vacancies aforesaid according to the necessity of the school in future.

They are serving to their own posts in the school very satisfactorily which seems become as sacrifice from their and in interest of the constitution. So, I feel responsibility to .....that they may avail first priority in case of appointment in the school.

Their applications and testimonials should be kept under the custody of the Headmaster of the school for necessary action.

5. The petitioner claims to have continued to discharge his duties as clerk of the school even after reconstitution of the Managing Committee. According to the petitioner the members of the new Managing Committee acknowledged and approved the services of the staff and also of the petitioner observing that they had till then not been issued letters of the appointment. Pursuant to a resolution of the Managing Committee, appointment letters were issued to the petitioner on 8th March, 1994.

6. Factual disputes as to whether the petitioner worked at the school as clerk, as alleged, and if so, the period during which the petitioner worked, cannot be adjudicated under Article 226ZA of the Constitutional of India.

7. The impugned order is long and reasoned The Director of School Education has on consideration of the evidence adduced before him concluded that the petitioner might perhaps have worked in the school as organizing clerk prior to DLIT

Inspection but there was nothing on record to show that he continued in service at the time of DLIT inspection.

8. As per the rules in force at the material time, when the Organizing Teachers and non-teaching employees of the school were regularized and approved the condition precedent for regularization was appearance of the name of the teacher/non teaching employee in the DLIT Report, on the basis of which the school was recognized and/or up graded.

9. The Director of School Education found that the name of the petitioner did not appear in the DLIT Report. The Director found, in effect that there was no conclusive evidence that the petitioner continued to work, and/or in other words, was still in service as clerk of the school, at the material time when the DLIT Inspection took place. More over the petitioner agitated his claim in 2002 after the formalities of recognition and approval of appointment of organizing staff had been completed.

10. In my view, it is not material that the petitioner started agitating his grievances after the school was up graded and after the Organizing Staff were approved. The question is whether he was working at the time of the DLIT inspection. Even if he had been working, he could not have raised any dispute until others were regularized. A teacher or a non-teaching employee could not definitely have known whether he/she would not be regularized or not, until completion of the regularization and appointment process.

11. At the time of DLIT Inspection, all the relevant particulars with regard to the school concerned, including the number of students studying in the school, the number of teachers teaching at the school, the infrastructural facilities available and other relevant particulars are recorded. Inclusion of the names of teachers or members of the non-teaching staff in the DLIT Inspection Report is prima facie evidence of the fact that they were actually working in the school. The Inspection Report being an official report there is a presumption of correctness of the report.

12. Thus, for the purpose of regularization of organizing teachers and/or organizing members of the staff, the DLIT Report is relevant. Government orders provide that teachers and/or members of the non-teaching staff who worked at the time of inspection by the DLIT for the purpose of recognition and/or recognition of up gradation, as the case might be, would be eligible for regularization.

13. The whole object of insistence on inclusion of the names of the teachers and/or non-teaching employees in the DLIT Report is to eliminate bogus collusive claims from persons who never actually rendered service as organizing teachers or alternatively had rendered service for a while but had later discontinued and hence ineligible.

14. Inclusion of the name of a teacher and/or non teaching employee, in the DLIT Report, is acceptable, if not conclusive evidence of the teacher and/or employee

concerned having worked in the school. However, omission to include the name of a teacher or non-teaching employee in the Inspection Report is not in itself ground for rejection of a bona fide claim for regularization supported by cogent evidence of the teacher and/or non-teaching employee concerned having worked at the school. For example, deliberate omission to record the names of existing unapproved teachers or alternatively omission to record the name of any particular employee or teacher by reason of his absence on the particular day on which the inspection took place, would not render a genuine candidate who had been rendering service till the date of inspection, and after wards, ineligible for regularization.

15. In the instance case however, the Director of School Education has, in effect, found that there were no cogent documents to show that the petitioner had been rendering service to the school as a clerk on the date on which DLIT Inspection was held. The factual finding is based on analysis of the documentary evidence on record. The writ Court cannot reappraise the evidence.

16. In exercise of power under Article 226 of the Constitution of India, this Court does not sit in appeal over a factual decision taken by the Director of School Education. In exercise of the power of judicial review under Article 226, this Court is only to examine the legality and/or propriety of the decision making process. It is not for this Court to examine the correctness of the decision.

17. The petitioner has contended that the petitioner was an Organizing Clerk of this school. The Teacher-in-Charge of the school, who also claimed to be an Organizing Teacher of the school, alleged that he never saw the petitioner working either as teacher or as clerk of the school. The Head Teacher contended that the documents produced before the Director of School Education in connection with the alleged appointment of the petitioner were manufactured documents.

18. The report of the District Level Inspection Team was produced before the Director of School Education. In the said report the name of Tapan Kumar Pradhan was mentioned as clerk. A photocopy of the Attendance Register for the period from May 1999 to April 2001 was also produced where the names of Sri Swapan Kumar Samanta and Tapan Kumar Pradhan appeared as Assistant Teacher and Clerk respectively and they duly signed the attendance register. The name of Swadesh Kumar Gayen did not appear in the Attendance Register for the aforesaid period. The Director of School Education found that the School had been upgraded to a 4 Class Junior School with effect from 1st May, 2002. Inspection of the District Level Inspection Team for the purpose of up-gradation was held on 7th September, 1999. The petitioner's name was not recorded in the Inspection Report.

19. On consideration of relevant facts and documents, the Director of School Education was of the view that the petitioner might have worked in the school as Organizing Clerk prior to the DLIT Inspection but no records were produced by either of the parties. The petitioner agitated his claim in 2002 after the formality of

recognition and approval and appointment of organizing staff had been completed. As such, the petitioner could not be considered as Organizing Clerk of the institution.

20. The impugned decision is a reasoned decision based on materials on record. In the absence of cogent documents showing that the petitioner, in fact worked at the School as clerk and had continued in service till the date of Inspection by the DLIT, no relief can be granted to the petitioner. The view taken by the Director of School Education that the petitioner might perhaps have worked for some time but later discontinued is a plausible view. It is the petitioner's own case as pleaded in the writ petition that the petitioner was engaged without remuneration. It is possible that the petitioner might have lost his patience after working for years without remuneration and discontinued before the District Level Inspection team inspected the school. No relief can, therefore, be granted to the petitioner.

21. The writ application is disposed of. Urgent certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.