

(2013) 07 CAL CK 0013

Calcutta High Court

Case No: W.P. No. 1101 of 2009

Om Prakash Mishra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: July 3, 2013

Citation: (2014) 1 CHN 719

Hon'ble Judges: Ashoke Kumar Dasadhikari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ashoke Kumar Dasadhikari, J.

The subject-matter of challenge is the impugned order passed by the District Inspector of Schools (Secondary Education), Kolkata dated 19th August, 2009 refusing approval of the petitioner's appointment as Assistant Teacher in Gyan Bharati Vidyapith. Mr. Sanyal, Learned Counsel appearing for the writ petitioner, submits that the respondent-school is a D.A. getting school. The provisions of School Service Commission do not apply in case of appointment of teaching and Non-teaching Staff of the school. However, through the proper selection process the school selected the writ petitioner as an Assistant Teacher in Language Group in the school and the writ petitioner having been selected joined the school on and from 10th December, 2001. The petitioner's appointment was confirmed with effect from 1st April, 2005. Although the School Authorities sent relevant papers before the concerned D.I. for approval, the concerned D.I. did not grant approval. The writ petitioner moved this Hon'ble Court against such inaction on the part of the D.I. This Hon'ble Court directed the concerned D.I. to consider and dispose of the representation of the School Authority and further directed to take into consideration the prayer for condonation of age bar as made by the writ petitioner in the said writ petition. In view of the said order of the Hon'ble Court dated 19th November, 2008, the D.I. heard the matter and passed the impugned order dated 19th August, 2009 refusing approval on the ground that the writ petitioner is little

over-aged and that he was about 44 years 9 months which, according to the D.I., is contrary to the provisions as laid down in G.O. No. 1691-SB(S) dated 20th September, 2001 and it was held by the D.I. that since the writ petitioner could not produce any relevant order as regards condonation his age from Court, as such the age bar in the instant case could not be considered. Mr. Sanyal submits that this point was decided long back by a learned Single Judge of this Hon"ble Court on 2nd April, 2003, in W.P. No. 7498(W) of 2002. In that decision, the learned Single Judge following the Hon"ble Apex Court decision held that a human approach should be taken in all deserving cases when no prejudice had been caused either to the institution or the students or the State by reason of giving such appointment to an over-aged but well-qualified person. Mr. Sanyal submits that the impugned order passed by the District Inspector of Schools (SE), Kolkata, is not at all sustainable.

2. In spite of notice nobody is appearing for the respondents-authorities nor any opposition filed nor any accommodation was prayed for.

3. Heard Mr. Sanyal. It appears that the petitioner is a well-qualified person having Master Degree, that is M.A., B.Ed., and he passed through a selection process duly held by the school and he was given appointment. He joined the school on 10th December, 2001. His papers were sent by the school for approval, but the approval was not granted. The writ petitioner moved this Hon"ble Court and this Hon"ble Court passed the following order:

Upon hearing the learned Advocates for both the sides, the writ petition is disposed of with the direction upon the District Inspector of Schools (S.E.), Calcutta at Hindustan Park, Kolkata-29 to dispose of the proposal for approval of the appointment of the petitioner as given by the school authority within six weeks from the date of communication of this order and while disposing of the said application the concerned District Inspector of Schools (S.E.), Calcutta is directed to give personal hearing to the petitioner as well as to the representative of the school authority and permit the petitioner to produce the relevant rules and the decision as might have been passed by this Court and the Hon"ble Supreme Court and thereafter the District Inspector of Schools (S.E.), Calcutta is further directed to inform the petitioner as well as the school authority about his decision within seven days from the date of such decision.

The District Inspector of Schools (S.E.), Calcutta, is further directed to take into consideration the prayer for condonation of age bar as made by the petitioner in this writ petition, in the light of the prevailing rules and the decisions of different Courts.

4. Pursuant to that order, the concerned D.I. passed the impugned order which is under challenge. It appears from the order passed by the D.I. that the petitioner is little over-aged which is contrary to the Government's memo. That is why, the D.I. could not grant approval. It was mentioned that the no Court order was produced in

favour of such condonation. Therefore, his age-bar was not condoned and he was not granted approval. However, it appears from the judgment and order passed in W.P. No. 7498(W) of 2002 that in similar circumstances, a learned Single Judge of this Court taking note of one decision of the Hon"ble Apex Court has decided as follows:

A humane approach made in the case which was pending before the Apex Court. There is no reason why a humane approach should not be made in all deserving cases, particularly when no prejudice has been caused either to the Institution or to the students or to the State by reason of the petitioner being over-aged and furthermore, there is no Rule governing the field. There is no indication in the Recruitment Rules that the same will also be applicable to the teaching and Non-teaching Staff of a D.A. getting school. Therefore, I am not convinced that the same Rules would also be applicable to the teaching and non-teaching members of a D.A. getting School. Therefore, the so-called snag in approving the appointment of the petitioner on the basis of the supposition that she was over-aged on the date of appointment even is not borne out by the Rules.

In that view of the matter one can safely say that the rejection of the prayer for approval of appointment of the petitioner by the D.I. was uncalled for.

The authority including the D.I. is therefore directed to approve the appointment of the petitioner with effect from 27th June, 1986 which was the date when she joined pursuant to the letter dated 26th June, 1986. Let such approval be made within three weeks from the date of communication of this order.

5. Therefore, this Court do not have any hesitation to hold that the same principle will apply in the instant case when appointment of the writ petitioner is neither prejudicial to the State Authorities, not to the institution or its students.

6. In view of my aforementioned conclusion, I find that the impugned order passed by the concerned D.I. is not sustainable in law and, therefore, the same is set aside.

7. Accordingly, I direct the D.I. concerned to approve the petitioner's appointment with effect from 1st April, 2005 since when the petitioner's appointment was confirmed by the Secretary of Cyan Bharati Vidyapith after condoning the age bar. The concerned D.I. is further directed to release the arrear D.A. in favour of the writ petitioner with effect from 2009.

8. The writ petition is, thus, disposed of. There would be no order as to costs. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.