courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 13/11/2025

(2011) 01 CAL CK 0017

Calcutta High Court

Case No: F.M.A. No. 531 of 2010

State of West Bengal		APPELLANT
	Vs	
Sasti Kumar Chowdhury		RESPONDENT

Date of Decision: Jan. 21, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 141, 16

Citation: (2011) 2 CHN 553

Hon'ble Judges: Mrinal Kanti Chaudhuri, J; Amit Talukdar, J

Bench: Division Bench

Advocate: W.A. Mondal and Shanti Das, for the Appellant; Malay Kr. Basu, A.P. Lahiri for Respondent No. 1 and Yamin Ali, for the Respondent

Judgement

Amit Talukdar, J.
Quintessentially a molecular point arises for our consideration as to whether a Division Bench decision is binding on us, which was based on a previous Supreme Court judgment, that was later overruled by a Larger Bench.

2. In the trajectory of the same, we would have to examine the Order rendered by the Hon''ble Trial Court whereby the directions for according sanction for appointment in favour of the Respondent No. 1 herein was passed. That has been carried at the instance of the State of West Bengal in this appeal.

3. Bereft of details in connection with W.P. No. 21354 (W) of 2004, the Hon''ble Trial Court directed the Respondent No. 3 to send necessary papers regarding appointment of the Respondent No. 1 to the Appellant No. 3, who will forward the same to the Appellant No. 2, who, in turn will approve the appointment of Respondent No. 1 within two weeks.

4. The State of West Bengal has concentrated oh the following premises:

(i) In the event such a position is permitted to remain, it will result in an irregular appointment;

(ii) The Managing Committee has No. authority and;

(iii) Without permission of the District Inspector of Schools, No. appointment can be made.

5. Rounding up his submissions on the basis of those three focal aspects, Shri Wasef Ali Mondal with Smt. Shanti Das for the Appellant State of West Bengal has argued that the Order passed by Hon''ble Trial Court, unless set aside would give rise to a very difficult situation resulting in the Respondent No. 1 being appointed without following the Recruitment Rules and without prior approval of the District Inspector of Schools.

6. He was of the view that even though the District Inspector of Schools had given approval earlier in respect of some other candidates; that cannot have any binding value on the Court.

7. He doubted that one mistake cannot be cured by another and that Article 14, on the basis of which the Respondent No. 1 has laid his claim cannot have any negative application.

8. He has also relied on a Written Notes of Argument and cited two decisions of the Hon''ble Apex Court in Shesh Mani Shukla Vs. D.I.O.S. Deoria and Others, nd State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai, as well as two Division Bench decisions of this Court in State of West Bengal and Ors. v. Smritikana Maity and Ors. 2008 (1) CLJ (Cal) 316 and Manindra Nath Sinha and Ors. v. State of West Bengal and Ors. 2006 (2) CLJ (Cal) 489.

9. Shri Yamin Ali for the Respondent Nos. 2 and 3 i.e. the Teacher-in-Charge and the Secretary of the concerned School submitted that this was a pure case of discrimination. Although the District Inspector had accorded sanction in respect of others, there is No. reason why, he refused the same in favour of the present Respondent No. 1, who was similarly situated.

10. He submitted that as the post was sanctioned, there was No. difficulty in absorption of the Respondent No. 1 and it was necessary that the District Inspector should have given permission.

11. Shri Malay Kr. Basu, learned Senior Counsel with Shri A.P. Lahiri for Respondent No. 1 wondered in the same School identically situated person was given appointment but No. challenge was thrown in respect of the same, whereas the Respondent No. 1 being otherwise eligible, was discriminated against.

12. He referred to a Division Bench decision of this Court dated 13.04.2010 in F.M.A. No. 771 of 2008 (State of West Bengal and Ors. v. Husna Banu and Ors., where on similar facts and circumstances the said Division Bench in State of West Bengal and

Ors. v. Husna Banu and Ors. (supra) concluded that when the services has been accepted for long time and she was not disengaged, it can be said that the appointment is neither void nor invalid.

13. Shri Basu, learned Senior Counsel placed before us the Order of the Hon''ble Apex Court in Special Leave to Appeal (Civil) No. 16966 of 2010 dated 30.07.2010 wherein the State of West Bengal had moved against the Order passed by the said Division Bench in State of West Bengal and Ors. v. Husna Banu and Ors.(supra) and the Supreme Court dismissed the special leave petition.

14. On the basis of the same, Shri Basu, the learned Senior Counsel has submitted that apart from the question of discrimination adopted by the District Inspector of Schools concerned--in view of the Division Bench decision in State of West Bengal and Ors. v. Husna Banu and Ors. case (supra) which stood affirmed by the Hon''ble Apex Court, the Order under Appeal, which has been assailed by the State of West Bengal needs to be maintained.

15. Before we enter into the core area of discussion, the background facts are required to be set out.

16. The Respondent No. 1 was appointed on 22.12.1995 by the then Managing Committee. Since there were several vacancies existing in the School and in spite of approach made to the Appellant Nos. 2 and 3 No. steps were taken as a compulsive measure such appointment was made. It appears that since 04.01.1996 (actual date of Joining), the Respondent No. 1 has been continuing in service in the said School.

17. In the meantime, he approached the District Inspector of Schools for regularisation of his appointment but nothing fructified. Thereafter, he approached the Hon''ble Writ Court, which resulted in the impugned finding.

18. The following quotients are required to be solved in the theorem of the situation that we have had interfaced with:

(A) Appointment of Assistant Teacher given by the then Managing Committee in favour of the Respondent No. 1, who is still in service. Is it sanctified in view of the promulgation of West Bengal School Service Commission (Amendment) Act, 2008?

(B) Whether the approval granted by the District Inspector to a similarly situated candidate and refusal of the same facility to the Respondent No. 1 would violate the right to equality?

(C) The Division Bench decision in State of West Bengal and Ors. v. Husna Banu and Ors. (supra), whether it would have any binding effect ?

We will solve the three problems individually.

Let us take up the first one.

19. The answer to theorem No. A would be a big No. in view of the coming into effect of the said Act on and from January, 2009. The same supersedes the other preceding Acts in this area. Recruitment process was not initiated under the earlier Rules and the same has, as yet not began. Obviously, the new Rules are required to be followed or else such appointment would be de hors the Recruitment Rules (See: 1) Asoke Sawoo v. State of West Bengal and Ors. in W.P. No. 16383 (W) of 2010 (2) Managing Committee of Poloerhat High School v. State and Ors. 2011 (1) WBLR (Cal) 214 and (3) Sankar Das v. State of West Bengal and Ors. 2011 (1) WBLR (Cal) 326.

20. Needless to say Article 14 never has a negative application. In the event the two other candidates namely Ashif Iqbal and Modasser Hossain having been given appointment by the District Inspector in the circumstances, which we shall see, cannot give any edge to the present Appellant as the rule of one wrong cannot justify another as in life so also in employment.

21. Theorem No. C. Simply the Division Bench decision in State of West Bengal and Ors. v. Husna Banu and Ors. (supra) cannot have any binding effect on us for the two part reasons.

22. Firstly, it was passed in oblivion of the ratio of the decision of a Three-Judge Bench of the Hon''ble Apex Court in Official Liquidator Vs. Dayanand and Others, wherein the Division Bench decision of Supreme Court in U.P. State Electricity Board Vs. Pooran Chandra Pandey and Others, by which the said Division Bench in State of West Bengal and Ors. v. Husna Banu; Ors. (supra) swept away--was overruled.

23. Secondly, the earlier decision of Harminder Kaur and Others Vs. Union of India (UOI) and Others, was also not noticed by the said Division Bench wherein the decision of U.P. State Electricity Board v. Pooran Chandra Pandey (supra) being overruled; was also not taken into account and it was held that the ratio of a Constitution Bench decision should be ascertained by reading the same as a whole.

24. More precisely in Paragraph 14 Their Lordships in Harminder Kaur and Ors. v. Union of India and Ors. (supra) has laid down:

14. A judgment of a Constitution Bench of this Court laying down the law within the meaning of Article 141 of the Constitution of India must be read in its entirely for the purpose of finding out the ratio laid down therein. The Constitution Bench in Umadevi (3) easel, in No. uncertain terms, based its decision on the touchstone of the "equality clause" contained in Articles 14 and 16 of the Constitution of India. Emphasis has been laid at more than on place for making appointments only upon giving an opportunity to all concerned. Appointment through side door has been held to b'' Constitutionally impermissible.

25. As such the very basis of the decision of State of West Bengal and Ors. v. Husna Banu and Ors. (supra) cannot be said to have an impinging effect. This is the Part I reason as to why we would not be able to adhere to the submission of Shri Basu,

learned Senior Counsel who placed his argument on the strength of the decision of State of West Bengal and Ors. v. Husna Banu and Ors. (supra).

26. Shri Basu, learned Senior Counsel has submitted at length that once the decision of State of West Bengal and Ors. v. Husna Banu and Ors. (supra), which was carried at the instance of the State of West Bengal before the Hon''ble Supreme Court in Special Leave to Appeal (Civil) No. 16966 of 2010 on 30.07.2010 met with the following fate:

We do not find any ground to interfere.

Special Leave Petition is dismissed.

27. Accordingly, Shri Basu, learned Senior Counsel, was of the view that the decision rendered by the Division Bench in State of West Bengal and Ors. v. Husna Banu and Ors. (supra) has clinched the issue.

28. We are afraid, that we have to consider the said submission of the learned Senior Counsel in the light of the situation evolved from the ratio of the decision of the Supreme Court in Union of India (UOI) and Another Vs. Manik Lal Banerjee, it has been held:

17. Only because this Court dismissed the special leave petition, the same would not mean that any law within the meaning of Article 141 of the Constitution was laid down thereby.

29. Similarly the Supreme Court in State of Manipur Vs. Thingujam Brojen Meetei, has held:

16. It is No. doubt true that SLP (Civil) No. 285 of 1993 filed by the State of Manipur against the decision of the High Court in N. Arun Kumar Singh v. State of Manipur1 was dismissed by this Court by Order dated 15.2.1993. The said SLP was, however, dismissed in limine without expressing any opinion on the merits of the impugned Judgment. The dismissal of a SLP by a non-speaking order which does not contain the reasons for dismissal does not amount to acceptance of the correctness of the decision sought to be appealed against. The effect of such a non-speaking order of dismissal without anything more only means that this Court has decided only that it is not a fit case where the SLP should be granted. Such an order does not constitute law laid down by this Court for the purpose of Article 141 of the Constitution.

30. Accordingly, the aforesaid two situations in Part I and Part II of our reasoning practically steals the thunder out of the storm of the argument of the learned Senior Counsel in this regard.

31. Since at the stage of writing the judgment we found mention of two Orders passed in W.P. No. 18 (W) of 2000 and W.P. No. 17 (W) of 2000, we deferred the delivery of the same and put up the matter for further hearing. As such, we assembled again and after affording an opportunity of hearing to the Appellants,

the Respondent No. 1 and Respondent No. 3, we have reserved our judgment.

32. Written Notes have been exchanged between the parties and several decisions have been referred in support of the individual claim of the respective parties.

33. Even though we have literally set out the basics by way of a astern analysis in the foregoing paragraphs, we are of the view that the mechanism of the same should be formulated once again for a better understanding of the situation.

34. On the strength of the decision of State of West Bengal and Ors. v. Husna Banu and Ors. (supra) it was prayed that the fate of Respondent No. 1 cannot be distinguished. In reply to the same it would be found that firstly. Article 14 cannot have a negative application, as rightly shown by Shri Wasef Ali for the Appellants in view of the decisions of Supreme Court in State of Madhya Pradesh and Ors. v. Ramesh Chandra Bajpai (supra).

35. That apart, the decision in State of West Bengal and Ors. v. Husna Banu and Ors.(supra) also, cannot be said to be good law. and as a Coordinate Division Bench--although bound by judicial propriety, cannot have any effect of stare decisis upon us. Because the same was in oblivion of the decisions of Supreme Court in Official Liquidator v. Dayanand (supra) and Harminder Kaur and Ors. v. Union of India and Ors. (supra).

36. As such, the decision of State of West Bengal and Ors. v. Husna Banu and Ors. (supra) cannot be of any use by Shri Basu in order to retrieve him from the situation that has been created by Shri Wasef Ali for the Appellants.

37. Stand of the Respondent No. 1 that he has been in service for long; however, painful it may be, does not have any effect since once it is found that the recruitment was dehorse the Rules, the same has No. basis at all. For this purpose reference by Shri Wasef Ali in the decision of Shesh Mani Shukla v. District Inspector of Schools, Deoria and Ors.(supra) has square application.

38. While we have found great substance in the submission of Shri Wasef Ali and are inclined to accept the same in the light of the situation that has surfaced before us; we feel sorry that the sheet anchor of Shri Basu''s stand based on State of West Bengal and Ors. v. Husna Banu and Ors.''s case (supra) stands wilted in the gossamer white of the decisions of Supreme Court in Official Liquidator v. Dayanand (supra) and Harminder Kaur and Ors. v. Union of India and Ors.(supra).

39. More particularly, recently rendered decision of Asoke Sawoo v. State of West Bengal and Ors. case (supra) where Dipankar Datta, J. in a historiographical manner, perhaps, have said the last world on the issue before us.

40. The said decision of Asoke Sawoo v. State of West Bengal and Ors. (supra) has been approved by two different Division Benches of this Court in Managing Committee of Poierhat High School (supra) and Sankar Das v. State of West Bengal

and Ors. (supra).

41. Reference by Shri Basu, learned Senior Counsel to the dismissal of the Special Leave to Appeal (Civil) No. 16966 of 2010 on 30.07.2010 to recuse himself from the situation as pointed out by Shri Wasef Ali that the decision State of West Bengal and Ors. v. Husna Banu and Ors. (supra) has to be viewed in the perspective of the decision of Supreme Court in Union of India v. Manik Lal Banerjee (supra) and State of Manipur v. Thingujam Brojen Meetei (supra).

42. In such paradigm, we are unable to accept any of the submissions advanced on behalf of the Respondents and would be of the view that the finding returned by the Hon''ble Trial Judge in W.P. No. 21354 (W) of 2004, is required to be set aside without any whimper.

43. As we have pointed out earlier, in our quest for precision, we desired to look into two Files being W.P. No. 18 (W) of 2000 and W.P. No. 17 (W) of 2000. Unfortunately, two other Files from the Appellate Side have been placed having No. relevance.

44. However, Shri Basu, learned Senior Counsel has placed before us the copy of the Order in W.P. No. 18 of 2000. We find that the learned Single Judge of this Court passed directions for regularising the service of the Petitioner therein as Assistant Teacher in the vacant post. This judgment was also relied upon by the Hon''ble Trial Judge while arriving at his conclusion.

45. Since we have found that the confection of the entire issue have been melted in the changed situation, the same would also have No. bearing for the purpose of our present discussion.

46. In the majestic splendour of the Constitution Bench decision Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors. 2006 (4) SCC 1, the Order under appeal of 11.09.2009 passed by the learned Trial Court in W.P. No. 21354 (W) of 2004 should pale into absolute insignificance and the appeal arising therefrom is required to be carried to its logical conclusion by way of setting aside the same and allowing the appeal.

47. So long we have traversed through the geometry of the situation where we had to put precision to the various angles and curves, where only cold logic of Law had its interplay. Neither sympathies nor sentiments could guide us, as creatures of Law we are bound to move in the steps as known to Law.

48. However, empathetic we may be, and in our quest for Justice, which, needless to say, is always above Law-yet the same must be administered in accordance with Law.

49. We will now disengage ourselves from the logjam and logomachy and see through the back of the beyond where some essential human elements, which require some tender handling, stare at our face.

50. In this kaleidoscope it appears that the Respondent No. 1 has been in service discharging the functions of Assistant Teacher in the social Science Group since January, 1996 and in such fortuitous circumstances the blind application of Law, would put an end to his employment. We can share and anticipate the distraught situation he would be pushed into by virtue of the dead reasoning of Law, which, after all, has No. appeal to him except the bread which he secures through such employment.

51. Between Law and life, the Court, even in its obligation for being creature of the former-cannot lose its sense of Justice in respect of the latter. It is borne out from the Records that two sanctioned posts exist. Obviously, the same would be put up for regularisation by the Committee through the District Inspector of Schools for approval in terms of the existing Recruitment Rules, as known to Law. Necessarily, there will be an invitation for such appointment from prospective candidates.

52. Keeping in view the fate of the Respondent No. 1 to the effect where he will be situated on account of this Order where once he was propelled by way of a ladder to a position of employment; and now he will asked to deescalate to ground reality--in our opinion, it would be Just Justice in the event we pass the following directions:

(a) Till such time the vacancy is filled up by way of following the Recruitment Rules, the service of the Respondent No. 1 would continue uninterrupted and he will enjoy all his perquisites and salaries, which he hitherto had received.

(b) in the selection process, he will obviously have an edge over and above the others of his peer level considering the years of service he has put in with the experience behind him.

(c) He should also be treated more equal than other co-equals in his age and other bar.

53. To wrap up. As we have found that the order under appeal cannot be sustained, the same is accordingly set aside, however, by way of applying the aforesaid three guidelines.

No order as to costs.

M.K. Chaudhuri, J.

I agree.