

(2008) 04 CAL CK 0011

Calcutta High Court

Case No: M.A.T. No. 1998 of 1999

Abdul Rashid

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: April 23, 2008

Hon'ble Judges: Tapan Mukherjee, J; Pranab Kumar Chattopadhyay, J

Bench: Division Bench

Advocate: Ekramul Bari, for the Appellant; P.S. Deb Barman for the District Primary School Council Tapabrata Chakraborty, Kumaresh Dalal, for the Respondent

Final Decision: Allowed

Judgement

The Judgment of the Court was as follows:

1. This appeal has been preferred assailing the judgment and order of the learned Single Judge whereby and where under the said learned Single Judge dismissed the writ petition filed on behalf of the appellant herein on merits.

2. Going through the records, we find that the appellant herein moved another writ petition on the earlier occasion before this Hon'ble Court for issuance of appropriate direction upon the Chief Medical Officer of Health, Malda to examine the appellant herein and also for issuance of necessary direction to the other respondent authorities to consider the claim of voluntarily retirement of the appellant. The said writ petition was finally decided by another learned Single Judge of this Hon'ble Court by the order dated 3rd October, 1997 whereby and where under the District Medical Officer of Health, Malda was specifically directed to examine the appellant herein by a Medical Board and in the event of declaring the said appellant unfit for service, necessary certificate was also directed to be issued so that the same could be considered for the purpose of giving appointment to the appellant's son in the post of primary teacher. The text of the said order dated 3rd October, 1997 passed by the learned Single Judge of this Hon'ble Court while finally deciding the earlier writ petition of the appellant herein is set out hereunder:

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W.P. No. 24044 (W) of 1997. 3.10.1997.

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Let the District Medical Officer Health, Malda examine the writ petitioner by a Medical Board and if he is satisfied that the petitioner is unfit for service, he should issue necessary certificate to that effect and should submit the same to the concerned school positively within two weeks from the date of communication of this order and the authority concerned in such case would appoint the petitioner's son in the post of primary teacher if the petitioner's son has got the requisite qualification positively within three months from the date of submission of such certificate by the CMOH, Malda and also observing all formalities. The authority concerned in such case would also release all retirement benefit to the petitioner as would be entitled to him by approving the voluntary retirement under the law positively within the said period of three months as aforesaid.

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3. It is not in dispute that in terms of the said order, the appellant herein was medically examined by the Medical Board at Malda on 6th February, 1998 and was also declared unfit on being permanently incapacitated. The said medical report was duly submitted to the Chairman of the District Primary School Council, Malda. The Chairman thereafter informed the Sub-Inspector of Schools (SE), Malda under Memo dated March 5, 1998 that the appellant herein has been declared permanently incapacitated by the Medical Board with effect from 6th February, 1998 and, therefore, the said appellant should be allowed to retire on and from that date. In the said notice, it was also mentioned that the prayer for appointment of the appellant's son cannot be considered in view of the notification of the Education Department dated 22nd November, 1991 since the appellant was declared permanently incapable beyond 58 years of age.

4. It is true that the appellant was declared permanently incapacitated beyond 58 years of age by the Medical Board but the said appellant submitted application before the competent authority for holding medical examination shortly before attaining the age of 58 years. In any event, the appellant herein filed the writ petition challenging the aforesaid decision of the Chairman, Malda District Primary School Council issued under Memo dated 5th March, 1998 and the same was finally disposed of by the order under appeal passed by the learned Single Judge. The said learned Single Judge in the aforesaid order under appeal although had taken note of the earlier decision of the another learned Single Judge passed on 3rd October, 1997 in the previous writ petition bearing W.P. No. 24044(W) of 1997 but unfortunately declared the directions issued by the said learned Single Judge on 3rd October, 1997 as per incuriam.

5. It is not in dispute that the earlier order dated 3rd October, 1997 was passed by the learned Single Judge while finally deciding the writ petition being W.P. No. 24044(W) of 1997 upon hearing the learned Counsel of the respective parties and the respondent authorities also acted in terms of the said order by constituting the Medical Board to examine the appellant herein and ultimately the Medical Board declared the appellant herein permanently incapacitated with effect from 6th February, 1998. A report was also submitted to that effect by the Chief Medical Officer of Health, Malda to the Chairman, District Primary School Council, Malda.

6. Since no appeal was preferred from the earlier order dated 3rd October, 1997 passed by the learned Single Judge in the writ petition being W.P. No. 24044(W) of 1997, the said order became final and binding on the parties to the said writ petition and furthermore, the respondent authorities acted in terms of the said order. In the aforesaid circumstances, it cannot be held subsequently while deciding the subsequent writ petition by another learned Single Judge of this Hon'ble Court that the earlier directions passed by the another learned Single Judge while finally deciding the earlier writ petition are per incuriam. Since the earlier order dated 3rd October, 1997 passed by the learned Single Judge while deciding the writ petition being W.P. No. 24044(W) of 1997 has become final and binding on the parties, the respondent authorities cannot refuse to comply with any part or portion of the directions contained in the said order dated 3rd October, 1997. Even assuming the earlier directions passed by the learned Single Judge on 3rd October, 1997 while deciding the previous writ petition bearing W.P. No. 24044(W) of 1997 were erroneous in fact or in law, the order of the said learned Single Judge is still valid and binding. Even if a judgment is erroneous, the same does not mean that the order passed therein is not binding. Unless a judgment or order is set aside by a competent superior Court, the same must bind the parties to the proceeding.

7. In this connection, we may recall the specific observations of Sabyasachi Mukharji, J, (as His Lordship then was) in the case of [A.R. Antulay Vs. R.S. Nayak and Another](#), at page 1577. The relevant portion of the aforesaid judgment is set out hereunder:

125.The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong.....

8. In the present case, the order passed by the learned Single Judge on 3rd October, 1997 while deciding the writ petition bearing W.P. No. 24044(W) of 1997 has not and could not have been set aside as neither any appeal nor even any review application was filed by or at the instance of the respondent authorities and the same, therefore, remains valid and binds the parties to the proceeding. The respondent authorities, therefore, cannot refuse to comply with any direction passed in the said order dated 3rd October, 1997. The aforesaid order dated 3rd October, 1997 binds so far the parties to the writ petition are concerned viz., the respondent authorities

herein.

9. In the aforesaid circumstances, the Chairman, District Primary School Council had no authority to refuse appointment to the son of the appellant herein in compliance with the specific direction passed by the learned Single Judge in the order dated 3rd October, 1997. The learned Single Judge while deciding the subsequent writ petition bearing W.P. No. 10546(W) of 1999 on 17th May, 1999 unfortunately did not remember the aforesaid established principles of law and refused to issue necessary directions to the respondent authorities for implementing the directions passed earlier by this Hon"ble Court on 3rd October, 1997. The principles of law referred to and relied upon by the learned Single Judge in the order under appeal cannot have any manner of application in the facts of the present case when the earlier directions issued by the learned Single Judge while finally deciding the previous writ petition of the appellant herein on 3rd October, 1997 already became final and binding on the parties to the said writ petition including the respondent authorities herein.

10. For the aforementioned reasons, we are unable to approve the decisions of the learned Single Judge passed on 17th May, 1999 while deciding the subsequent writ petition filed by the appellant herein bearing W.P. No. 10546(W) of 1999 and direct the respondents including the Chairman, Malda District Primary School Council to implement the directions of the learned Single Judge passed on 3rd October, 1997 in the writ petition bearing W.P. No. 24044(W) of 1997 relating to the appointment of the son of the appellant in the post of primary teacher, if the said son has the requisite qualification, without any further delay but positively within a period of four weeks from date.

11. With the aforesaid directions, this appeal stands allowed and the judgment and order under appeal passed by the learned Single Judge are set aside.

12. In the facts of the present case, there will be no order as to costs.