

(2009) 09 CAL CK 0014

Calcutta High Court

Case No: F.M.A. 1955 of 2007

Smt. Anita Pattanayak and
Others

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Sept. 23, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Surinder Singh Nijjar, C.J; Biswanath Somadder, J

Bench: Division Bench

Advocate: Susanta Kr. Kundu and Saptarshi Kundu, for the Appellant; L.K. Gupta L.K. Pal and Shukla Kabir Sinha, for the Respondent

Final Decision: Dismissed

Judgement

Biswanath Somadder, J.

This appeal arises out of a judgment and order dated 16th September, 2004, passed by the learned Single Judge in W.P. No. 12314 (W) of 2002, whereby the writ petition filed by the appellants herein was dismissed on the ground that the writ petitioners had no locus standi to move the writ petition, inasmuch as they were neither the persons aggrieved nor were they prejudicially affected.

2. The writ petitioners/appellants were the guardians (at the point of time of filing of the writ petition) of their wards, who were reading in a school, named Palaspai Anchal Gita Rani Dhara Balika Vidyalaya, situated in village-Bhairabpur in the District of Hooghly. According to the writ petitioners/appellants, the school was recognized as a "Class-X" school on and from 1st May, 1992 and the concerned District Inspector of Schools approved twelve (12) teaching and three (03) non-teaching staff with effect from that date.

3. It was contended by the writ petitioners/appellants that the District Inspector of Schools approved the fixation and appointment of the respondent No. 9, being Smt. Ratna Saha and respondent No. 10, being Smt. Sadhana Das, as teacher-in-charge and assistant teacher respectively and fixed their pay scale as stated in Memo dated 30th December, 1993. It was contended that Smt. Ratna Saha was M.A. in Political Science and Music and she passed her Secondary Education in compartmental and in B.A. she appeared in Part I and Part II combined and Smt. Sadhana Saha was MA in Philosophy; but neither Political Science nor Music nor Philosophy were included in the secondary syllabus of West Bengal Board of Secondary Education and in normal course these subjects were not taught in the said school. It was further contended that although a teacher became entitled to a higher scale of pay for having higher education, but in case of non-relevant subjects, i.e., if the higher qualification was in a subject which was not within the syllabus or was not taught in the institution in which such a teacher is employed, she would not be entitled to such higher scale of pay and the said teacher would only be entitled to pay scale of a graduate assistant teacher. According to the writ petitioners/appellants, the respondent Nos. 9 and 10 were not entitled to higher scale of pay, but the pay scale that of an assistant teacher.

4. It was further contended by the writ petitioners/appellants that the respondent Nos. 9 and 10 were not entitled to higher scale of pay from the public exchequer, which was being made available as grant-in-aid to the said school. The respondent Nos. 9 and 10, not having qualification in relevant subjects, were not entitled to higher scale of pay as per circular dated 27th January, 1995. The respondent No. 9/Smt. Ratna Saha, who was working as teacher-in-charge, had made representation before the Administrator for taking necessary action for her approval to the post of headmistress on 1st May, 2002, on her completion of ten years in service. The said representation had been disclosed in the writ petition filed by her, being WP No. 8328 (W) of 2002. The writ petitioners/appellants made further reference to that writ petition where it was also disclosed that the administrator of the said school, being the respondent No. 8 herein, submitted papers to the Additional District Inspector of Schools, Arambagh, for approval of Smt. Ratna Saha as headmistress, with effect from 01st May, 2002.

5. The writ petitioners/appellants further contended before the learned Single Judge that Smt. Ratna Saha obtained an order dated 01st July, 2002, of a learned Single Bench of this Court in W.P. No. 8328 (W) of 2002 whereby that writ petition was disposed of by granting liberty to her, inter alia, to make representation before the Director of School Education, West Bengal, for redressal of her grievance within two weeks from that date with a further direction upon the Director of School Education to consider such representation in accordance with law after giving an opportunity of hearing to her, the school authorities and other persons interested in the matter by passing a speaking and reasoned order within a period of eight weeks from the date of such representation. It was contended that the said order dated 01st July,

2002 had been passed by the court through inadvertence, overlooking the fact that new appointments were to be made by the West Bengal School Service Commission.

6. According to the writ petitioners/appellants, the West Bengal School Service Commission Act, 1997 has come into force on and from 01st April, 1997 and the procedure of selection of persons for appointment to the posts of teachers of schools, including the appointment of headmistress, has been prescribed therein, which has come into effect on and from 08th January, 1998 and the recommendation of the School Service Commission having jurisdiction in such matters would be binding and any other appointment made otherwise would have no effect. It was, thus, contended that respondent No. 9/Smt. Ratna Saha could not be appointed as headmistress, otherwise than by a recommendation after selection by the West Bengal School Service Commission and the Director of School Education had no authority to consider any representation of Smt. Ratna Saha for appointment as headmistress. Furthermore, the academic qualification of Smt. Ratna Saha was not suitable for such appointment and both, Smt. Ratna Saha and Smt. Sadhana Das, being the respondent Nos. 9 and 10 respectively, were not entitled to the scale, as was being drawn by them. Smt. Ratna Saha's higher qualification in Political Science and Music had no relevance because such higher qualification was not in the relevant subject, that is to say, subjects, which were in the syllabus of the secondary schools. The administrator of the school, in a motivated manner and in collusion with Smt. Ratna Saha, had issued a Memo dated 06th May, 2002, accepting her appointment as headmistress and had so accepted her appointment knowing that the same could not be done as per relevant circulars. It was contended that Memo No. 2063 dated 30th December, 1993 issued by the respondent No. 4 granting sanction of higher scale of pay was to be treated as issued through inadvertence since it was thoroughly misconceived. It was contended that neither Smt. Ratna Saha nor Smt. Sadhana Das had tried to improve their qualification in any relevant subject since their time of appointment and as such they were not entitled to higher scales of pay.

7. Mr. Kundu, learned Counsel representing the writ petitioners/appellants, submitted that without considering the merits of the controversy and the issues raised by the writ petitioners/appellants, the learned Single Judge ought not to have dismissed the writ petition only on the ground of locus standi. He further contended that the ad-interim order passed in the matter earlier on 17th September, 2002 had become final and binding. He submitted that by the said ad-interim order dated 17th September, 2002, the court had given directions to the District Inspector of Schools (SE) to look into the pay fixation of the respondent Nos. 9 and 10 and to decide the same strictly in accordance with 1987 ROPA and in particular note "C" appended thereto as well as the 1990 ROPA. It was further directed that in the event the District Inspector of Schools (SE) found that the pay fixation of the respondent Nos. 9 and 10 had not been done in accordance with the mandate of ROPA, he was to take steps forthwith to refix the same in the manner the same was required to be

fixed in terms of the said ROPA. He submitted that pursuant to the said ad-interim order, the District Inspector of Schools (S.E.), Hooghly had passed an order on 05th March, 2003 wherein it was held that Smt. Ratna Saha and Smt. Sadhana Das were not entitled to sanction/grant of post-graduate scale of pay and were therefore directed to refund the excess amount drawn by them. He further submitted that on 01st July, 2002 an order was passed by Subhro Kamal Mukherjee, J. in W.P. No. 8328(W) of 2002, at the instance of Smt. Ratna Saha, whereby the Director of School Education was directed to dispose of Smt. Ratna Saha's representation for redressal of her grievances in accordance with law after giving an opportunity of hearing to her and other persons interested in the matter, by passing a speaking and reasoned order within the time-frame stipulated therein. The Director of School Education, West Bengal, passed an order dated 30th December, 2002/02nd January, 2003. By that order, the Director of School Education, West Bengal had observed, inter alia, that Smt. Ratna Saha was qualified for being appointed as headmistress, but in terms of the directions given by Barin Ghosh, J in W.P. No. 12314 (W) of 2002 on 17th September, 2002, the question of her being appointed as headmistress of the institution did not and could not arise. The Director of School Education observed that Barin Ghosh, J. had directed that until further orders, no one should be appointed in teaching post of the institution in question until she had been required to be appointed in such teaching post by the School Service Commission. In such circumstances, the Director of School Education regretted that he was unable to grant any relief to Smt. Ratna Saha, as prayed for by her in W.P. No. 8328 (W) of 2002 in view of the order dated 17th September, 2002 passed in W.P. No. 12314 (W) of 2002. This order of the Director of School Education, West Bengal, was sought to be challenged by the writ petitioners/appellants in a subsequent writ petition, being W.P. No. 8340 (W) of 2003. That writ petition was dismissed by a learned Single Judge on 08th July, 2003 and in an appeal preferred therefrom, being F.M.A. No. 186 of 2007, a Division Bench of this Court passed an order on 22nd April, 2008, dismissing the appeal while upholding the observation of the learned Single Judge that the Director of School Education, West Bengal, had refused to grant any relief to Smt. Ratna Saha until she was recognized to be appointed in the post of headmistress of school concerned by the School Service Commission. The Division Bench went on to further uphold the observation of the learned Single Judge to the effect that the writ petitioners could not have any cause of action since no relief was granted to Smt. Ratna Saha. Mr. Kundu submitted that in view of the aforesaid observation made by the Division Bench of this Court in F.M.A. 186 of 2007, the order passed by the learned Single Judge at the ad-interim stage on 17th September, 2002, in respect of the instant writ petition had become final and binding. Mr. Kundu also referred to the said ad-interim order dated 17th September, 2002, wherein the learned Single Judge had recorded prima facie satisfaction that the writ petition filed by the guardians was maintainable. He submitted that since the learned Single Judge was pleased to dismiss the writ petition at the time of final hearing only on the ground of locus standi, the writ petition could be converted, at

this appellate stage, to a Public Interest Litigation as it was clearly held in the ad-interim order that the court was prima facie satisfied that the teacher-in-charge had taken recourse to things to which she was not prima facie entitled to and the institution was not in a position to discharge its academic obligation towards the students enrolled by it and therefore, as such, the writ petition was maintainable in law.

8. Mr. Kundu relied on the judgment of the Supreme Court in the case of [M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others](#), and submitted that in view of the expanded concept of locus standi, the writ petition ought not to be dismissed solely on the ground of locus standi of the guardians to file the same before the learned Single Judge. He further submitted that a much wider canvass has been adopted in recent years regarding a person's entitlement to move the High Court in writ jurisdiction. He also relied on the judgment of the Supreme Court in the case of [United India Insurance Company Limited Vs. Manubhai Dharmasinhbhai Gajera and Others](#), and submitted that although the writ petition has been filed by the guardians, it had a wider ramification since it would affect not only the writ petitioners but also others similarly situated and therefore this was an appropriate case for the High Court to consider the same as a public interest litigation. Even if it was not so regarded, the High Court could always consider the same to be "public law litigation".

9. On the other hand, Mr. Laxmi Gupta, learned senior Counsel representing respondent Nos. 9 and 10, submitted that the ad-interim order dated 17th September, 2002 passed by Barin Ghosh, J. had merged into the final judgment and order dated 16th September, 2004. The issue of locus standi was never finally adjudicated upon at the ad-interim stage while the Court passed the ad-interim order on 17th September, 2002. It was merely a "prima facie" view of the learned Single Judge while passing the said ad-interim order giving direction upon the District Inspector of Schools (S.E.) regarding fixation of pay scale of respondent Nos. 9 and 10. The learned Single Judge was also pleased to observe while issuing such ad-interim direction upon the District Inspector of Schools (S.E.) that such fixation shall however abide by the result of the writ petition. It was, therefore, not open to the writ petitioners/appellants to contend that the issue of locus standi could not have been decided by the learned Single Judge, at the stage of final hearing, while dismissing the writ petition. Mr. Gupta further submitted that the primary issue raised in the writ petition filed by the guardians was with regard to fixation of scale of pay of respondent Nos. 9 and 10 and was not regarding syllabus of students or for that matter the teaching strength of the school or anything to do for the well-being of the students of the school. He also submitted that save and except one of the wards of the writ petitioners, who was still in the school, all other wards of guardians who filed the writ petition jointly, have either passed out or have left the school. He also drawn our attention to the order of the Director of School Education West Bengal passed on 30th December, 2002/02nd January 2003. He submitted that

the said order was passed pursuant to the direction given by the writ court on 01st July, 2002, while disposing of a writ petition being W.P. No. 8328 (W) of 2002, which was filed by one of his clients, namely Smt. Ratna Saha, being the respondent No. 9 herein. Referring to the said order of the Director of School Education West Bengal he submitted that Smt. Ratna Saha was MA in Political Science as well as in Music. Music was being taught in the school as a subject, besides, she had English and Bengali at the degree level. She passed M.A. in Political Science in 1979 and M.A. in Rabindra Sangeet from Rabindra Bharati University in 1983. She passed her B.Ed. examination from the University of Calcutta in 1981. She had completed ten years" of teaching service experience in a recognized high school on 01st May, 2002. Thus, she was qualified for being appointed as headmistress. Mr. Gupta submitted that the Director of School Education, West Bengal, however, was unable to grant any relief to Smt. Ratna Saha in view of the ad-interim order passed by Barin Ghosh, J. on 17th September, 2002 and had therefore held that the question of her being appointed as headmistress did not and could not arise. Mr. Gupta has also drawn our attention to the memo of the District Inspector of Schools (S.E.), Hooghly dated 30th December, 1993, whereby provisional appointment was given to respondent Nos. 9 and 10 and wherein it has been stated that Smt. Ratna Saha holding MA (Double) & B.Ed as academic qualification was approved as teacher-in-charge on and from 01st May, 1992, while Smt. Sadhana Das, holding M.A.(Phil) & B. Ed. as academic qualification, was approved as an assistant teacher in the language group on and from the same date, both being given the same scale of pay, i.e. Rs. 1780-3780. Mr. Gupta also referred to a Memorandum bearing No. 33-EDN (B) dated 07th March, 1990, issued by Government of West Bengal, Education Department, Budget Branch. Clause 3 of the said Memorandum states as follows:

3. Scale of pay of post

(1) From the 1st January, 1986, the revised scale of pay of every post in the Institutions and Organizations as mentioned in Annexure I except teaching and non-teaching posts in Government Sponsored/Aided recognised Institutions upto Class XII standard shall be as specified against it in column (4) of Annexure V.

(2) The scales of pay of the teaching and non-teaching posts in the Government Sponsored/Aided recognised institutions upto Class XII standard shall be as specified against such posts in column (4) of Annexure V I.

10. Relevant portion of Annexure-VI is extracted and reproduced hereinbelow:

Assistant Teacher

4. Trained Masters'' degree holder/Masters degree in Physical Edn./Masters'' degree in Work Education.	550-1470	1780-3780
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11. Referring to the Clause 3 above he submitted that based on Sub-clause (2) of Clause 3 the scale of pay of respondent Nos. 9 and 10 had been duly fixed by the District Inspector of Schools (S.E.), Hooghly, vide his memo bearing No. 2063 dated 30th December, 1993 and as such the same is not open for challenge. He thus submitted that there was no case made out by the writ petitioners/appellants before the learned Single Bench which could call for interference by the writ court in exercise of its high prerogative jurisdiction, in the facts of the instant case.

12. He has relied on the judgment of the Supreme Court in the case of [D. Nagaraj and Others Vs. State of Karnataka and Others](#), and submitted that it is now well settled that although Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of a legal right is implicit for exercise of the extraordinary jurisdiction by the High Court under the said Article. It is also well established that a person who is not aggrieved by the discrimination complained of cannot maintain a writ petition. Finally, he relied on a judgment of another Division Bench of this High Court in the case of Controller of Patents and Designs and Ors. v. Glaxo Smithkline Plc. and Ors. reported in 2007(3) CHN 815 and submitted that the writ petitioners must show that on the date of filing of the writ application they had an existing legal right.

13. We have considered at length the submissions made by the learned Counsel appearing for the parties.

14. We may notice hear that initially when the writ petition was moved, an ad-interim order was passed on 17th September, 2002. In that order although certain directions were given to the District Inspector of Schools for pay fixation of the respondent Nos. 9 and 10, it was clearly observed therein that such fixation was to abide by the result of the writ petition. The "prima facie" view of the learned Single Judge, who passed the ad-interim order dated 17th September, 2002 with regard to the maintainability of the writ petition filed by the guardians, could not have bound another learned Single Judge in any manner at the time of final adjudication of the writ petition while passing the impugned judgment and order dismissing the writ petition on the ground of locus standi. As rightly observed by the learned Single Judge, although the writ petitioners claimed that they were the guardians of the wards who were reading in the school, but nowhere had the petitioners asserted as to which class their wards were in fact studying or whether their wards were outgoing students or not. Rather, the writ petitioners did not even care to mention the names of their wards who were studying in the school. By now it is well settled as to who can term themselves as "persons aggrieved". In this regard, it may be worthwhile to refer to the observations made in judgment of the Supreme Court in the case of D. Nagaraj and Ors. (supra), which makes the position very clear:

....

The sole question that requires to be determined in these appeals is whether the appellants could maintain the aforesaid writ petitions. It is well settled that though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under the said Article. It is also well established that a person who is not aggrieved by the discrimination complained of cannot maintain a writ petition....

15. The order of the Director of School Education, West Bengal, dated 30th December, 2002/02nd January, 2003 which was passed pursuant to the direction given by the court in a writ petition [W.P. No. 8328 (W) of 2002] filed by Smt. Ratna Saha makes it clear that Smt. Ratna Saha was qualified for being appointed as a headmistress. However, the Director of School Education, West Bengal, was unable to grant any relief to her in view of the ad-interim order dated 17th September, 2002 passed by the learned Single Judge in the instant writ petition, being W.P. 12314(W) of 2002. The reasoning given by the learned Single Judge in the impugned judgment and order with regard to the locus standi is unquestionable since it is well settled that unless and until a writ petitioner is prejudicially affected or unless he had any substantive legal right which was being violated, he could not pray for judicial review.

16. We have also not been able to appreciate the contention of Mr. Kundu with regard to the ad-interim order dated 17th September, 2002, having become final and binding between the parties. It is patently clear that while passing the ad-interim order dated 17th September, 2002, the learned Single Judge issued certain directions upon the District Inspector of School (S.E.) with regard to pay fixation of the respondent Nos. 9 and 10 with a rider that such fixation of pay shall however abide by the result of the writ petition. The observations made by a Division Bench of this Court in F.M.A. No. 186 of 2007 on 22nd April, 2008, while dismissing the writ petitioners' appeal from an order of dismissal of their subsequent writ petition, being W.P. No. 8340 (W) of 2003, was in the context of their challenge in respect of the order passed by the Director of School Education, West Bengal, dated 30th December, 2002/02nd January, 2003 whereby the Director, while observing that Smt. Ratna Saha was qualified for being appointed as a Headmistress, was unable to grant any relief to her as prayed for, in view of the ad-interim order dated 17th September, 2002 passed in W.P. No. 12314(W) of 2002. Therefore, by any stretch of imagination, the same cannot be construed, in any manner, as making the ad-interim order dated 17th September, 2002 final and binding between the parties.

17. The question of conversion of the instant writ petition to a "Public Interest Litigation" or even as a "Public Law Litigation", as submitted by Mr. Kundu, cannot arise in the facts and circumstances of the instant case, in view of the observations made by this Bench on the point of locus standi in the following judgments:

1. [Empathy 05 and Another Vs. Central Bureau of Investigation and Others,](#)

2. Asian Front of Human Rights v. State of West Bengal and Ors. reported in 2009(2) CHN 706.

18. In Empathy 05 (supra), this Bench observed, inter alia, to the effect that no judicial notice can possibly be taken when a writ petition is wholly bereft of any material particulars to establish the credentials of the writ petitioners for filing the writ petition. If such a writ petition is filed as a public interest litigation, the same would be an abuse of process of the Court, being frivolous, vexatious and not having been filed bona fide. This Bench further went on to observe that repeatedly the law has been laid down by the Supreme Court that it is incumbent on the High Court to satisfy itself with regard to the bona fide of the writ petitioner. It was further observed that it is also necessary for the High Court to ensure that frivolous and vexatious public interest litigation are not entertained, especially at the instance of interlopers and busybodies.

19. In Asian Front of Human Rights (supra), this Bench, following the ratio of the law laid down by the Supreme Court in [Janata Dal Vs. H.S. Chowdhary and Others,](#) , [Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others,](#) and [Common Cause \(A Regd. Society\) Vs. Union of India \(UOI\) and Others,](#) , reiterated the view of the Supreme Court with regard to the essential requirement to establish the bona fide of a person, having sufficient interest in proceedings in the nature of public interest litigation, who alone can have a locus standi to approach the court and not a person who comes for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious writ petition, under the colour of "Public Interest Litigation", brought before the court for vindicating any personal grievance, deserves rejection at the threshold. Keeping in mind the ratio of law laid down by the Supreme Court in the judgments referred above, this Bench, in Asian Front of Human Rights observed, inter alia, that when a writ petition is not presented by the writ petitioner bona fide or is not likely to serve any public interest, the same cannot be entertained.

20. The attempt on the part of the writ petitioners-merely describing themselves as guardians of students and that too devoid of particulars and details of their wards, which are conspicuously missing in the pleadings- to encroach upon the domain of the state authorities, who have adequate power and authority in law to determine fixation of pay of teachers as well as to confirm appointment of teachers and headmistress, cannot be described as anything, but, that of a an action sought to be brought about by a busybody or an interloper. We cannot permit persons, such as the writ petitioners/appellants, to abuse the process of the court by instituting such proceedings, as has been done in the instant case. This practice needs to be deprecated and discouraged. We are, therefore, of the opinion that the appeal deserves to be dismissed with exemplary cost. However since the cost will entirely have to be borne by the litigants, we refrain from imposing any costs, in the interest

of justice.

21. The appeal, therefore, stands dismissed with no order as to costs.

22. I agree.