

(2003) 09 CAL CK 0042

Calcutta High Court

Case No: Mat No. 1587 of 2003 and CAN No. 5159 of 2003

The Secretary, Vivekanandapally
Kishore Bharati High School

APPELLANT

Vs

Munshi Mohammad Mansur and
Others

RESPONDENT

Date of Decision: Sept. 16, 2003

Citation: 107 CWN 1001

Hon'ble Judges: Asok Kumar Mathur, C.J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Amal Baran Chatterjee, Kazi Safuddin Ahmed, Manas Kumar Das and Dipankar Dutta, Ashoke De and Arun Kumar Roy, for the Appellant;

Final Decision: Allowed

Judgement

Ashim Kumar Banerjee, J.

This is a unique case where due to legal silence no protection could be given to the writ petitioner despite the equity being fully in his favour. Vivekanandapally Kishore Bharati High School was not having any headmaster for about 5 years. Hence, one Assistant Teacher of the school was acting as Teacher in Charge since 1998. Under the proper recruitment rules the school was no intimate the Regional School Service about such vacancy, in default of such intimation being given by the school the District Inspector of Schools was to intimate the Regional School Service Commission about such vacancy. On such intimation being received the Regional School Service Commission was to initiate the recruitment process by inviting applications from the eligible candidates by public notification in print media.

2. In the instant case the Central School Service Commission published a booklet in 2001 intimating the respective vacancies. In the said list the name of the concerned school was given as item No. 10 under the following heading :

"Secondary/H.S. Schools status to be ascertained before submitting application."

3. The concerned regional service commission on the basis of such Information about the vacancy initiated the recruitment process without having ascertained the vacancy either from the concerned school or from the concerned District Inspector. Due publication was made in the newspapers and after a regular recruitment process the writ petitioner being the respondent no- 1 was selected for appointment in the concerned school as headmaster. The panel was finally approved by the Regional Service Commission on 20th March, 2002 as would appear from the extract of the resolution so quoted in the affidavit of the Regional School Service Commission affirmed on August 13. 2003. The Regional School Service Commission, however, did not send such recommendation to the concerned school.

4. On March 21, 2003 the writ petitioner/respondent No. 1 approached this court inter alia praying for writ of mandamus compelling the school authority being the appellant herein to issue letter of appointment to the writ petitioner/ respondent No. 1.

5. The learned single judge by an order dated June 12, 2003 allowed the writ petition by directing the school authority to issue letter of appointment in favour of the writ petitioner/respondent No. 1. Hence, the present appeal.

To resolve the controversy the relevant recruitment regulation is quoted below :

Regulation No. 3. Information regarding vacancies. - Each Regional Commission having jurisdiction shall, on the 1st January of each year or as soon as may be thereafter, receive or obtain from the Schools, or from the District Inspectors of School (Secondary Education) the number of vacancies in approved posts which are then available or are expected to be available for appointment upto the second day of next January and thereafter. In case, such requisition is not available, the vacancy position may be obtained from the Director of School Education, West Bengal or from the Central Commission.

Regulation No. 8(2) - Each panel prepared shall remain valid for one year from the date of approval of the panel by the Regional Commission for the posts which have already been reported and which will (within the period of validity of such panel arise and shall be reported). If the Central Commission thinks it expedient to extend the validity of the panel beyond its normal period for any reasonable cause, the validity of any such panel shall be extended for a further period of one year [for the posts which exists or will arise and shall be reported within such extended period of one year but such panel, in any event, shall not remain valid for more than two years.)"

6. Under the West Bengal School Service Commission Act, 1997 the head master at the relevant point of time was to be appointed through the school service commission. Under Regulation 3 it was the duty of the regional commission to receive or obtain vacancy position from schools or from the District Inspector of School or in case of such recommendation/requisition is not sent the vacancy

position would be obtained from the Director of School Education or from the Central Commission. Upon such ascertainment of vacancy the Regional Commission would initiate the selection process and would finally prepare a panel for candidates and would recommend appointment to the concerned school.

7. Under Regulation 8(2) the validity of the panel is valid for one year from the date of approval by the Regional Commission and in case for any reason the same could not be implemented the Central Commission is empowered to extend such validity for another one year.

8. In the present case on appreciation of facts it would appear that the concerned school and its managing committee as well as recruiting authority, being school service commission, and all other concerned parties were at fault except the writ petitioner/respondent No. 1. The concerned school authority despite having the fact that the post of headmaster had fallen vacant on November 30. 1998 failed and neglected to intimate such vacancy to the concerned commission obviously to facilitate the present teacher-in-charge to continue. It was the duty of the District Inspector of School to intimate such vacancy to the concerned commission which was also not done. Rule 7(2) of the West Bengal School Service Commission Rules. 1997 being relevant herein is quoted below

"Rule 7(2) Every school shall report the vacancies as on the date of report and as will arise upto the second day of next January to the Regional Commission with a copy to the District Inspector of the Schools (Secondary Education) who shall scrutinize the same and forward it to the Regional Commission with or without modifications, as may be-necessary. within a month of receipt thereof. In case of delay in receipt of the recommendation of the District Inspector of Schools (Secondary Education), the Commission may take final decision on the basis of the guidelines of the Government without consulting the requisition of the school or the recommendations of the District Inspector of Schools."

9. In accordance with the aforesaid rules it was the duty of the school to report the vacancy to the Regional Commission with a copy to the District Inspector. The District Inspector was to scrutinize the same and forward the same to the Regional Commission with or without any modification within a month from the date of receipt. It is also provided that in case of delay in receipt of recommendation from the District Inspector the commission is empowered to take final decision on the vacancy on the basis of the guidelines framed there for. Neither the school submitted its report about the vacancy to the commission nor the District Inspector of School took any initiative for filling the said vacancy through the commission.

10. The act on the part of the Regional Commission was also wrongful. It started the selection process on the basis of the vacancy reported by the Central Commission. In the said category it was specifically mentioned that the Regional Commission was to verify the status. The Regional Commission did not take any initiative to verify

such status either from the concerned school or from the concerned District Inspector. They of, their own proceeded to complete the selection without ascertaining the status from the concerned authority. However, the commission after approval of the panel kept mum and did not take any step to have its recommendation implemented by the concerned school.

11. Learned counsel for the Regional Council contended that in accordance with Rule 7(2) of the School Service Commission Rules 1997 the Commission was entitled to take final decision in absence of a proper information being received from the concerned District Inspector.

12. Assuming that the School Service Commission had such power they should have completed the process by sending the recommendation to the concerned school. Their action would *ex-facie* show that they were in dilemma that resulted in the unfortunate incident by which the writ petitioner/respondent No. 1 became the victim of uncertainty.

13. The stand of the school authority was also deplorable. In 1998 the vacancy arose. It was incumbent upon them to send requisition to the concerned commission for appointment. It deliberately withheld such requisition for last 5 years only to facility de continuance of service of the teacher-in-charge In course of hearing we specifically asked the learned counsel for the school authority "whether they were prepared to send requisition to the School Service Commission. The learned counsel obviously in absence of proper instruction avoided the answer. The learned counsel on behalf, of the appellant being the school authority contended that since there was no requisition the Regional Commission had no power to initiate the recruitment process and in any event so long the requisition was, not sent the Regional Commission was not entitled to send any recommendation to the concerned school.

14. We heard this matter from time to time and the State respondents including the District Inspector opted to remain absent before us.

15. From the analysis of the relevant (sic) (*supra*) and discussed (sic) and regulations as quoted (sic) above we are of the view that the Regional (sic)ussion should not have initiated the recruitment process at all without ascertaining the vacancy position from the concerned authority. If the Regional Commission decided to exercise their power conferred under Rule 7(2) of the School Service Rules, 1997 the School Service Commission should have completed the process by sending the recommendation to the concerned school before expiry of the panel. Now that the panel had expired and the Central Commission did not extend the panel within the validity period for another one year although we satisfied on the facts that grave injustice had been caused to the writ petitioner/ respondent No. 1 we are compelled to refuse to grant relief to the writ petitioner/respondent No. 1 in absence of proper legal provision. The writ petitioner was selected and was brought on panel of the

commission. No legal right had accrued in favour of the writ petitioner. The writ petitioner approached this court after the expiry of the life of the panel. Hence, no relief can be granted to the writ petitioner.

16. In such circumstances, we are constrained to allow the appeal of the school authority even after being satisfied that the school authority was guilty of deliberate wrongful attitude taken by them by taking advantage of the legal snag.

17. We are unable to conceive of a situation that the concerned school was without a Headmaster duly appointed through the regular recruitment process for last 5 years. We are also unable to conceive as to how long this stalemate would continue. The State and the concerned authority have also, for reasons best known to them, opted to remain silent. How long such silence would continue and when they would rise to the occasion is a question whose answer is not known to us.

18. We are also unable to conceive of a situation that an appropriate governmental authority being backed by the statutory protection invited public to go through the recruitment process and thereafter expressed their inability to implement such selection in the facts and circumstances as stated hereinbefore. The facts would justify proper damage to be awarded to the writ petitioner/ respondent No. 1. However, we do not "incline to exercise such attempt in writ jurisdiction and leave it open to the writ petitioner/respondent No. 1 who would be entitled to initiate appropriate civil proceeding for recovery of damage caused to him by the appropriate authorities discussed hereinbefore.

19. In the result the appeal succeeds and is allowed. There would be however no order as to costs.

20. The Registrar General, High Court, Appellate Side, Calcutta is directed to send copies of this judgment to the Director, School Education, Chairman, Central School Service. Commission, Principal Secretary, Ministry of Education (Secondary), State of West Bengal for their perusal and necessary action. Urgent xerox certified copy would be given to the parties, if applied for.

Ashok Kumar Mathur, C.J.

I agree.