

(2004) 08 CAL CK 0043

Calcutta High Court

Case No: Writ Petition No. 14544 (W) of 2002

Tapan Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Aug. 25, 2004

Citation: (2005) 1 CHN 351

Hon'ble Judges: Indira Banerjee, J

Bench: Single Bench

Advocate: Milon Bhattacharjee, Jayanta Kumar Das and Daisy Basu, for the Appellant; Chabi Roy, for the Respondent

Judgement

Indira Banerjee, J.

This writ application is directed against the action of the respondents in not approving the appointment of the petitioner to a Group "D" post in Pichhabani Bani Niketan High School, P. O. Pichhabani, District-Purba Medinipur, hereinafter referred to as the School.

2. The petitioner's father who was an assistant teacher of an aided nonGovernment School in Midnapur died in harness.

3. The petitioner's name was sponsored for appointment to the post in question from the "died-in-harness" category after the concerned District Inspector of Schools granted prior approval to the School for filling up the post.

4. The petitioner successfully appeared for an interview and was empanelled. The petitioner is the only empanelled candidate for the post.

5. By a memo, dated 21st March, 2001, the concerned District Inspector of Schools approved the panel. There was, however, an endorsement to the effect "the contents of Finance Department's Memo. No. 4100-FB dated 13.12.2000 strictly be followed". There was also a direction in the aforesaid memo, which is extracted hereinbelow for convenience :

"You may now take up the case for appointment from the above panel(s) on usual terms and conditions for such appointment(s) after careful scrutiny of the original papers relating to the case(s) so that nothing adverse may occur in course of time and for which the appropriate authority may be moved for withdrawal of approval or the panel(s). The panel shall remain valid for one year with effect from the date of approval. The term of the panel for another six months in spl. cases."

6. Pursuant to the direction of the District Inspector of Schools a letter of appointment dated 23rd March, 2001 was issued to the petitioner appointing the petitioner to the post in question. The petitioner joined the service on 218t March, 2001. A copy of the joining letter has been annexed to the writ application.

7. Thereafter the school authorities forwarded the documents pertaining to the appointment of the petitioner to the Office of the District Inspector of Schools for approval of his appointment and release of his salary and allowances.

8. The respondents, for reasons best known to themselves, those not to take any action. Though the petitioner was appointed in March, 2001 his service has not been approved even today after lapse of over 3 years.

9. The Additional District Inspector of Schools (SE) Contai Sub-Division all on a sudden issued memo. No. 4-Cont. dated 1st January, 2002 to the Headmaster of the School in connection with the requisition for release of salary and allowances of one Asis Kr. Paul, Assistant Teacher and the petitioner.

10. The contents of the said letter are extracted hereinbelow for convenience:

"Referring to the subject noted above the undersigned has to request him to explain the reason for submission of requisition of salaries of the noted unapproved staff which is highly irregular. The said explanation is to be submitted within seven days from the date of receipt of the letter."

11. The aforesaid memo, is misconceived and smacks of total non-application of mind. The submission of requisition in respect of an employee appointed in accordance with the rules from the panel of candidates approved by the District Inspector of Schools cannot in itself, be irregular, The other irregularities, if any, have not been specified.

12. In course of hearing of this writ application the alleged irregularity has been explained. According to the respondents, the stipulations in the Circular No. 4100-FB dated 13th December, 2000 of the Finance Department of the Government of West Bengal had not been followed.

13. As held by this Court in several decisions including the decision rendered on 14th July, 2004 in W. P. No. 15547(W) of 2003, an appointment can not be said to be invalid for failure to obtain prior approval of the Appointment Committee of the Cabinet and/or finance clearance.

14. This Court has time and again held that there is no embargo on appointments but only certain restrictions to streamline the work. Appointments can not indefinitely be kept in abeyance on the ground of so-called embargo. There can be no question of withholding salary and allowances of an employee appointed in accordance with law on account of the so-called financial embargo.

15. The concerned District Inspector of Schools having approved the panel and permitted the school to make appointments should have forthwith initiated steps for compliance with the formalities, if any, stipulated in the Circular dated 13th December, 2000. Denial of salary and allowances for years to an employee who has been given compassionate appointment defeats the very purpose of compassionate appointment.

16. In any event, it appears that by reason of difficulties faced in administration of schools the Director of School Education sought general permission to fill up Group C and Group D posts in aided non-Government schools.

17. Thereafter, a Government Order being No. 463-SE(A) dated 8th July, 2004 was issued approving the filling up of over 3000 Group C and Group D posts in aided non-Government schools.

18. Pursuant to the aforesaid Govt. Order dated 8th July, 2004, the Director of School Education has issued memo. No. 2924-GA dated Calcutta 25th July, 2004 clarifying that the schools specified in the said memo, would be entitled to fill up the posts referred to in the memo. The name of the school in the instant case is specified in Sl. No. 97.

19. The filling up of a Group D post has been approved. As such it is incumbent on the concerned District Inspector of Schools to forthwith issue formal order of approval of appointment and to release the salary and allowances of the petitioner. The current salary and allowances of the petitioner shall be released forthwith.

20. All appears due and payable to the petitioner from the date of his appointment on 24th March, 2001 shall be released to the petitioner within two months from the date of communication of this order. The petitioner shall be entitled to interest at the rate of 6% per annum on the outstanding salary and allowances from the 7th day of the month following the month for which the salary and allowances are due and payable. The petitioner having unnecessarily been dragged to Court shall be entitled to costs of these proceedings assessed at 100 CMs. to be paid to the petitioner along with his outstanding arrears.

20. This writ application is disposed of.

21. If an urgent xerox certified copy of this order is applied for, the same be supplied expeditiously subject to compliance with requisite formalities.