

(2011) 01 CAL CK 0059

Calcutta High Court

Case No: Writ Petition No. 8761 (W) of 2008

Smt. Srabani Roy

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Jan. 25, 2011

Acts Referred:

- Bengal (Rural) Primary Education Act, 1930 - Section 54, 66(2)
- Constitution of India, 1950 - Article 14

Citation: (2011) 1 BC 511 : (2011) 1 CALLT 511

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Ashok Kumar Janna, S. Sultana and K.D. Das, for the Appellant;Tulsidas Maity and Pradip Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Harish Tandon, J.

This writ application has been filed by the Assistant Teachers of Sri Arobinda G.S.F. Primary School for approval of their services and release of all the payment since date of the recognition of the said school.

2. The case as made out in the writ application is that the Petitioners were appointed as Assistant Teacher on the strength of the resolution of the Managing Committee passed on 24th March 1978.

3. The writ Petitioners have further contended that they were rendering their services since their appointment without any break and their appointment was made as organizer teachers. The said school was subsequently recognized on 9th February 1981 and at the time of the inspection made by the Sub-Inspector of School on 29.7.1983 the Petitioners were found working in the school. The Petitioners made several representations, between 1983 to 1989 to the District

Inspector of Schools and the Chairman of the Municipality, to absorb and approve the said appointment of the Petitioners. The Respondent being reluctant in proceeding any further in the matter, the writ Petitioners filed a writ application before this Court and the Hon"ble Justice Susanta Chatterjee (as His Lordship the then was) disposed of the said writ application directing the authorities concerned to dispose of the representation within a period of 8 weeks from the date.

4. Pursuant to the said order the Director of the School Education disposed of the said representation holding that at the time of recognition of the school three teachers were found to be appointed w.e.f. February 2, 1975 and their services were duly approved. It was further stipulated therein that the appointment of the two more assistant teachers could be made subject to increase of roll strength. In the said order the Director of the School Education observed that no document could be produced in relation to the increase of roll strength and refused to pass any order and referred the matter to the President of the West Bengal Primary Education Board for consideration after holding that in view of the promulgation of the West Bengal Primary Education Act 1973 the Director of the School Education is no longer a competent authority to grant approval. Since the matter was referred to the President of the West Bengal Board of Primary Education the aforesaid representations were disposed of holding that the plea of the absorption of the Petitioners may be considered if the effective roll strength of the school increases to justify the creation of the additional teaching post or in case of a normal vacancies but not in case of vacancy arises on the ground of transfer. Subsequently the Headmistress of the said school submitted an application to the District Inspector of School (PE), Calcutta intimating that the roll strength of the school has increased and sought for approval of the appointment of the Petitioners. In spite of the submission of the said application, no step was taken which constrained the writ Petitioners to file a writ application before this Court and the said writ application was disposed of by Paritosh Kumar Chatterjee, J (as His Lordship the then was) on December 20, 1993 directing the Respondent authorities to consider and grant the approval to the Petitioners" appointment in accordance with law with further direction to pay salaries to the Petitioners. It would be pertinent to mention in this regard that the existence of the said order or filing of the said writ application is highly disputed. It is a further case of the writ Petitioner that in spite of the said order dated December 20, 1993, no approval was granted and challenging such inaction the Petitioners filed writ application being W.P. No. 1687(w) of 2004 which was ultimately disposed of on November 29, 2007. The said order reads thus:

Department has submitted report that none of the learned Lawyers could supply any copy of the writ petition, as directed. Therefore, the records relating to W.P. No. 20186(w) of 1993 could not be reconstructed.

It is submitted that on 20th December 1993 an order was passed in the above writ petition. From the copy of the order sheet, annexed to the present writ petition, I do not find any number of the aforesaid matter. Certified copy of the said order is not also available.

By the present writ petition, the aforesaid order dated 20th December 1993 is sought to be implemented when there is a dispute regarding existence of the said order, this Court cannot pass any order on this writ petition. However, liberty is given to the Petitioner to file a fresh application, stating all facts as to the misplacement of the records. Therefore, time from 1993 till today, shall be excluded, In the event any point of limitation is taken, as during this period, the matter was pending before the Court for enquiry and adjudication.

The writ petition being W.P. 1687(w) of 2004 is accordingly, disposed of. There will be no order as to costs.

Urgent xerox copy of this order, If applied for, be supplied to the applicants.

In terms of the liberty so granted the present writ application is filed with the following prayers:

- a) A writ in the nature of Mandamus commanding the Respondents, their men and agents and employees and each one of them to approve the service of the Petitioners as Assistant Teacher in respect of Sri Aurobindo GSF Primary School, and to release all payment including arrears along with interest since the date of recognition of the said school, strictly in compliance of the solemn order dated 20.12.1993 passed by the Hon"ble Justice Paritosh Kumar Mukherjee,
- b) A writ in the nature of Certiorari calling upon the Respondents to certify and produce all relevant documents relating to this case, so that on perusal thereof conscionable justice may be rendered by passing appropriate orders;
- c) A writ in the nature of Prohibition, Prohibiting and/or restraining the Respondents from filling up the vacancies of the Assistant Teachers, in respect of Sri Aurobindo GSF Primary School;
- d) Ad-interim order or injunction be passed restraining the Respondents, their men, agents and employees from filling up the vacancies of Assistant Teachers, in respect of Sri Aurobindo GSF Primary School till the disposal of the instant application;
- e) Rule NISI in terms of prayer (a), (b) and (c) above;
- f) To pass such other further order or orders as Your Lordships may deem fit and proper.

5. Mr. Jana. learned Advocate appearing for the Petitioner submits that the Petitioner who is working since 1978 is entitled to be absorbed. He further argues that the Petitioner cannot be allowed to continue with his services without being

permanently absorbed and without their services being regularized by the authority concerned. He further argues that the workers who have been continuously working for more than 10 years are entitled to be absorbed and their services should be regularized in view of the judgment of the Supreme Court in case of [State of Karnataka and Others Vs. M.L. Kesari and Others](#). Mr. Jana further argues that the authorities are bound to act reasonably and not arbitrarily so as to violate Article 14 of the Constitution. While contending so, he relies upon a judgment of the Supreme Court in case of UP State Electricity Board v. Pooran Chandra Pandey and Ors. reported In 2008 (1) CLJ (SC) 87. Further argument is advanced by Mr. Jana that on recognition of the school there is no point in not approving the appointment of the organizer teachers and relies upon a judgment of the Division Bench in case of West Bengal Board of Secondary Education v. State of West Bengal and Ors. reported in 1997 (1) CLJ 165.

6. Mr. Tulsidas Maity, learned Advocate appearing for the Council submits that the Petitioners cannot be said to be the organizer teachers as their appointment is made by the Managing Committee subsequent to the creation of the school. He vehemently disputed the existence of the order dated December 20, 1993 passed by Paritosh Kumar Chatterjee, J. (as His Lordship the then was) in contending that no such order was ever in existence and further relies upon the observation made by this Court in an order dated 29.11.2007 passed in WP No. 1687(w) of 2004.

7. Mr. Jana succinctly argues that after the enactment of the rules regulating the recruitment and leave of teachers in primary schools in West Bengal, the Chairman of the respective Council is only the appointing authority who can appoint only those persons whose name has been sponsored by the respective concerned employment exchange.

8. In spite of the service no one appears on behalf of the state.

9. Having considered the submissions made at the bar the claim which is made by the Petitioner is on the strength that having been appointed as organizer teachers, they are entitled to have their appointment approved. Organizer teacher has not been defined in the said recruitment rules but from the various circular issued prior to the said recruitment rules and even prior to the amendment of Rule 3D of the old rules the organizer teachers are those who since the birth of the school are rendering their services or appointed as such the Division Bench in case of West Bengal Board of Secondary Education (supra) while considering the status of the teachers who have been appointed subsequent to the creation of the schools by the Managing Committee was pleased to hold that they are not an organizer teacher but at best can be said to be a teacher in position. Such a person being not an organizer teacher has no statutory right to have the approval of their appointment. The Division Bench while denying the right of the aforesaid teachers observed in the following words:

95. Thus, there cannot be any, doubt whatsoever that the right to be considered for appointment as organizer teacher was at best in terms of Rule 3D (Old) but the organizer teachers could not claim any right to be absorbed by way of regularization or otherwise.

96. Organizer Teachers, are those teachers who had been working since the inception of the schools. The teachers who had joined the school after its establishment are known as teachers-in position. The teachers-in position had, thus, no statutory right even under Old Rule 3D.

97. The State framed rules for recognition of the school in terms of Section 66(2)(n) and (o) of the 1930 Act laying down the procedure therefore. Thus a primary school, in terms of the provision of Section 54 of 1930 Act could be recognized as and when the condition prescribed under the aforementioned rules which came into force with effect from 27.3.1940 were fulfilled. The primary schools, thus, did not have any legal right to be recognized only upon its establishment, but a right be considered therefore which was hedged by conditions. It is neither denied nor disputed that the right of the organizer teachers under Rule 3D (Old) could be considered only upon recognition of the schools.

10. It would be profitable to quote certain paragraphs of the writ petition wherefrom a logical conclusion could be arrived that the claim of the Petitioner to have their approval of their services on the strength of the organizer teacher are made in the following paragraph:

2. That the Managing Committee of the said school passed a resolution on 10.11.74 and also by resolution dated 24.3.78 appointing these Petitioners as Assistant Teachers of the said school and the Headmistress and the Secretary of the school issued letters of the appointment.

3. That previously the school was situated at 30, Satchasipara Road, Calcutta 700 002, but thereafter in 1978, it was shifted to 48/1/H/13 Satchasipara Road, Calcutta 700002.

4. The school was earlier in the name of Sri Arobinda Abaltanik Prathamik Vidyalaya but it was renamed at the time of recognition as Sri Aurobindo GSF Primary School.

5. That the Petitioner Nos. 1 and 2 were appointed as Organizer Assistant teachers of the said school on 1st April 1978 and since then they have been working in the said school without break as Assistant Teachers of the school.

11. Thus, if the ratio of the Division Bench of the said judgment is applied the Petitioners are undoubtedly the teachers in position and not the organizer teachers and as such does not have any right to be considered for approval of their appointment.

12. The judgment rendered by the Supreme Court in case of [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), has not laid down any law by which a logical inference can be drawn that a person who has worked continuously for several years, the authorities are bound to regularize the services of such employees. In case of Umadevi (supra) the regularization was allowed in the event a person working temporarily/on daily wages having requisite qualification in duly sanctioned vacant post. It is further held therein that such an appointment may be irregular but not illegal. Even the Supreme Court in case of M.L. Kesari (supra) was pleased to observe that the true effect of the direction made in case of Umadevi (supra) is that the persons who have worked for more than ten years in the vacant post possessing requisite qualification are entitled in the following words:

8. The object behind the said direction in para 53 of Umadevi [Secretary, State of Karnataka and Others Vs. Umadevi and Others](#), para 44 is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi AIR 2006 SCW 1991 was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any Court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

13. The judgment passed in case of UP State Electricity Board (supra) cited by Mr. Jana is not applicable to this case. The facts as emerge in the said case, was that the 34 Petitioners who were the daily wage employees of the Co-operative Electric Supply Society prayed for regularization of their services in UP State Electricity Board on the ground that the said society was taken over by the electricity board. It is further contended therein that the electricity board had taken a decision prior to taking over of the said society i.e. on 28.11.96 to regularize the services of its employee working on daily wage basis on or before 4.5.1990 on the existing vacant post. It was contended by the Petitioners therein that after taking over of the said society by the Electricity Board they cannot be discriminated against vis-a-vis the original employee of the Electricity Board since they have been taken over by the electricity Board in the same manner and position. This is obviously not a case in the instant writ application. There is no case of discrimination having been made out by

the writ Petitioners. From the length and breadth of the writ petition my efforts have failed to find out whether any case of discrimination as enshrined under Article 14 of the Constitution of India is made out.

14. Another point which has been taken by Mr. Jana that the appointment of the writ Petitioners had already been approved in terms of an order dated 20th December 1993 passed by Paritosh Kumar Mukherjee. J (as His Lordship the then was), is also not tenable. In an earlier writ application being W.P. No. 1687(w) of 2004 this Court directed the department to produce the record relating to the said writ application. The department reported that there is no such writ application filed by the writ Petitioner found in the record. While disposing of the said writ application it was observed that the very existence of the said order is in dispute. Thus, in absence of any authenticated certified copy, I am of the view that no reliance can be placed on a bare submission of the writ Petitioner. As I have already indicated that the writ Petitioners are not entitled to any relief in the writ application, the writ application is liable to be dismissed.

15. Thus, I do not find any merit in the writ application and the same is hereby dismissed.

16. However, there shall be no order as to costs.