

(1998) 02 CAL CK 0025

Calcutta High Court

Case No: MAT No. 649 of 1997

Astapada Sasmal

APPELLANT

Vs

Ishani Hundu (Sm.)

RESPONDENT

Date of Decision: Feb. 23, 1998

Acts Referred:

- Constitution of India, 1950 - Article 166
- Criminal Procedure Code, 1973 (CrPC) - Section 167(5)
- West Bengal Board of Secondary Education Act, 1963 - Section 45, 45(2)

Citation: (1998) 1 ILR (Cal) 231

Hon'ble Judges: Satyabrata Sinha, J; Ronojit Kumar Mitra, J

Bench: Division Bench

Advocate: Dilip Kumar Smanta, for the Appellant; Tridib Sarkar, for the Respondent

Judgement

Satyabrata Sinha, J.

This appeal is directed against a judgment and order dated January 31, 1997 passed by a learned Single Judge of this Court in C.O. No. 2103 (W) of 1989 whereby and whereunder the said learned court disposed of the writ application with various directions.

2. The fact of the matter lies in a very narrow compass.

The writ Petitioner/Respondent No. 1 was appointed as an Assistant Teacher in Balpai Prafullya Chandra Sen Vidyanamdir in the year 1969. Her service was approved by the competent authority.

The writ Petitioner/Respondent No. 1 was also promoted to the post of Assistant Headmistress. The Petitioner also acted as Headmistress in absence of the regular Headmistress. For the purpose of disposal of the appeal, the other facts which are required to be noticed are that according to the Petitioner a Criminal Case had been instituted against her wherefrom she was discharged in terms of Section 167(5) of

the Code of Criminal Procedure. Further claim of the Petitioner appears to be that she had been restrained from entering into the school by the school authority without any authority of law.

3. Before the learned trial Judge, a report from the District Inspector of School has been called and such report had been filed relying on or on the basis of the said report the learned trial Judge not only directed that all arrears of salary should be paid to the Petitioner but also issued certain directions to the Assistant Inspector of Schools.

4. Mr. Samanta, learned Counsel appearing on behalf of the Appellant has raised a short question in support of this appeal. The learned Counsel submits that from a perusal of a Memo No. 477-Edn.(S) dated Calcutta the June 18, 1980 as contained in annexure "B" to the Stay Application, it would appear that the Governor of the State of West Bengal had laid down certain procedure as regard payment of salary in respect of a teacher who had been prevented from joining the school under duress and performing their normal duties. The said circular letter reads thus:

Sub.: Absence of teachers and non-teaching employees of recognised Non-Government Secondary Schools prevented under duress from attending the schools and performing normal duties.

In continuation of this Department Government Order No. 1071-Edn(S) dated the 19th August, 1977 the undersigned is directed to say that the Governor has been pleased to decide that the period of absence of the teachers and non-teaching employees of recognised non-Government Secondary Schools prevented under duress from attending their schools and performing their normal duties should be treated as period spent on leave without pay but will count towards increments, as a Special case. Such period of absence will automatically be counted as continuity in service for the purpose of pension. The Governor is pleased to direct that the appointments of the teachers or non-teaching staff on reinstatement in terms of Government Order No. 1071-Edn(S) dated the 19th August, 1977 should not require fresh approval if their first appointment in their Schools were duly approved by the competent authority. However, in the case of non-approved teachers and non-teaching staff formal approval of the competent authority in respect of their appointments will be necessary.

The District Inspector of Schools concerned should be advised to communicate this decision to heads of Secondary Schools.

5. According to the learned Counsel in view of the aforementioned circular letter, the impugned judgment and order could not have been passed.

6. The learned Counsel appearing on behalf of the writ Petitioner/Respondent No. 1 on the other hand submits that the Petitioner should not have been deprived of her legitimate dues. According to the learned Counsel, the learned trial Judge has

passed the judgment under appeal on the basis of a report submitted by the District Inspector of Schools wherein it has been categorically stated that the Petitioner was prevented by force from attending the schools. The learned Counsel states that in the said report it has been revealed that the writ Petitioner was assaulted and a false Criminal case was initiated against her.

7. In this appeal we are not concerned with the factual aspect of the matter. The fact remains that neither the writ Petitioner questioned the vires of the aforementioned circular letter dated June 18, 1980 nor the learned trial Judge issued direction upon taking into consideration the said circular letter.

8. Section 45 of the West Bengal Board of Secondary Education Act empowers the State Government to make Rules for carrying out the purposes of the said Act. Sub-section (2) of Section 45 of the Act provides for power of the State Government to make rules enumerated therein which includes terms and conditions of appointments and composition, powers and functions of the Managing Committee of the Institutions. The provision of the said Act clearly shows that the control of the school which was in the hands of the West Bengal Board of Secondary Education has been taken over by the State Government to a large extent. Even function of the Board is subject to certain direction of the State Government. In terms of Section 45 of the said Act, the State Government has framed. Rules known as Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969. Rule 28 of the said Rules provides for powers of the committee. Such power is subject to a guide-line or direction which may be issued by the State. The Director of School Education has issued such guide-line known as "Recruitment Rules". The State Government has power to issue direction in such a matter. The aforementioned circular letter dated June 18, 1980 is also one of such direction. The said direction has been issued under the order of the Governor and therefore satisfies the condition of Article 166 of the Constitution of India. As the effect of the said circular has not been taken by the learned trial Judge, we are of the opinion so far as the direction relating to the arrear of salary payable to the writ Petitioner by the school authority is concerned, the same may require reconsideration at the hands of the learned trial Judge. It appears from the impugned judgment that the writ Petitioner has already joined the school and therefore she must get the salary.

9. The learned Counsel for the writ Petitioner submits that even the District Inspector of Schools (S.E.) has deposited the arrear of salary with the Managing Committee.

10. If that be the position, it would be open to the District Inspector of Schools (S.E.) to withdraw the same and/or keep the same on suspense account.

11. It may however be placed on record that the learned Counsel for the writ Petitioner/Respondent No. 1 submits that if he is so advised, the Petitioner may question the constitutionality/legality of the said circular letter.

12. He may do so.

13. For the reason aforementioned, this appeal is allowed in part and to the extent mentioned hereinbefore.

14. There will be no order as to costs.

15. The appropriate Bench is hereby requested to dispose of the matter as early as possible.

Ronojit Kumar Mitra, J.

16. I agree.