

(2010) 02 CAL CK 0060

Calcutta High Court

Case No: Writ Petition No. 22745 (W) of 2009

Sk. Mohmud Hossain
and Others

APPELLANT

Vs

State of West Bengal
and Others

RESPONDENT

Date of Decision: Feb. 24, 2010

Acts Referred:

- West Bengal Primary Education Act, 1973 - Section 41, 42, 42(1), 42(2)

Citation: AIR 2010 Cal 121

Hon'ble Judges: Biswanath Somadder, J

Bench: Single Bench

Advocate: Ashok Kr. De, S.K. Das and S. Jana, for the Appellant;Tulsidas Maity and Abha Ray, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Biswanath Somadder, J.

After hearing the learned advocates for the parties and upon perusing the instant writ petition, it appears that an interesting question has arisen in the instant case.

2. In terms of Section 42(1) of the West Bengal Primary Education Act, 1973 (hereinafter referred to as the "said Act"), the term of office of a member of a Primary School Council has been restricted to four years from the date of publication of his name in the Official Gazette u/s 41 of the said Act. Section 42 also provides for a member to be re-elected, re-nominated or re-appointed, upon expiration of the four year term. Section 42(1) reads as under:

Subject to the provisions of this Act, every elected, nominated or appointed member of a Primary School Council shall hold office for a term of four years from the date of publication of his name in the Official Gazette u/s 41 and may on expiration of such

term be re-elected, re-nominated or re-appointed.

3. Sub-section (2) of Section 42 of the said Act has, however, been introduced by an Amendment Act of the year 2004, which reads as follows:

A Primary Council shall, notwithstanding the expiration of its term, continue to hold office until the newly formed Primary School Council enters upon its office.

4. The question that now falls for consideration is whether by virtue of the newly introduced Sub-section (2), the mandatory provision of Sub-section (1) confining the term of a member of a Primary School Council to hold office for four year can be kept indefinitely suspended, since the said Sub-section (2) does not specify any time limit for the formation of anew Primary School Council, upon expiration of its four year term.

5. In my opinion, in order to give harmonious construction to the statutory provisions as referred above, Sub-section (2) of Section 42 cannot be read in isolation and has to be read along with the provision of Sub-section (1) of Section 42 of the said Act. The scheme of Section 42, as a whole, provides for a time limit in respect of holding of office by a member of a Primary School Council. Although, such time limit has been statutorily fixed for four year, as specified in Sub-section (1) of Section 42, the introduction of Sub-section (2) into the statute book allows continuance of office by a member of a Primary School Council, even upon expiration of its four year term. That, however, does not and cannot mean that a member of a Primary School Council, by virtue of Sub-section (2) of Section 42 of the said Act, can continue to hold office of a member of a Primary School Council for an indefinite period of time. That will surely frustrate the scheme of Section 42 of the said Act when read as a whole and render in nugatory.

6. In such circumstances, I direct the State to inform this Court as to when it intends to call for election of members of the Primary School Council of the District of Purba Medinipur, whose four year term has admittedly expired last year on 31st March, 2009. The State shall provide this information on the next date.

7. Let this matter stand adjourned for four weeks.

8. Urgent photostat certified copy of this order, if applied for, be given to the parties.