

(1984) 12 CAL CK 0026

Calcutta High Court

Case No: F. M. A. T. No. 3022 of 1982

President- Cum Secy. Sailendra
Sircar Vidyalaya

APPELLANT

Vs

Prafulla Kumar Samajdar and
Others

RESPONDENT

Date of Decision: Dec. 10, 1984

Citation: 89 CWN 333

Hon'ble Judges: P.K. Mukherjee, J; M.M. Dutt, J

Bench: Division Bench

Advocate: Tapas Roy and Sumit Kumar Panja, for the Appellant; Gopal Ch. Mukherjee and Subir Hazra for Respondent No. 1, A.N. Banerjee and D. Bera for State, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Dutt, J.

This appeal has been preferred by the President-cum-Secretary of Sailendra Sircar Vidyalaya, which is a sponsored Institution, against the judgment and order of Suhas Chandra Sen J, whereby the learned Judge allowed the writ petition of the respondent no. 1, Prafulla Kumar Samajdar. The respondent no. 1 is an M.A.B.T. of the Calcutta University. He joined Government service as an assistant teacher in the year 1952 and served various Government Institutions since then. While he was officiating as the Headmaster of the Sanskrit Collegiate School, on July 31, 1980 he retired from Government service, on his attaining the age of. 58 years. After his retirement, the Administrator of Sailendra Sircar Vidyalaya by his letter dated July 1, 1982 appointed the respondent no. 1 to the post of Headmaster of the school on probation for two years with effect from the date on which the respondent no. 1 would join the post, on pay and allowances as admissible under the Rules. The respondent no. 1 joined the post of Headmaster of the school on August 1, 1980. On April 8, 1982, the respondent no. 1 drew the attention of the President of the school to the fact that his probationary period would expire on August 1, 1982, and

requested the President of the school to confirm him in the post and also to grant one year's extension of his service with effect from August 1, 1982 as he was physically fit. In support of his physical fitness a medical certificate was sent by him along with the said letter. Again he wrote another letter on April 11, 1982 to the President of the school requesting him to confirm him (the respondent no. 1) in the post of Headmaster and extend his service for" one year with effect from August 1, 1982. In reply to the said letter, the President of the school by his letter dated July 1, 1982 informed the respondent no. 1 that the period of his probation would expire on July 31, 1982. In that letter, nothing was said as to Whether the respondent no. 1 was confirmed in the post or not. But, by his letter dated July 27, 1982, the President of the school informed the respondent no. 1 that his probationary period could not be extended and, accordingly, his superannuation would be on August 1, 1982.

2. Being aggrieved by the said decision or order of the President of the school as contained in the said letter dated July 27, 1982, the respondent no 1 filed the writ petition against the same. As stated already, the learned Judge set aside the impugned order dated July 27, 1982 and directed the respondents to the writ petition including the President of the school not to give any effect to the same and to act in accordance with law. Further, it was directed that the said order of the learned Judge would not prevent the respondents from taking any step that might be open to them under the law. Hence this appeal by the President-cum-Secretary of the school.

3. The West Bengal Board of Secondary Education, hereinafter referred to as "the Board", framed certain rules Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969, hereinafter referred to as the 1969 Rules. Clause (g) of rule 2 defines sponsored Institution as follows :

"Sponsored Institution" - means an Institution which is declared as such by the State Government by a Notification published in the Official Gazette Provided that an" institution shall not be declared as a sponsored institution unless it is (i) established by the State" Government with or without aid or co-operation from others, or (ii) taken over, by the State Government with the consent of the majority of persons for the time being in charge of its management for its being maintained by the State Government insofar as its financial deficit is concerned, completely by grant-in-aid.

Rule 28 of the 1969 Rules lays down the powers of the Managing Committee of schools Clause (iii) of Rule 28(1) confers power on the Committee of an aided institution subject to the approval of the Director of Secondary Education, West Bengal, to extend the services of teachers and other employees beyond the date of superannuation; approval for such extension being thereafter sought for from the Director or any officer authorised by him ordinarily within, a week from the date of the decision of the Committee. Sub-rule (2) of rule 28, inter alia, provides for the giving of reasons by the Director in case of disapproval of the extension of service and for communication of such reasons by him to the Managing Committee of the

school. Under sub-rule (3) of rule 28, in case the Committee does not recommend the extension of the service of a teacher, it shall record specific reasons therefore and the person concerned may make his representation to the Director through the District Inspector. Inspectors of schools concerned and so far as the Committee is concerned, the decision of the Director shall be final. Sub-rule (4) of rule 28 provides for the power of the Managing Committee Of an unaided institution. Under clause (ii) of sub-rule (4), such Committee has the power to extend as per conditions laid down by the Director, the services of teachers and other employees beyond the date of superannuation, approval for such extension being thereafter sought for from the Board ordinarily within a week from the date of decision of the Committee.

4. With regard to the confirmation at the expiry of the probationary period, sub-rule (7) of rule 28 provides, inter alia, that in the case of a permanent appointment, a teacher or an employee appointed on probation shall "be confirmed on the expiry of the period of probation, unless an order to the contrary is issued at least six weeks before the date on which the confirmation-normally falls due. Sub-rule (7) applies to both aided and unaided schools.

5. In this connection, it may be stated that the Rules for Management of Sponsored Institution (Secondary), 1972, hereinafter referred to as "Sponsored Rules", have been framed by the Government. Rule 23(iii) of Sponsored Rules confers power on the Committee of a sponsored school to extend the services of teachers and other employees beyond the date of superannuation. Thus it appears that both under the 1969 Rules which apply to aided and unaided schools and under the Sponsored Rules, the Committee of the school has the power to extend the services of teachers and other employees beyond the dates of superannuation.

6. The respondent no. 1 has placed reliance upon sub-rule (7) of rule 28 of the 1969 Rules which, as noticed earlier, provides that a teacher or an employee appointed on probation shall be confirmed on the expiry of the period of probation, unless an order to the contrary is issued at least six weeks before the date on which confirmation normally falls due. It follows from sub-rule (7) that if no order is passed to the effect that the incumbent concerned will not be confirmed after the expiry of the probationary period, six weeks before the date on which the confirmation normally falls due, there will be an automatic confirmation. There is no dispute in this regard. It is, however, submitted on behalf of the appellant that sub-rule (7) will not apply to the respondent no. 1 in view of rule 32 of the 1969 Rules. Rule 32, inter alia, provides that nothing in the 1969 Rules shall apply to the institutions mentioned therein including "a, sponsored institution. It is, accordingly, contended that as Sailendra Sircar Vidyalaya is a sponsored institution, sub-rule (7) of rule 28 of the 1969 Rules will not apply. Attractive though the contention is, we are unable to accept the same. We have already noticed the definition of a sponsored institution as given in clause (g) of rule 2 of the 1969 Rules. It defines "Sponsored Institution" as meaning an institution which "is declared as such by "

the State Government by a notification published in the Official Gazette. So long as, therefore, no such declaration is published in the Official Gazette, an institution cannot be treated as a sponsored institution for the purpose of excluding the application of the 1969 Rules including sub-rule (7) of rule 28.

7. In the instant case, by a notification published in the Calcutta Gazette, Extra-ordinary, dated March 7, 1983, Sailendra Sircar Vidyalaya was declared a sponsored institution, with effect from November 30, 1979.

8. In our opinion, although Sailendra Sircar Vidyalaya was declared a sponsored institution with effect from November 30, 1979, it will not affect the vested right which the respondent no. 1 had acquired with regard to his confirmation, as provided for in sub-rule (7) of rule 28 of the 1969 Rules. The respondent no. 1 had joined the post of Head-" master with effect from August 1, 1980, that is, long before the school was declared a sponsored institution by a publication in,that regard in the Calcutta Gazette on March 7, 1983. Therefore, inspite of the fact that the school was declared a sponsored institution with effect from. November 30, 1979, the respondent no. 1 will be governed by sub-rule(7) of rule 28 of the 1969 Rules with regard to his confirmation. It is not disputed that the Managing Committee of the school did not issue any order not to confirm the respondent no. 1 in the -post of Headmaster six weeks before the expiry of the probationary period., Therefore, in view of sub-rule (7). of rule 28 of the 1969 Rules, the appointment of the respondent no. 1 to the post of Headmaster became, automatically confirmed on and from August 1, 1982.

9. Now the question is whether the respondent no. 1 can claim extension of his service beyond 60 years. In this connection, we may refer to a notification dated July 31, 1981 issued "by the Government of West Bengal, inter alia, to the following effect "Teachers in all Government aided: educational Institutions opting for "the revised, scale of pay shall retire at 60 years, provided, however that who were about 54 years but Below 57 years of age on April 1, 1981 shall retire on completion of 62 years of age or on March 31, 1987 whichever is earlier, and for such teachers who were about 57 years of age on April 1, 1981 retirement will be on. completion of 65 years or on March 31, 1987 whichever is earlier. The non-teaching employees of all Government aided Institutions shall retire at 60 years of age."

Under this notification, teachers in Government aided Institutions,. who were above 57 years of age on April 1, 1981, will retire on completion of 65 years of age or on March 31, 1987, whichever is earlier.

10. The respondent no. 1 has strongly; relied upon the said notification dated July 31, 1981 and it is contended by him that in view of the said notification, he will retire after the completion of 65 years of age. On the other hand, it is submitted on behalf of the school that this notification applies only to aided educational institutions and not to sponsored institutions. Further, it is submitted that the benefit of this

notification will be available only to those who have opted for the revised scale of pay". It is the case of the respondent no. 1 that he has exercised his option for the revised scale of which has, however, been denied by the appellant. It is difficult for us to decide whether or not such option has been exercised by the respondent no. 1. We have already noticed that under the 1969 Rules, the Managing Committee of both aided and unaided schools have the power to extend the services of a teacher beyond the age of superannuation subject to the approval by the Director of Secondary Education or by the Board respectively. It has also been noticed that in case the Committee "does not recommend the extension of the service of a teacher, the Committee has to record the reasons therefore and the teacher concerned will be entitled to make representations to the Director or the Board, as the case may be. In the instant case, the Committee did not record any reason for not granting any extension to the respondent no. 1. In the impugned letter dated July 27, 1982, it has been stated by the President of the school that as the probationary period cannot be extended, no extension of service can be granted. In our opinion, it is no reason at all. Moreover, as already stated, the appointment of the respondent no. 1 became automatically confirmed, on the expiry of the probationary period by virtue of sub-rule (7) of rule 28 or the 1969 Rules, which has been held to apply to the respondent no. 1. Even under rule 23 (ii) of the Sponsored Rules, it is the Committee which has been conferred with the power to extend the services of teachers and other employees beyond the dates of superannuation. No such power has been conferred on the President of the Committee.

11. We are unable to appreciate the attitude of the President of the school, who is the appellant before us, towards the respondent no. 1. The respondent no. 1 was appointed on probation for two years to the post of Headmaster of the school after his retirement from Government service at the age of 58 years. It was quite known to the Administrator, who appointed the respondent no. 1, that the date on which the probationary period would expire synchronized with the date of his superannuation as contended on behalf of the President of the school. If that be so, the respondent no. 1 should have been appointed temporarily for a period of two years. The very fact that he was appointed on probation implied the question of confirmation. It is apparent from the above facts that both the Administrator and, thereafter, the President of the school, were of the view that the age of superannuation could be extended up to the age of 65 years as per 1969 Rules. We also fail to understand that in the case of an aided school a teacher would retire at the age of 65 years if his age was above 57 years. On April 1, 1981, but a teacher in an unaided school even though he satisfies the said condition of his age being above 57, years on April 1, 1981, extension of his service will be subject to the recommendation of the Committee of the school and approval of the Board. Be that as it may, we are of the view that there is no reason why the service of the respondent no. 1 should not be extended if he is physically fit and mentally alert. The learned trial Judge was perfectly justified in quashing the impugned order dated

July 27, 1982. For the reasons aforesaid, this appeal is dismissed. There will, however, no order for costs. The cross objection has not been pressed and no order is made on the same.

The President of the school is directed to reinstate the respondent no. 1 within a period of six weeks from date.

Paritosh K. Mukherjee, J.

I agree.