

Mithus Basu (Kurmi) Vs Shyamali Bhattacharjee and Others

Court: Calcutta High Court

Date of Decision: March 28, 2007

Citation: 111 CWN 566

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Arunabha Basu, J

Bench: Division Bench

Advocate: Arabinda Chatterjee and Kakali Dutta, Himadri Baruah, for the Appellant; Ranjit Chatterjee, Prasenjit De, Keshab Bhattacharya and Banani Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

Pranab Kumar Chattopadhyay, J.

This appeal is directed against the judgment and order dated 4th May, 2001 passed by the learned

Single Judge in the writ petition being C.O. No. 5240 (W) of 1992 whereby the said learned Single Judge directed for approval of the

appointment of the respondent No. 1/writ petitioner with effect from 3rd January, 1990 and also set aside the approval of appointment of the

appellant herein. It has been urged on behalf of the appellant that the validity and/ or legality of the approval of appointment of the appellant was

never an issue in the writ petition filed by the respondent No. 1 herein although the learned Single Judge while deciding the said writ petition finally

issued specific direction for setting aside the approval of the appointment of the appellant herein. It has been submitted on behalf of the appellant

that the learned Single Judge did not appreciate the relevant circulars and/ or orders issued by the Govt., of West Bengal regarding appointment of

organiser teachers and non-teaching staff in secondary schools in an appropriate manner while deciding the writ petition filed by the respondent

No. 1 herein.

2. Undisputedly, " the school was recognised by the West Bengal Board of Secondary Education by Memo dated 29th December, 1986 and

pursuant to such recognition, Director of School Education, West Bengal by the Memo dated 3rd November, 1988 accorded approval to

teaching and non-teaching staff of the concerned school wherein it has been specifically mentioned that the sixth post should remain vacant and

should be filled up by a B.Sc. (Bio) teacher as per existing rules. The said order of approval issued by the Director of School Education, West

Bengal by Memo dated 3rd November, 1988 is quoted hereunder:

Memo No. Dated : Calcutta, the... Oct, 1988 4G-620/88

From : The Director of School Education, West Bengal.

To : The District Inspector of Schools (S.E.), Burdwan, P.O. & Dist. Burdwan.

Sub. : Approval of teaching and non-teaching staff of Gopalnath Girls Jr. High School, P.O. Oyaria, Dist. Burdwan.

With reference to his memo No. 1406/Jr. dt. 18-11-1987 in connection with the subject mentioned above, the undersigned has to state that the

approval of appointment of the following staff of Gopalnath Girls Jr. High School, P.O. Oyaria, Dist. Burdwan is hereby accorded with effect from

the date of recognition of the school as a 2-class and 4-class school i.e. from 01-01-1986 and 01-01-1987 respectively.

Teaching Staff : with effect from

1) Sm. Maya Nandi, M.A., B.Ed.,

Teacher-in-Charge ... 1-1-86

2) Sm. Jaba De, B.A., Asstt. Teacher ... 1-1-86

3) Sm. Srilekha Tewary, B.A. (Hons),

Asstt. Teacher ... 1-1-86

4) Smt. Swapna Bose, B.Sc.

(Distinction, Pure), Asstt. Teacher ... 1-1-87

5) Sm. Kabita Mahato, B.A., Asstt. Teacher ... 1-1-87

Non-teaching Staff:

1) Sm. Jyotsna Banerjee, B.A., Clerk ... 01-01-87

2) Sri Dulal Ch. Banerjee,

Class VIII passed, Class IV staff ... 01-01-87

The 6th post should remain vacant and it should be filled up by a B.Sc. (Bio) teacher as per existing rules.

He is now requested to take necessary action in the matter.

Sd/- R. P. Banerjee

For Director of School Education

West Bengal.

Memo No. 1757/1(1)SC/6

4G-62G/88

Dated : Calcutta, the 3rd Nov, 1988.

3. Thereafter Deputy Director of School Education, (Junior High School), West Bengal by Memo dated 27th March, 1990 accorded approval of

appointment of the appellant herein as Bio-science teacher with effect from 1st March, 1990 against the sixth post, which was not filled up so far.

4. Mr. Arabinda Chatterjee, learned Counsel of the appellant submits that the service of the appellant was approved following the rules which

were prevalent at the relevant point of time. It is not in dispute that a post of Science teacher has been kept vacant under the order of this court

and the learned Single Judge by the order under appeal directed the State-respondents to take steps for regularisation of the service of the

appellant against the said vacant post. Mr. Chatterjee submits that there was no illegality and/or irregularity in the approval of service of the

appellant herein by the concerned authority and the learned Single Judge should have directed the State-respondents to take steps to regularise the

service of the respondent No. 1/writ petitioner against the vacant post of Science teacher.

5. From the records it appears that while considering the cases of approval of organiser teachers in respect of the school herein, namely,

Gopalnath Girls Junior High School, the appointment of organiser teachers and non-teaching staff was governed by the circular issued by the

Government of West Bengal, Education Department, Secondary Branch under Memo No. 1224-Edn(S)/4A-53/87 dated 5th/9th December,

1987. In the said circular it has been specifically provided as hereunder:

Under the circumstances the following principles are reiterated for strict adherence in the matter of granting approval to the appointment of

teaching and non-teaching staff in a non-Govt. aided Secondary School recognised by the West Bengal Board of Secondary Education on being

granted such recognition (1) the existing teaching and non-teaching staff of a unrecognised Junior High School which applied to the said Board

before 1975 in due process may be approved for appointment as organiser teacher or non-teaching staff upon the school being recognised by the

said Board provided (a) such teaching or non-teaching staff has the required educational and age qualifications at the time of appointment (b) they

were present and were recommended to be so present during the authorised inspection based on which such Institution was granted recognition by

the said Board and (c) that there will be only six teachers in a 4 Class Jr. High School including one with academic qualifications to teach Bio-

Science and another to teach Pure-Science. It should be noted that if such qualified teaching staff was not available during the said inspection these

172 posts will remain vacant for being, appointed through the normal process.

6. While granting approval of teaching and non-teaching staff of the concerned school, Director of School Education specifically mentioned that the

sixth post should be filled up by a B.Sc. (Bio) teacher as per existing rules and in view of the aforesaid circular, the said sixth post has been filled

up by the appellant herein and necessary order of approval was issued subsequently by the Deputy Director of School Education by the Memo

dated 27th March, 1990 approving the appointment of the appellant with effect from 1st March, 1990.

7. Although the respondent No. 1/writ petitioner was the sixth person in the school but the sixth vacancy could not be filled up in terms of the

existing rules by the said respondent No. 1/writ petitioner as the said sixth post is required to be filled up by a B.Sc. (Bio) teacher as per the

existing rules. Therefore, the approval of appointment of the appellant in the said sixth post bring a B.Sc. (Bio) teacher was just and proper in

terms of the rules, which was operative at the relevant time.

8. For the aforesaid reasons, we are of the opinion that the learned Single Judge should not have set aside the approval of the appointment of the

appellant herein and should not have also held that the appointment of the respondent No. 1/writ petitioner should be deemed to be approved with

effect from 3rd January 1990. We, therefore, disapprove the aforesaid directions of the learned Single Judge.

9. However, due to the upgradation of the school with effect from 1st May 1998. another post of Pure Science teacher has been admittedly

sanctioned by the District Inspector of Schools (SE), Burdwan, which has not yet been filled up and kept vacant pursuant to the earlier order

dated 06-12-2000 passed by this court.

10. Undisputedly, the respondent No. 1 herein has the requisite qualifications for the said post of Science teacher and serving the concerned

school as a Science teacher since 1982. In view of creation of the new post due to upgradation of the school, the service of the said respondent

No. 1 should be regularised against the said vacant approved post of Science teacher with effect from 01-05-1998 i.e. from the date of

upgradation of the school. The concerned authorities should, therefore, take necessary steps for regularising and/or approving the service of the

respondent No. 1/writ petitioner in the said subsequently created post of Science teacher with effect from 01-05-1998 i.e. from the date of

upgradation of the school.

11. In the aforesaid circumstances, we direct the school authorities to submit necessary papers to the District Inspector of Schools (S.E.),

Burdwan for approval of the appointment of the respondent No. 1/writ petitioner within a week from date and the said District Inspector of

Schools (S.E.), Burdwan is directed to take necessary steps for regularisation of the service of the said respondent No. 1/writ petitioner with effect

from 01-05-1998 i.e. from the date of upgradation of the school and pass appropriate order regarding disbursement of salary and other

allowances including payment of arrears from the date of the aforesaid regularisation of the service within two weeks thereafter positively. If

necessary the other State-respondents will also take appropriate steps and/or pass necessary orders for regularising the service of the respondent

No. 1 /writ petitioner in the vacant post of Pure Science teacher of the said school and make payment of salary and other allowances including

arrear dues without any further delay but positively within the time mentioned hereinabove.

12. The impugned order under appeal is, therefore, set aside and this appeal thus stands allowed. There will be, however, no order as to costs.

Arunabha Basu, J.

I agree.