

Narayan Baidya Vs. District Inspector of Schools (S.E.) South 24 Parganas and ors.

Narayan Baidya Vs. District Inspector of Schools (S.E.) South 24 Parganas and ors.

SooperKanoon Citation : sooperkanoon.com/858479

Court : Kolkata

Decided On : Oct-14-1999

Reported in : (2000)1CALLT487(HC)

Judge : Satyabrata Sinha and ;Malay Kumar Basu, JJ.

Acts : [Constitution of India](#) - Articles 14, 21 and 226;; School Service Commission Act, 1997 - Sections 3, 7, 8, 9, 9(2) and 16-F;; [West Bengal Board of Secondary Education Act, 1963](#) - Section 45;; Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 - Rule 28;; Recruitment Rules;; Karnataka General Service (Motor Vehicles Branch) (Recruit) Rules, 1962

Appeal No. : Civil Appellate Jurisdiction M.A.T. No. 3466 of 1998

Appellant : Narayan Baidya

Respondent : District Inspector of Schools (S.E.) South 24 Parganas and ors.

Advocate for Def. : Mr. Udayan Battacharyya and ;Mr. J.K. Dubey, Advs.;Mr. Amal Das, Adv.

Advocate for Pet/Ap. : Mr. Pradip Kumar Chakraborty, Adv.

Judgement :

S.B. Sinha, J.

1. The question which arises for consideration in this appeal is the interpretation of the provision of section 9 of the School Service Commission Act, 1997 (West Bengal Act No. IV of 1997).

2. The fact of the matter lies in a very narrow compass. The post of a teacher of English fell vacant in Baribhanga Bamacharan Vidyapith (hereinafter referred to as 'the said school'). The Managing Committee of the said school adopted a resolution for filling up the post; wherefor a requisition was sent to District Inspector of Schools (S.E), South 24 Parganas, the prior permission wherefor was granted on 9.12.1996.

3. On 17.3.97 interview was held and 19 candidates appeared at the interview. No panel was prepared whereafter, a writ petition was filed by the respondent No. 11 which was marked as W.P. No. 18927 (W) of 1997. By an order dated 29.9.97, a learned Judge of this court directed the District Inspector of Schools to consider the case of the petitioner within eight weeks from the date of communication of the order and the school authority was restrained from holding any interview for filling up the said post. The Managing Committee of the school was further directed to hold a fresh interview.

4. On or about 27.11.1997 upon hearing the petitioner, the District Inspector of Schools passed an order, directing that the said post would be filled up on the recommendation of the School Service Commission. On 18.9.98 the writ petition was filed and was dismissed by reason of the Impugned order dated 18.9.98.

5. The question which arises for consideration is as to whether section 9 of the School Service Commission Act (hereinafter referred to as the said Act) has any application In the Instant case?

6. The learned counsel appearing on behalf of the appellant has, inter alia, submitted that the selection process having started from the date of grant of prior permission, the Recruitment Rules framed by the Director of School Education shall hold the field. It was submitted that the District Inspector of Schools was

bound to carry out the order of the court Irrespective of coming into force of the said Act. The learned counsel contends that when an Act does not contain any specific provision for its retrospective operation. It shall be prospective in nature and, thus, the selection process would be governed by the existing rules. Reliance in this connection has been placed on A. A. Cotton v. The Director of Education & Ann reported in : (1983)ILLJ502SC , Y.V. Rangath & Ors. v. J. Sreenivasa Rao and Others, reported in AIR 1983 SC 853, Sukhdarshan Singh etc. v. State of Rajasthan. reported in , Basudeb Bag & Anr. v. Bhaskar Chandra Kar & Others, reported In 1996(1) CLJ 230 and two unreported decisions of tills court in W.P. 4469(W) of 1998 (Naresh Chandra Mondal v. D.I. of School(SE) disposed of on 7.4.98) and in W.P. No. 24509(W) of 1997 (Kalpana Biswas v. State of West Bengal & Ors. deposed of 18.12.98).

7. It was further submitted that the learned trial court erred in applying section 9(2) of the said Act in the fact of this case Inasmuch as the same ought to have been read down. The learned counsel contends that the effect of the relevant provision of the Recruitment Rules should have been considered while interpreting the provision of the said Act. It was also argued that as no panel was prepared, the writ petitioner-appellant ought to have been considered to be sole surviving candidate In the panel.

8. Legislature of the State of West Bengal enacted the [West Bengal Board of Secondary Education Act, 1963](#) with a view to establish a Board of Secondary Education in the State of West Bengal, to define the powers and functions of such Board and to provide for certain other matters connected therewith.

9. Section 45 of the said Act empowers the Slate Government to make rules for carrying out the purpose of this Act Including the composition, powers and functions of the Managing Committee of the Institutions. Pursuant to or infurtherence of the said power, rules were framed known as Rules for Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 (hereinafter referred to as Management Rules).

10. Rule 28 of the Management Rules, provides for the powers of Committee. The powers of the committee Include power to appoint the teacher.

11. Clauses (i) and (ii) of sub-rule (1) of Rule 28 of the Management Rules as they stood prior to amendments read thus :--

'28. Powers of Committee--(1)

(Old) (1) to appoint teachers and other employees on permanent basis against permanent vacancies, if available, within the sanctioned strength of teachers and other employees, approval for such appointment being thereafter sought for from the Director or any other officer authorised by him, ordinarily within a fortnight from the date of decision of the Committee;

(ii) to appoint teachers and other employees on temporary basis against permanent or temporary vacancies, If available, within the sanctioned strength of teachers and other employees, approval for such appointment being thereafter sought for from the Director or any other officer a theorised by him, ordinarily within a week from the date of decision of the Committee.'

12. However, the said Act of 1997 was enacted by the Legislature of the State of West Bengal to provide for the constitution of Regional School Service Commission and a Central School Service Commission in West Bengal and for matters connected therewith or incidental thereto. The said Act no doubt is prospective in nature as it was to come into force with the date of publication of a Notification therefore which was done with effect from 1.11.97. The said Notification was published in the Calcutta Gazette, Extraordinary on 1.4.1997.

13. Section 3 of 'the said Act' provides for Constitution of a Central Commission or a Regional Commission. The State of West Bengal has been sub-divided for the aforementioned purposes into four regions.

14. Section 7 of the said Act provides for the functions of Regional Commission. The said provision contains a non-obstante clause. Section 8 provides for the manner and scope of the selection of persons for appointment to the post of teachers would be in terms of the rules as may be prescribed. In exercise of the said power the Governor has made a rule which was published in the Calcutta Gazette dated 15.1.1998 providing for procedure of selection of persons of

appointment to the post of teachers of school. The said rules are self-contained ones. Upon coming into force of the said Act, Rule 28 of the Management Rules had also been substituted by a Notification dated 22.2.1997 published in Calcutta Gazette on 1.11.1997 which is to the following effect:

'(New) (1) to appoint on the recommendation of the West Bengal Regional School Service Commission in respect of the region concerned, teachers on permanent or temporary basis against permanent or temporary vacancies, if and when available, within the sanctioned strength of teachers and on approval by the Director or any officer authorised by him, such approval being sought for within a fortnight from the date of decision of the Committee in this behalf;

(II) to appointment non-teaching employees on permanent or temporary basis against permanent or temporary vacancies, if and when available, within the sanctioned strength of non-teaching employees and on approval by the Director or any office authorised by him, such approval being sought for within a fortnight from the date of decision of the Committee in this behalf.'

15. There cannot be any doubt that the selection process starts from the date of grant of prior permission keeping in view the fact that in other cases the same will begin from the date when an advertisement therefrom is made.

16. The question as regards the applicability of the old Rules vis-a-vis new Rules in a case when new rules had come into force pending selection process fell for consideration before the apex court in various decisions viz. A.A. Calton v. Director of Education & Anr. reported in : (1983)ILLJ502SC , Y.V. Rangalah & Ors. v. Sreenivasa Rao & Ors. reported in : (1983)ILLJ23SC as also P. Mahendran & Ors. v. State of Karnataka & Ors. reported in : AIR 1990 SC405 . In Cation (supra) it was held :--

'At every stage in that process certain rights are created in favour of one or the other or the candidates. Section 16-F of the Act cannot, therefore, be construed as merely a procedural provisions.'

17. In *Y.V. Rangaiah & Ors. v. J. Sreenivasa Rao & Ors.* reported in : (1983)ILLJ23SC , the apex court was considering a question as regard non-preparation of panel within the time stipulated in rules, as a result whereof promotional chances of eligible D.D.Cs. adversely affected and they were superseded by their Juniors in the panel prepared in accordance with the amended rules. In that situation, the apex court held :--

'Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representations petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewise basis and, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.'

18. In the Instant case the court is not concerned with a case of promotion or a case when a person has acquired a vested right to be considered for promotion.

19. The matter again came up for consideration in *P. Mahendra and Ors. v. State of Karnataka & Ors.* reported in : AIR 1990 SC405 . In that case the question which arose for consideration was violation of a vested right by reason of amendment In Karnataka General Service (Motor Vehicles Branch) (Recruit) Rules, 1962. Upon considering various decisions and distinguishing the decision of the Supreme Court in *I.J. Divakar v. Govt. of Andhra Pradesh* reported in : (1983)ILLJ217SC , it was held :-

'In Divakar's case since the Jurisdiction of the Public Service Commission had been denied by the Government in exercise of its constitutional power the

Commission had no jurisdiction to conduct selection or prepare select list. In this background the court made observations that a candidate merely by making applications does not acquire any right to the post. It is true that a candidate does not get any right to the post by merely making an application for the same, but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment rules. If a candidate applies for a post in response to advertisement Issued by Public Service Commission in accordance with recruitment Rules he acquires right to be considered for selection in accordance with the then existing Rules. This right cannot be affected by amendment of any Rule unless the amending Rule is retrospective in nature. In the Instant case the Commission had acted in accordance with the then existing rules and there is no dispute that the appellants were eligible for appointment, their selection was not in violation of the Recruitment Rules. The Tribunal in our opinion was in error in setting aside the select list prepared by the Commission.'

20. However, the fact situation of this case appears to be different. Rule 28 of the Management Rules stands substituted. A substitution may amount to an amendment but the normal rule of Interpretation of substitution is that it will have effect as if the same was existing from the beginning. In the instant case, the selection process had not been completed. Had the selection process been completed, the matter might have been different keeping in view the provision of section 8 of the said Act read with the procedure for selection framed by the Governor. Furthermore, both sections 7 and 9 of the said Act contain non-obstante clauses which are of wide amplitude. Keeping in view the provisions of the said Act vis-a-vis the direction Issued by the Director of School Education, there cannot be any doubt that in case of conflict the former will prevail.

21. Each Act has to be construed keeping in view the purpose of the Act. Furthermore, a rule when validly framed may become part of an Act but the same cannot be said to be true with regard to a direction made by a subordinate authority in exercise of its power conferred upon it under a rule. Such a direction being subject to any direction made by the State has been held to be directory in nature. See *Debasis Dutta v. State of West Bengal* reported in 1998(2) CLJ 1.

22. In *Basudeb Bag v. Bhaskar Chandra Kar & Ors.* reported. 1996(1) CLJ 230, a Division Bench of this court of which one of us (S.B. Sinha, J.) was a parry, was considering a similar contention but on different factual matrix. In that case vacancies arose much prior to 8.3.1981. Prior permission was granted on 14.5.81 and Interview was held on 22.5.81. In the meanwhile the Director of School Education in supersession of its earliest guidelines issued another guideline containing a different procedure. It was in that situation held that the selection process should be complete in terms of the old Rules.

23. In *Naresh Chandra Mondal & Ors. v. State of West Bengal & Ors.* [W.P. No. 4469(W) of 1998] disposed of on 7.4.98, a learned single Judge of this court noticed that In an earlier writ application a direction was Issued upon the District Inspector of Schools to take decision regarding the approval of the Headmaster's post within three weeks from the date of communication of the said order. However, In the meantime a Memo dated 13th February, 1998 was Issued pursuant whereto the said respondent expressed his Inability to take decision in the matter for approval of the panel in view of the Gazette Notification dated 17th October, 1997 issued by the State. Such is not the position here.

24. In *Smt. Kalpana Biswas (Nanda) v. State of W.B. & Ors.* (W.P. No. 24509(W) of 1997) disposed of on 18.12.1998. one of us (S.B. Sinha, J) had considered various decisions including the decisions in *Basudeb Bag (supra)* as also *Lalin Kumar Mahato v. State of W.B. & Ors.* reported in 1998(2) CLJ 365. The *Managing Committee, Kanaldight Deshapran Vidyapith v. The State of W.B. & Ors.* reported in 1998(2) CLJ 497 and *Ansar Alam v. The State* reported in 1998 LIC 2233 and held that old Rules should apply as the panel was approved by the Managing Committee and forwarded to the District Inspector of School on 2,10.1997.

25. Although the School Service Commission Act came Into force with effect from 17.10.97, the procedure for selection of schools having been made on 8.1.98, it became effective only with effect from that date. If prior to 8.1.98 the selection process had been completed the matter would have been different. But in the Instant case the selection process was not complete by the said date and by an

order dated 29.9.97, a learned single Judge of this court directed holding of another Interview. The very fact that another interview was directed to be held clearly goes to, show that the selection process was not complete as admittedly no panel had been prepared and, thus, the question of approval thereof by the District Inspector of Schools did not arise.

26. It is true that on 27.11.97 when the impugned order was passed by the District Inspector of Schools, the said Act could not have been given effect to as the rules for selection had not been completed but as of to-day no relief as has been prayed for can be, granted.

27. In this view of the matter, therefore, we have to consider each case on its own factual matrix.

28. In the Regional Manager and Anr. v. Pawan Kumar Dubey reported in : (1976)ILLJ266SC , It has been held :

'It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.'

29. In Jaya Sen v. Sujit Kr. Sarkar reported in : AIR1998 Cal288 , it has been held;

'27. It is now well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. It is also well known that even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. See : Quinn v. Leatham (1900-1903) AER(Rep)1, Krishna Kumar v. Union of India : (1991)ILLJ191SC . Commissioner of Income Tax v. Sun Engineering Co. Ltd. reported in : [1992]198ITR297(SC) , Regional Manager v. Pawan Kumar Dubey, reported in : (1976)ILLJ266SC and Municipal Corporation of Delhi v. Gurnam Kaur reported in . '

30. It is also a settled law that a decision is not an authority on a point which was not argued. See Mittal Engineering Works (P) Ltd. v. Collector of Central Excise,

reported In : 1996(88)ELT622(SC) .

As Indicated hereinbefore, the questions raised In this application were not raised before the apex court in CIT Limited (supra) and Pankaj Jain Agency (supra); and in this view of the matter this court Is bound to follow the decisions wherein the apex court had relied on the law after considering the rival contentions on the point at Issue.'

For the reasons aforementioned there is no merit in this appeal which is accordingly dismissed but in the facts and circumstances of this case there will be no order as to costs.

M.K. Basu, J.

31. I agree.

32. Appeal dismissed

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com