

Ashoka Acharyya

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Court : Kolkata

Decided On : Feb-12-1998

Reported in : (1998)1CALLT442(HC)

Judge : Rabin Bhattacharyya, J.

Acts : West Bengal Primary Education Act, 1973 - Section 106;; [Constitution of India, 1950](#) - Articles 14, 16, 21 and 226;; Recruitment Rules, 1991 - Rules 14 and 35

Appeal No. : Constitutional Writ Jurisdiction W.P. No. 22819 (W) of 1997

Appellant : Ashoka Acharyya

Advocate for Def. : Mr. A.P. Sarkar, ;Mr. S. Sanyal and ;Mr. A. Roy, Advs.

Advocate for Pet/Ap. : Mr. L.C. Behani and ;Miss K. Mukhopadhyay, Advs.

Judgement :

R. Bhattacharyya, J

1. Both the petitioner and the respondent have looked their horns with each other to succeed in their respective claims. The claim of the petitioner, according to the learned counsel, is blessed by constitutional flavour deeply emboldred within the broad sweep of Articles 14, 16 and 21 of the Constitution of India. When the class legislation is silent, the question necessarily is posed up as to whether the State

meted out different treatment to different individuals. All are equal is the basic concept of Law and the State is to treat all the individuals with equal treatment. Otherwise, the doctrine of equality and the doctrine of equal treatment shall become a misnomer.

2. In the advent of the administrative circular issued by the State, a further question crops up as to whether the statute or the Rules can prevail upon the circular and lose its identity and origin within them. The basic realities and structure of the constitution can never be forgotten in all administrative actions. But when the statute is made and the Rules following from them, could they be dislodged and dethroned from the seat of justice, unless the viability of the statute or the Rules, as the case may be, is affected. Administrative circulars become a blunt weapon in the advent of legislation. If the administrative circulars and the Rules are repugnant to each other, there would be a complete anarchy and the Justice will cry in silence.

3. The question arises this way in this case. It stands out that the petitioner passed the Madhyamik pariksha conducted by the West Bengal Board of Secondary Education in the year 1978. It is sad to note that the father of the petitioner died-in-harness which opened the avenue for his heirs for appointment in the school. The petitioner was chosen by the heirs of the deceased employee to be appointed on compassionate ground as the heirs were bereft of income to maintain their livelihood.

4. Applications galore for appointment of the petitioner on compassionate ground in vain. The petitioner is sufficiently armed with requisite academic qualification to be appointed as an assistant teacher in any school after his father died-in-harness on November 30, 1993.

5. Subsequently, the petitioner came to know after lapse of much time that the respondent No. 3 by his Memo. No. 1403/C dated 22nd June, 1995 transmitted the petitioner's candidature to the respondent No. 5 for his appointment on compassionate ground in terms of G.O. No. 457-Edn(P) dated 12th October, 1997. The said circular was issued by the Government to bring it within the fold of compassionate appointment both teaching and non-teaching staff of Primary/Jr.

High School/and Higher Secondary School.

6. It is notorious to find from the said circular that the dependent of the deceased, if not armed with requisite qualification for being appointed as High School Teacher may be so appointed upon his acquisition of requisite qualification for being appointed as Primary School Teacher. The name of the dependent, therefore, would be forwarded to the District Primary School for enlistment in the panel of died-in-harness candidates for giving appointment as School Teacher. Thus the claim of the dependent can never be defeated in the matter of appointment. If the deceased employee died in harness. The claim of the petitioner, since not acceded to by the respondent authorities, a writ application was earlier filed which was registered as Civil Order No. 10579(W) of 1996 which was disposed of by a direction on the chair person of the school council to dispose of the matter in accordance with law within certain time.

7. Undoubtedly, the name of the petitioner was registered before the concerned Employment Exchange which still holds the field. The direction to dispose of the matter by the chair person of the school council appears to be abortive as the council was not crowned with any power to appoint the petitioner as primary teacher on compassionate ground. The Impugned order has now become the last nail on the coffin of the claim of the petitioner.

8. To secure relief, the petitioner has cultivated that the stand of the respondent is strlcked with arbitrariness as the father of one Syed Abdul Momin who died in harness while serving as an approved assistant teacher in R.K. High School and though his father had worked in the High School but Syed had no requisite qualification for appointment as an assistant teacher in the High School yet he was appointed by the Chairman in a Primary School. The above benefit could equally be extended to the case of the present petitioner whose claim cannot be sacrificed at the alter of cranks and whims of the respondents.

9. It is predominant that the respondents No. 4 and 5 in their affidavit-in-opposition has registered the claim of the petitioner on the ground that Government Order being No. 457-Edn(P)/4A/50/83 dated 12th October, 1997 cannot prevail upon the Recruitment Rules of 1991. The purported transfer of candidature by the

respondent No. 3 was merely an administrative action which is not a proviso to recruitment Rules, 1991. The appointment of Syed Abdul Momin was a pre-Act action which cannot tear off the statutory obligation.

10. The affidavit-in-opposition of the council deals a death blow to the claim of the petitioner in the crucible of Recruitment Rules of 1991 which cannot animate the claim of the petitioner.

11. With the above allegations and counter allegations, the parties have crossed their sword on the floor of the court to harvest their rival remedies.

12. In the light of the above, the question that became garmane for consideration of the court is as to whether the G.O. No, 457-Edn(P) dated 12th October, 1997 issued by the Government could put a lid on the Recruitment Rules dated 22nd November, 1991.

13. Mr. Behanl to enrich the claim for appointment has submitted with much vehemence and Industry that it will stand out, upon excavation of facts on record, that the Government has in the long past compromised the transfer of candidature for a candidate whose father dled-In-harness by appointing him at Nurpur Primary School under P.S. Nanpur on 30lh April, 1987. The respondents are perfectly within their Jurisdiction which could buttress the claim of the petitioner for appointment by the memo which Is a strength giving factor. Any departure made from the memo or the Government Order about which the learned counsel for the petitioner is very much vocal would result in catastrophe and arbitrariness of the chairman. In refusing the appointment is an inroad on the principles of natural justice.

14. The respondents cannot pick and choose a candidate for appointment of having recourse to whims and arbitrariness.

15. In enforcing the claim, Mr. Behanl, the learned counsel appearing for the petitioner has submitted that a State action shall always stand the test of reasonableness. If the reasonableness of the State action is absent in lis core, the discrimination and the discriminatory attitude shall defeat all claims of a citizen of a

State when they are equally circumstanced and similarly situated.

16. It is trite saying that the approach and treatment of the State towards its citizen should not have any bend. Thus, the petitioner could very well avail himself of the G.O. No. 457-End(P) dated 12th October, 1997 of his appointment to the Nurpur Primary School. Fairness of procedure and cultivation of natural justice by the State towards its dealing with the citizens shall supersede all other factors.

17. Mr. Sarkar has submitted with all emphasis that the above G.O. had already lost its force for the Recruitment Rules of 1991.

18. Mr. Sarkar has taken me through the Recruitment and leave Rules Issued on 22nd November, 1991 which was made or issued in exercise of the power conferred by sub-section (1) of section 106 of the West Bengal Primary Education Act, 1973. He has well contended that the claim of the petitioner is to be governed by Rule 14 of the said Rules of Chapter-III which is consistent with the Recruitment Rules. The G.O issued on 12th October, 1987 for Syed. Abdul Momin is of no consequence, in view of Rule 35 of the said Rules as the authority wielded power independent of the Recruitment Rules of 1991. The provision has cured the appointment of Syed. Abdul Momin. When the authorities are the creature of the statute or the Rules cannot override them but to act in accordance with the law. The appointment of Syed cannot be used as lubricant for the petitioner.

19. Mr. Sarkar has further enlightened in his argument that the court cannot perpetuate illegality, even if an appointment on compassionate ground is made earlier.

20. Mr. Sarkar has relied on three decisions namely, State of Haryana & Ors. v. Ram Kumar Mann : (1997)11LLJ 1039 SC . Chandigarh Administration & Anr. v. Jagit Singh & Anr., : [1995]1SCR126 and Secretary, Jaipur Development Authority, Jaipur v. Daulatn Jain & Ors.. : (1997)1SCC35 to contend that the claim of the petitioner to appoint on compassionate ground cannot gather any force as the court is devoid of power to perpetuate illegalities and, therefore, it could not entertain any claim which is not enforceable at law. The illegalities cannot be multiplied affording any right to the authorities to exercise power in respect of

persons similarly situated and that the same can never be a ground for Issuing a writ in favour of the petitioner. Nor the High Court could compel the authority to repeat that illegality over again and again. The same cannot be treated as precedents.

Thus upon considering the merit of the submissions made by the learned counsel for the parties, I accept the contentions of the learned counsel for the respondent but I am unable to persuade myself to agree with the contentions of Mr. Behani who appeared for the petitioner. With the aforesaid observations, I dispose of the writ application accordingly.

21. Writ application disposed of

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