

Swapan Kumar Chatterjee Vs. Calcutta District Primary School Council and ors.

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Court : Kolkata

Decided On : Jan-28-2000

Reported in : (2000)2CALLT231(HC),2000LabIC2049

Judge : Prabir Kumar Samanta, J.

Acts : [Constitution of India](#) - Articles 14, 16, 21 and 226;; Bengal (Rural) Primary Education Act, 1930 - Rule 3B(6)

Appeal No. : Constitutional, Writ Jurisdiction C.O. No. 19268(W) of 1992

Appellant : Swapan Kumar Chatterjee

Respondent : Calcutta District Primary School Council and ors.

Advocate for Def. : Mr. Tulshi Das Maity, Adv.

Advocate for Pet/Ap. : Mr. Gouri Sankar De and ;Mr. Runu Das Mitra, Adv.

Judgement :

P.K. Samanta, J.

1. The writ petitioner was appointed as an Assistant Teacher of Calcutta Academy Primary School with effect from 1st September. 1981. The appointment letter

dated 30.8.81 issued to the writ petitioner by the Secretary of the said Primary School revealed that he was appointed on a temporary basis against a permanent vacancy caused by the resignation of one Assistant Teacher of the said school namely Sri Tushar Mondal. The petitioner since his appointment with effect from 1.9.81 is serving the said school as an Assistant Teacher. His appointment as such has not yet been made permanent nor regularised. This writ petition was accordingly moved for a direction upon the respondent authorities for regularisation of his service and/or for permanent absorption in the post of Assistant Teacher in the said school. This writ petition has been opposed by the respondents by filing affidavits-in-opposition to this writ petition. The defence of the respondents is substantially as under :

(a) The writ petitioner was not appointed by the authority concerned by following the relevant recruitment rules and the procedure prescribed under the law.

(b) In view of the Education Department Memo No. 1614-Edn. (P) dated 8.11.1974, all appointments in Government sponsored Primary Schools in urban areas are to be made by the District Inspector of Schools from the approved panel for the respective Municipal areas. The appointment of the writ petitioner having not been made pursuant to the said Circular dated 8.11.1974 the petitioner is not entitled to be regularised and/or permanently absorbed in the said school.

(c) That if there be any necessity of an additional post of an Assistant Teacher in a school, then upon sanction of such an additional post by the authority concerned an appointment shall be given in such additional post only to a trained candidate as per sub Rule 6 of Rule 3B of the Rules framed under the Bengal (Rural) Primary Education Act, 1930 which was prevalent at the relevant point of time.

2. In the instant case it is clear that the petitioner was appointed in the permanent vacancy caused by the resignation of one Assistant Teacher namely Tushar Mondal. The facts that Tushar Mondal was an approved teacher and he did resign from the said school and that a vacancy of permanent nature was caused upon resignation of said Tushar Mondal were not denied by the respondents in their affidavit-in-opposition. It further appeared that an Assistant Inspector of Schools inspected the school in question on 14.11.84 and submitted a

report of the self-same date which disclosed that the school in question was running with shortage of teachers in relation to the numbers of students. It was specifically mentioned therein that the writ petitioner was performing his duties as an unapproved Assistant Teacher in the said school. Similar report dated 9.4.85 by another Assistant Inspector of School finds place in the documents annexed to this writ petition. By a letter dated 13.12.92, the Secretary of the School in question made a representation to the D.I. of Schools (PE) Calcutta for absorption of the writ petitioner in one of the two vacancies in the sanctioned posts of the said School. The contents of the said letter run as under :

'You are aware that our school had four sanctioned posts and four approved teachers. Out of them, Sri K.C. Chakraborty. Head Teacher, retired on 31.12.77 and Sri Tusher Mondal. Assistant Teacher, resigned on 21.6.81. So there remained only two approved teachers and it was impossible to run four class units with Just two teachers. The school wrote to the D.I. (Pry) Calcutta, asking for at least one teacher. But it become apparent to the school that due to the lapse of the then existing panel of teachers for Calcutta, the D.I. (Pry) Calcutta was not in a position to meet our prayer.

Consequently the Managing Committee of the School considered the situation and in the Interest of proper teaching of its students decided to appoint, as a very temporary measure Sri Swapan Kumar Chatterjee, H.S. an assistant Teacher with a nominal allowance of Rs. 75/- (Rupees seventy five only) (to be met from the school fund). Copy enclosed. The D.I. (Pry) Calcutta was informed of the same and requested to take necessary action in the matter.

Thereafter on 13.7.82 Sri N. Chakraborty the successor Head Teacher also left the school, leaving the school with Just one approved staff and one non-approved staff to run four class units.

Subsequently Sri J. Paul was appointed on transfer, an Assistant Teacher of the school. This raised the approved staff of the school from one to two only. As a result the school could not dispense with the services of Sri Swapan Kr. Chatterjee the unapproved staff. Till now the school has only two approved and one unapproved staff to run four class units.

Meanwhile, on 24.11.84 and 9.4.86 and D.I. (Pry.) Calcutta conducted two inspections of the school, whole reports (copy enclosed) bear testimony to the urgent need of appointment at least one Asstt. teacher to the school. The School then requested the D.I. (Pry) to kindly absorb Sri Swapan Kr. Chatterjee to the third post, but to no avail.

Recently we are hearing reports that instead of absorbing Sri Swapan Kr. Chatterjee who has been sincerely serving the school for the last ten years with a nominal allowance, the D.I. (Pry) Is thinking of transferring one teacher to the school from some other school.

We therefore, fervently appeal to you to kindly consider the rightful claims of Sri Swapan Kr. Chatlerjee to the third post in the School and absorb him in the post. The school strongly feels that this delayed Justice will better than no Justice at all.

We shall be awaiting your reply.

Thanking you.'

3. It is evident therefrom that there were four sanctioned posts in the said school. Out of such four sanctioned posts one Sri K.C. Chakraborty, Head Teacher retired on 31.12.77 and Sri Tushar Mondal. Assistant Teacher, resigned on 21.6.81. So on the date of appointment of the writ petitioner, two sanctioned posts lay permanently vacant and it is also evident that the concerned respondent authorities had full knowledge of two permanent vacancies in the sanctioned posts of the said school. Yet then It did not forward any name whatsoever from the panel of teachers, if there by any, for the purpose of filling up of the said vacancies. It is also evident from the office memorandum dated 14.7.92 issued by the Chairman and Secretary of the Calcutta District Primary School Council that the school in question was suffering from acute shortage of teachers for which one Smt. Priti Rani Das an assistant teacher of Purba Kallkata Vldyalay, a Girls Primary School was transferred to the school in question for the purpose of utilisation of her service in the said school. Though it was submitted on behalf of the petitioner that said Priti Rani Das did not Join the said school but without going into the verally of the said statement it could safely be said on the basis of the said transfer order

dated 14th July, 1992 that for a period of about 11 years a permanent vacancy was allowed to remain vacant and no steps were taken to fill up the same as per the provisions of any recruitment rules, Government Circular and/or notification in this regard. Most importantly the authority concerned having had the knowledge of the appointment of the petitioner in the said school by the managing committee with effect from 1.9.81 never intimated to the authorities of the school that such appointment cannot be regularised, nor directed the school authorities to cancel and/or revoke such appointment at any point of time during those 11 years. Rather it utilised the services of the petitioner during all these 11 years on the basis of such appointment in his favour on temporary basis against a permanent vacancy. Apart from making an order for transfer of one Prill Rani Das to the school in question nothing transpired that during long 11 years any steps were taken by the authority concerned to fill up the said permanent vacancy in compliance with the relevant rules, laws, notifications and Government order or from the panel as alleged. Furthermore at the relevant point of time or even during those 11 years whether any such panel was in existence is absolutely in doubt. Because the rules and/or the procedure for filling up of a permanent vacancy as alleged did not also authorise filling up of a permanent vacancy by transferring a permanent teacher from another school and thereby artificially creating a permanent vacancy in the said school to be filled up from a panel in relation to such a school if there be any, by depriving a legitimate candidate of the panel in relation to the school in question. Such a step therefore had no sanction in the eye of law. The plea put forward by the respondents as above therefore cannot have any impact in the present case.

4. The learned Advocate appearing on behalf of the respondent authorities placed his reliance upon the decision of the Division Bench of this Court in the case of Calcutta District Primary School Council and Another v. Smt. Anuva Roy (Chakraborty) reported in 1996 Lab 1C 1990 for the proposition that since the appointment in favour of the writ petitioner was not made by following the mandatory provisions of the Recruitment Rules so regularisation of his services cannot be directed by invoking the principles embodied in Articles 14 & 16 of the [Constitution of India](#). In the same time the learned advocate for the respondents relied upon the decision of the Supreme Court reported in : (1997) IILLJ856SC

(Ashwant Kumar & Ors. v. State of Bihar & Ors.).

5. The facts of the aforesaid Division Bench Judgment of this Court, are completely different from the present one. In paragraph 9 of the said decision it was noted as under :

'It is not clearly stated as to the status of the school in question. in the instant cases, however. It is evident that no offer of appointment was given to the writ petitioner. The petitioner herself stated that she had been doing clerical job also. It is, therefore, not clear as to whether the petitioner was appointed as a teacher-cum-clerk. The petitioner has also not stated unequivocally as to when the school in question was recognised. However, one fact remains admitted that a post fell vacant only In the year 1990. Admittedly, therefore, the writ petitioner-respondent was appointed although there did not exist any sanctioned post.'

6. In the case before the Supreme Court, a large scale appointments were made in Class III and class IV posts casually without any letters of appointment to fill up even non-existing vacancies.

7. Though the principle as laid down in the aforesaid decisions that where the appointment itself was in violation of the relevant recruitment rules, there could not be any derived right from such appointment to have the same regularised under the law, is a settled one, but the same cannot have application in the present case, because of the particular facts and circumstances of this case that the petitioner was appointment in the permanent vacancy of a sanctioned post that had arisen on the resignation of one Tushar Mondal, as assistant teacher of the said school and the concerned respondent authority having had full knowledge of such appointment and working of the writ petitioner as an assistant teacher against such permanent vacancy in a sanctioned post, did not take any steps immediately thereafter to fill up the same from any alleged panel if existing at the relevant point of time. Nor did it during long 11 years intimate to the authorities of the school that the appointment of the petitioner was In violation of the Rules and therefore should be done away with. On the contrary, it acquiesced both the appointment and service of the petitioner in the school for long 11 years. That apart it should be remembered that relevant recruitment rules and/or notification, Government order,

circular prescribing procedure for appointment of a teaching staff in a school should be read in the best interest of the students of the school. Recruitment Rules, notification, Government Order or circular for appointment of teaching staff in a school cannot be read to have an idea that the authorities have no obligation whatsoever even if the sanctioned posts do lie vacant for long years causing serious hindrance to the teaching of the students in such school or to notify to the school against any appointment made irregularly. Because all such rules prescribing the procedure for appointment of teaching staff in a school were framed to sub-serve the purpose of teaching of the students in a school in the best possible manner by appointing most suitable available teacher. The purpose will be frustrated altogether if it is read in the said rules that the authority concerned in spite of knowledge of a vacancy in a school or of an irregular appointment is under no obligation to ask the school authority to take steps for filling up the vacancy in compliance with the relevant rules. The authority concerned after having failed to discharge its obligation cannot be permitted to turn round and contend that something was irregular and not permissible in law.

8. The Division Bench Judgment of this Court reported in 1991(2) CHN 355 (The District School) Board, 24 Paraganas (North & South) & Ors. v. Dukhtram Sardar & Ors.) dealt with the case of a similar nature. There the writ petitioner worked in a school on voluntary basis from November, 1975 to 1981 without any break of service within the knowledge of the School Board and after moving the writ petition the petitioner rendered service by virtue of the interim order for about seven years under the School Board as a result of which there was a continuous service for about fourteen years. It was held that this long spell of service rendered by the writ petitioner enabled him to be regularised by the School Board. It was further held that it would be quite unreasonable, unfair and unjust at that stage to treat the writ petitioner as a teacher giving voluntary service and that would be the worst kind of exploitation which an employer can never be allowed to be indulged in. The Supreme Court in the decision reported in AIR 1999 SC 2202 (Gout. 0/T.JV. v. G. Mohamed Ameenuddin & Ors.) while dealing with the Census workers employed in Census Department for carrying out the job of census operations directed the authorities concerned to work out a scheme to absorb those employees in appropriate employments only upon consideration that retrenchment of such

employees after completion of the project would make them lose both their employments and their positions in Employment Exchange to get future employments. Here is a case where the petitioner was appointed In the year 1981 and as a matter of fact the petitioner has in the meantime completed 19 years of service in the school and valuable part of his life has therefore been spent In the service of the school. It is easily conceived that it would not be possible for the petitioner to get a fresh employment as Assistant Teacher in any School at this stage and non-absorption/non-regularisation of the writ petitioner at this stage would not only deprive him of his service benefits for these years but at the same time would render him to the vagaries of losing his employment as an assistant teacher of the school at the late stage of his life. I am therefore, inclined to allow this writ petition. I, therefore, direct the authorities concerned to regularise the service of the writ petitioner as an assistant teacher in the school in question in the permanent vacancy of a sanctioned post that had arisen on the resignation of said Tushar Mondal expeditiously and preferably within a period of two months from the date of communication of this order. Such absorption and/or regularisation of the writ petitioner must take effect from the date of his appointment on and from 1.9.1981.

Prayer for stay of operation of the order is refused.

If urgent xerox certified copies of this order is applied for by the parties, the same should be given as expeditiously as possible.

9. Petition allowed

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