

Ashoke Kumar Biswas Vs. the State of West Bengal and ors.

Ashoke Kumar Biswas Vs. the State of West Bengal and ors.

SooperKanoon Citation : sooperkanoon.com/870389

Court : Kolkata

Decided On : Sep-22-1993

Reported in : (1994)2CALLT269(HC),99CWN595

Judge : Bhagabati Prosad Banerjee and ;Ashok Kumar Chakravarty, JJ.

Acts : [Constitution of India](#) - Articles 21, 39, 41 and 226; ;Management of Recognised Non-Government Institutions (Aided and Unaided), 1969 - Rule 28(1)

Appeal No. : F.M.A.T. No. 310 of 1993

Appellant : Ashoke Kumar Biswas

Respondent : The State of West Bengal and ors.

Advocate for Def. : Subir Bhattacharjee, Adv. for the Respondent No. 2

Advocate for Pet/Ap. : Tara Charan Mukherjee, Adv.

Disposition : Appeal allowed

Judgement :

Ashok Kumar Chakravarty, J.

1. This is an application for stay of the operation of the order passed by the Learned Trial Judge dated 29th January, 1993 passed in C.O. No. 13066 (W) of 1992. By the said order the Learned Trial Judge rejected the writ application filed

by the appellant-petitioner in which the appellant petitioner prayed for absorption and/or regularisation of his service to the next available vacancy for the post of Assistant Teacher in Social Science Group in the Ganganagar Beharilal Ghosh Vidyapith (hereinafter referred to as 'the said school').

2. It is not in dispute that the petitioner is a highly qualified teacher. He is an M.A. in Political Science and also in History. He also holds the degree P.G.B.T. and as such he had better qualification than the requisite minimum educational qualification required for the purpose of appointment to the post of Assistant Teacher in Social Science Group.

3. The appellant petitioner was appointed in a deputation vacancy as Assistant Teacher of the said school and worked in that capacity from 25th September, 1989 to 15th July, 1990 in the scale of Rs. 440-1170 per month under grant-in-aid rules. Even after deputation vacancy came to an end on 15th July, 1990, the appellant petitioner was made to work by the Managing Committee of the said school. As the number of students reading in the said school increased to such an extent for which the approved teachers were wholly inadequate for the purpose and in order to overcome the additional burden and pressure and/or work-load from the shoulder of the approved teachers and in order to give and impart effective teaching to the students the managing committee requested the education authorities for sanction of additional post of teachers in the said school and accordingly, the respondent No. 3, the District Inspector of School (Secondary Education) North-24 Parganas was requested to sanction two posts of Assistant Teachers for the said school. Under the circumstances the service of the writ petitioner opposite party was continued by the managing committee. According to the managing committee, the service of the appellant-petitioner was extended in order to cope with the situation of urgent and emergent nature. The Secretary of the Governing Body issued a letter of appointment on 16th July, 1990 directing the appellant petitioner to continue the service as an Assistant Teacher of the said school till his service was regularised and/or is absorbed permanently. The District Inspector of School submitted a report on 2nd December, 1992 that there were vacancies for teachers to be appointed by the school authorities for the upper class after upgradation. Thereafter on 25th April, one post of Asst. Teacher in

Social Science Group in the said school was temporarily sanctioned for a period of two years with effect from 1st April, 1991. The appellant petitioner has alleged that inspite of his officiation to the said post as an Asst. Teacher from 25.9.89 to 15.7.90 with a request to continue in the said post thereafter, which he did on the basis of the assurance of the respondent No. 4, the managing committee of the school that the writ petitioner would be absorbed and regularised in the said post as and when sanctioned, he was not regularised. The most unfortunate part of it is that with effect from 16th July, 1990 the appellant petitioner rendered service as a duly qualified Asst. Teacher on a whole-time basis till the post is sanctioned by the appropriate authority at a paltry sum of Rs. 50/- per month as against the pay scale of Rs. 440-1170 which he was enjoying up to 15th July, 1990. It further appears that at the time of handing over the letter of appointment on 16th July, 1990 the appellant petitioner was assured by the then Secretary of the said school that if the post was sanctioned and/or approved he would be either absorbed or regularised in the said post. It also appears that the managing committee of the said school decided to purchase a plot of land adjacent to the said school for a price of Rs. 45,000/- for improvement and extending the school but as the financial condition of the school was not sound enough it was not possible on the part of the said school authority to purchase the same. According to the appellant petitioner, in order to make provision for money for the purchase of the said plot the school authority proposed to take loan from the appellant petitioner. It also appears that the teachers' council of the said school in its meeting held sometime in July, 1990 adopted a resolution to take loan from the appellant petitioner for that purpose. It was also resolved in the said meeting that the appellant petitioner would be given appointment in the next available post of Assistant Teacher which would be approved and sanctioned by the Educational Authorities. Accordingly, the appellant petitioner paid a sum of Rs. 15,000/-. Over and above the father of the appellant petitioner also paid a sum of Rs. 15,000/- to the school authorities. That the said sum was received by the school authorities and deposited in the school account is not in dispute. It is the case of the appellant petitioner that the said sum of Rs. 15,000/- paid by the appellant petitioner was returned to him on 29th July, 1991 by a cheque without any interest after a period of about 14 months. The appellant petitioner filed a writ application for not absorbing and or regularising the

appellant petitioner in consideration of the fact that he had worked for 10 months in the said school and was working since 16th April, 1990 against the receipt of a paltry sum of Rs. 50/- per month due to the bad financial condition of the said school. The Learned Trial Judge rejected the prayer of the appellant petitioner solely on the ground that the appellant petitioner wanted to secure a post by paying a sum of Rs. 30,000/- to the school authorities and that accordingly, the learned Trial Judge held that the appellant petitioner adopted an unfair strategy by advancing a sum of Rs. 15,000/- without any interest and another of sum of Rs. 15,000/- that is also free from interest. Advancing of such loan of Rs. 30,000/- by the appellant petitioner was considered by the Learned Trial Judge as a disqualification earned by the appellant petitioner for getting any job in said school. In this connection, the Learned Trial Judge observed that 'this petitioner does not deserve this concession from this court. The managing committee and the District Inspector of School concerned will see that this petitioner should not get a berth in the school and even if otherwise absorbed in any school any particularly in a profession like teaching he will pollute next generation and he will pollute the entire societies where the school is situated.'

4. Being aggrieved by and dissatisfied with the order passed by the Learned Trial Judge the appellant petitioner filed an appeal with a prayer for stay of the operation of the order. None appeared for the respondent Nos. 1 to 3, who are State of West Bengal, Director of State Education and the District Inspector of School concerned.

5. Admittedly, the petitioner was appointed on deputation vacancy for 10 months in the post of Asst. Teacher in the Social Science Group in the school from 25th September, 1989 to 15th July, 1990 and he is still continuing in the same post since then on the basis of the assurance of the Secretary of respondent No. 4. The Managing Committee of the said school. It is also admitted that one post of Asst. Teacher was sanctioned on 25th April, 1991 temporarily for a period of two years with effect from 1.4.91. Regarding the power of the managing committee of the school for appointment of teachers it appears from the Rule 28(1) of the rules for Management of Recognised Non-Government Institution (Aided or Non-Aided) 1969 that it has power to appoint teachers and other employees on temporary

basis against permanent temporary vacancy, if, available, within the sanctioned strength of teachers. Such appointment, however, shall also be subject to approval of the Director or any officer authorised by him. In the instant case, the post was not a sanctioned post when the petitioner was: initially appointed on deputation vacancy. The Managing Committee, therefore, having no knowledge whether the post will be sanctioned at all or not or whether the petitioner will be appointed to the said post, merely held out empty assurance to the petitioner for absorption or regularisation when the post will be sanctioned. The Managing Committee was not also justified in paying to a sum of Rs. 50/- per month which was nothing sort of 'begar' and also taking Rs. 30,000/- as loan from the helpless and highly educated young man in search of employment.

6. It, however, falls to be considered in the peculiar circumstances of this case, regard being had to the high educational qualification of the petitioner, rendering of service as Assistant Teacher from 25th September, 1993 at a paltry pay of Rs. 50/- per month which is nothing short of a 'begar', as stated above, and the payment of loan and the assurance held out to him by the respondent No. 4, is how far the petitioner should be entitled to protection from this Court. A reference may be made in this connection to a recent decision of the Supreme Court of India reported in : [1992]3SCR658 in the case of Miss Mohini Jain v. State of Karnataka which referred to the preamble of the Constitution promising to secure to all its citizens of India, justice-social, economic and political. Particular reference was made therein to Article 41 of the Constitution which may be quoted below for easy reference.'

7. Right to work, to education and to public assistance in certain cases the state shall, within the limits of its, economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other case of undeserved want. It is true that Article 41 is a Directive Principle of State Policy but as the Supreme Court of India in *Minerva Mills Ltd., and Ors. v. Union of India and Ors.*, reported in : [1981]1SCR206 held that 'the significance of the perception that parts III & IV together constitute the core of commitment to social revolution and they, together are the conscience of the Constitution is to be traced to a deep

understanding of the scheme of the Indian Constitution. Granville Austin's observation brings out the true position that Parts III & IV are like two wheels of a chariot one no less important than the other. You snap one and other will lose its efficiency. They are like twin formula for achieving the social revolution, which is the ideal which the visionary founders of the Constitution set before themselves. In other words, the Indian Constitution is founded on the bed rock of the balance between Parts III & IV. To give absolute primacy to one over other is to disturb the harmony of the Constitution. This harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution.' In the case *Ranadhir Singh v. Union of India*, reported in : (1982)ILLJ344SC it has also been held 'Directive Principles, as has been pointed out in some of the judgments of this Court, have to be read into the fundamental rights as a matter of interpretation'.

8. It should also be borne in mind in this connection the provision of the Article 21 of the [Constitution of India](#) which guarantees right to life. In the case of *Olga Tellis v. Bombay Municipal Corporation*, reported in : AIR 1986 SC180 it was held that the right to life guaranteed under Article 21 of the [Constitution of India](#) includes right to livelihood.

9. In the instant case, the respondent No. 2 by his Memo No. 396/1/SC/G dated Calcutta, the 25th April, 1991 sanctioned one post of the Assistant Teacher in the Social Science Group in the temporary basis for a period two years with effect from 1.4.91 though the petitioner was officiating to the said post prior to that date, no attempt was made to fill up the said post by the respondent Nos. 1 to 3, which in our opinion was neither proper nor justified and that compelled the petitioner to move a writ application before the court on 11.10.91 which was disposed of by directing the respondent to allow the petitioner to appear in interview held for recruitment to the said post and also to consider his case sympathetically. Thereafter additional post of Assistant Teachers were sanctioned as per memo No. 371/H/50 dt. 5.8.92 but respondent authorities like before, did not take any step to fill up these posts in spite of above order of this Court to that effect. Such inaction on the part of the respondent authorities to fill up the post was simply unwarranted and unjustified amounting to denial of social justice to the

petitioner affecting his right to livelihood thereby. It thus appears that the petitioner has been paid a monthly sum of Rs. 50/- for such work as a teacher which, in our view, was nothing but a form of 'begar' which is prohibited under Article 23 of the Constitution. In these days of inflation it is unthinkable that persons having such high academic qualification and experience would be paid a monthly sum of Rs. 50/- when even a day labourer is not available at such a monthly remuneration. Further, in this case all other part-time teachers of the said school had been absorbed in permanent and full time posts leaving the petitioners who had been marked off for arbitrary discrimination and the respondents failed to disclose any reason or ground for such discriminatory treatment. The Supreme Court of India in the case of *Sadhuram v. Pulin Behari*, reported in : [1984]3SCR582 had protected the interest of some persons who are in possession with unclean hands, tout who came for shelter and built in hutments, considered the concept of social justice as provided in our Constitution. In that case a property was sold in auction by the Official Receiver appointed by this High Court, thereafter some persons who were admittedly in unauthorised possession of the disputed premises which was sold in auction and who had built hutments and were staying there, moved an application before this Court whereupon a single Judge of this Court rejected the application holding that these persons were trespassers and had no right to be in possession of the premises after the Official Receiver had been appointed Receiver and further it was held that the parties had no right to grant any lease or licence, after the property came in the custody of the Official Receiver as Receiver appointed in the Suit. Thereafter an appeal was filed from the said decision to the Division Bench of this Court and the Division Bench was of the view that the offer made by these persons to pay a sum of rupees one lakh more for the purchase of the premises in dispute should be accepted. In that content at p. 1941 para 70 it was observed by the Supreme Court that 'The concept of social justice is not foreign to legal justice or social well-being or benefit to the community rooted in the concept of justice in the 20th Century. The challenge to the society at large is more than to the Court immediately. Social justice is one of the aspirations of our Constitution. But we, the Courts, we must remember,, are pledged to administer justice as by law established. In formulating the concept of justice, however, inarticulate factors that large member of human beings should not be dislodged from the possession

if it is otherwise possible to do so cannot but be a factor which must and should influence the mind of judges in the facts and circumstances of the case. It is true that the persons who were alleged to be in possession, are with unclean hands, but they came for shelter and built in hutments. They do not want to legitimate their stay by illegal entry, they want to be rehabilitated at a competitive bargain price. Should they be denied that opportunity on the ground of their original illegitimacy I am definitely of the opinion that in these circumstances they should not be so denied rehabilitation. In administering justice-justice according to law, in this case, no law is breached in the view taken by the Division Bench of the Calcutta High Court. The American Bar Association in its report in 1964 had observed that jurisprudence has shifted away from fine spun technicalities and abstract rules to practical justice to a recognition of human beings, as the most distinctive and important feature of the universe which confronts our senses and of the function of law as the historic means of guarantee in that prominence. (See 14th Amendment Centennial Volume edited by Bernard Schwartz page 10) 'It is true that original entry was illegal and we are sometime urged 'to do' a great right, do a little wrong'. (See plea of Bassanio in Merchant of Venice). In this case, however, court has done no legal wrong at all. The Court has only ignored the non-compliance of not seeking Court's leave for alleged grant of licence. In administering justice, social or legal, we do well bear in mind the word of Justice Holmes 'The life of law had not been logic, it has. been experience, The felt necessities of time, the prevalent moral and political theories institution of public policy, avowed or unconscious, even the prejudices which judges share that their fellow-men have had a good deal more to do than the syllogism in determining the rule by which the man should be governed.....' The felt necessity of time and in this case the convenience of the situation and the need of adjusting the rights of a large number of people without deprivation of any accrued right of anybody would be justice according to law. Before we reject social justice, we should remember that a meaningful definition of the rule of law must be based on the realities of contemporary societies and the realities of contemporary aspects are-men are in acute shortage of living accommodation and if they are prepared to bargain and rehabilitate themselves on competitive terms, they should be encouraged and no technical rules would stand in their way. That would be justice 'by highway' and no

infiltration 'by bye-lanches'. In the preamble of the [Constitution of India](#) it was provided that the Constitution is to secure to all its citizens amongst other things 'JUSTICE, Social, economic and political,' The Supreme Court of India in the case of Keshavanand v. State of Kerala reported in : AIR 1973 SC1461 held that the objectives specified in the preamble contain in basic structure of our Constitution. So the State cannot be allowed to deny the petitioner the social justice.

10. Supreme Court in the case of Jacob M. Puthuparambil v. Kerala Water Authority reported in : (1991)IILLJ65SC also held that 'The question of regularisation in service must be examined keeping in mind the historical as well as Constitutional perspective. Our Constitutional Makers were aware of the hardships and insecurity faced by working classes. The preamble promises socio-economic justice, the fundamental rights confers certain justiciable socio-economic rights and the Directive Principles fix the socio-economic goals which the state must strive to attain. These three altogether constitute the core and conscience of the Constitution. India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market Conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave it terms offered by the employer. Such terms of employment offer no job security and the employee 1st left to the mercy of the employer. The employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent job with a view to circumventing the protection offered to the working classes under the benevolent legislation offered from time to time. It is unfair and unreasonable to remove people who have been rendering service since sometime such removal has serious consequences. The family of the employee which have settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job is suddenly taken away. Besides the previous period of early life devoted in the service of the establishment will be wholly wasted and incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use them, generate hope and feeling of security in him attune to the concept of job security and would run counter to the constitutional philosophy, particularly the concept or

right to work in Article 41 of the Constitution.' The question of regularisation in similar circumstances was also considered by the Supreme Court earlier in case of *Bharatiya Dak Tar Manch v. Union of India*, : (1988)ILLJ370SC ; In *Manipur Regular Post Vacancies Substitute Teachers' Association v. State of Manipur*, : AIR 1991 SC2088 Supreme Court held, 'substituted or the ad-hoc teachers working for several 'years with requisite' qualification on the date of initial appointment was directed to be regularised without any Departmental Promotion Committee.' In *K.S.P. College Stop gap Teachers' Association v. State of Karnataka*, : (1993)ILLJ831SC Supreme Court held, 'Teachers appointed temporarily for three months or less by privately managed degree colleges receiving cent per cent Government grant-in-aid controlled administratively and financially by the Education Department of the State, sought regulations of their service by invoking principle of equitable estoppel arising from implied assurance due to their continuances, as such for years with break of day or two every three months. Supreme Court struck down the clause which provide one day's break in service, as ultra vires.' In this case Supreme Court directed them to absorb creating additional post. Applying those principles we are of the view that the appellant petitioner's claim for regularisation could not be denied. We cannot agree with the view expressed by the Id. Trial Judge that as because the appellant petitioner as well as his father has granted loan of Rs. 30,000/- to the school concerned that is why the appellant petitioner should be penalised and he should not be appointed as a teacher of the school as according to the learned trial judge the same would pollute the next generation and the society. We are of the view that the learned trial Judge did not construe the matter in its true perspective. It was not a case of giving bribe. It was a case of giving some loan to the school authorities for the purpose of purchase of piece of land required for the development of the said school. Money that was paid was duly reflected in the bank account of the said school, and that it was deposited by the school authorities. It also appears that the money was refunded to the appellant petitioner. Granting of loan might have been a consideration by the school authorities to give assurance and/or promise to the appellant petitioner but that per se could not amount to a disqualification. The learned Trial Judge had not taken in consideration that in the instant case the petitioner had been paid a monthly

sum of Rs. 50/- for whole time job which was nothing but a form of a 'begar' which is strictly prohibited under Article 23 of the Constitution. In these days, it is unthinkable that a person having such a high academic qualification and experience should be paid a sum of Rs. 50/- per month even when a day labourer is not available below a sum of Rs. 50/- per day in the cities. A teacher who had made such a sacrifice cannot be penalised in the manner which is sought to be penalised by the learned Trial Judge. If such a position is accepted in that event the concept of social and economic justice should become absolutely meaningless.

11. Applying the aforesaid principles of social justice and the right to livelihood, in our view, when the petitioner was appointed as an qualified teacher and he having acquired sufficient experience it would be doing great wrong and injustice to throw him out of employment and/or to allow him to continue in such precarious state of affairs when nobody has been appointed in the full time and permanent post of the Assistant Teacher of the school. Since post has been sanctioned and since nobody has been appointed in the said post no question of deprivation of accrued right of anybody in this case can arise if the petitioner is absorbed and/or appointed in full time and permanent post in the school. For ends of justice and more particularly in view of the law laid down by the Supreme Court of India in this behalf in order to secure justice social, economic and legal and for securing the right to work as provided in Article 41 and the right and livelihood under Article 21 of the [Constitution of India](#) we are firmly of the opinion that the petitioner should be spared the formal ritual of appearing before the selection committee for interview and he should be appointed to the post of Assistant Teacher which is lying vacant.

12. The petitioner having been given the assurance that he would be absorbed in the post of Assistant Teacher and his service having been obtained in the said post on a mere pittance, and he being a highly qualified man and having rendered unblemished service in the school since 1989 it was the duty of the respondent authorities to absorb and/or regularise him in the post of Asst. Teacher and we cannot permit the petitioner to be thrown out of the employment on the whims of the respondent authorities by holding any sham interview and finding him subsequently unsuitable for the said post as the chances of the petitioner not

getting a fair treatment from respondent Nos. 1 to 3, in the circumstances of the case, cannot be absolutely ruled out. Such appointment of the petitioner to the post of Assistant Teacher in the school on a permanent basis shall not affect the respondents prejudicially and if we desire a society to be governed by the rule of law and the principles of social justice, respondents should discharge their liabilities towards that end by doing so.

The stay application is accordingly allowed. In the light of the view we have taken above it will be of no use to keep the appeal alive and it is accordingly taken up and treated as on day's list and is also disposed of by the following order, namely, that the appeal stands allowed and the judgment and order of the Learned Trial Court are hereby set aside. Let, a writ in the nature of Mandamus do issue commanding the respondents to absorb the petitioner in the post of Assistant Teacher of the, school in Social Science Group or any other permanent and full time Post and if necessary, to create new and/or additional post to accommodate the petitioner forthwith.

There will be no order as to costs.

Let a xerox copy of the above order be given to the parties on the usual undertaking.

Bhagabati Prosad Banerjee, J.

13. I agree.

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