

In Re: Alia Begum

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Court : Kolkata

Decided On : Mar-19-1991

Reported in : (1991)2CALLT196(HC)

Judge : Mohitosh Mazumdar, J.

Acts : [Constitution of India](#) - Articles 14 and 226

Appellant : In Re: Alia Begum

Advocate for Def. : Gouranga Sundar Sarkar, Adv. for Respondent No. 4

Advocate for Pet/Ap. : J. Islam, Adv.

Judgement :

Mohitosh Mazumdar, J.

1. By this writ application the petitioner prays for direction upon respondents to select her for mother training and absorb her as mother teacher after completion of mother training at Raghunathpur Primary School under Murarai Circle, District Birbhum and also prays for direction upon respondents not to select and absorb respondent No. 9.

2. This writ application is moved after service of copy of the application upon all respondents. Affidavit of service and supplementary affidavit-of service have been filed. All the respondents have been served with copies of the writ application.

3. The facts of the case, in brief, are as follows :

The husband of the petitioner Abdul Majid died in harness on September 20, 1990. The said Abdul Majid was the Head teacher of Raghunathpur Primary School since 1987 till his death and died at the age of 54 years. 4 xerox copy of the certified copy of death certificate of Abdul Majid passed on October 4, 1990 is made Annexure 'C' to the writ petition. After the death of Abdul Majid, the petitioner made an application on October 11, 1990 before the Chairman, Ad hoc Committee, Birbhum District Primary School Council praying for absorption in a post on die in harness ground. It is stated that she has 6 minor sons and one daughter born of the wedlock with Abdul Majid. The petitioner submitted that she passed only examination of Class VIII and was promoted to Class IX.

4. The petitioner also averred that she submitted the application on 11.10.90 through the Sub-Inspector of Schools and consequently the Sub-Inspector of Schools by his Memo No. 172 dated 28.11.90 forwarded the same to the Chairman, Ad hoc Committee, Birbhum District Primary Council.

5. It is further claimed that one Surath Ali of village Kalahapur, a teacher of Primary School died in harness about two years back and his wife, who was promoted to Class IX was selected for Mother's Training. She completed the training. The petitioner further asserted that one Abdul Bari, a teacher of Srirampur Primary School died in harness and after his death his wife commonly known as 'Santi Bibi' who passed the Annual Examination of Class VIII and promoted to Class IX was absorbed in the said School as school Mother after getting her Mother Training about two years back. She has been absorbed at Asanpur Primary School under Murarai Circle. The petitioner submitted that the aforesaid application dated October 11, 1990 was forwarded to the Chairman Ad hoc Committee, Birbhum Primary School Council. The petitioner is aged about 30 years at present. The petitioner has been assured that her case for absorption would be considered only after imparting mothers' Training. The petitioner also made out her case in paragraphs 12, 13 and 14 of the writ petition in support of her absorption in the said post. The petitioner also referred to the application of Sk. Abdullah, the son of first wife of Abdul Majid. The petitioner has neither been

called for interview nor has she been informed of the decision of the Managing Committee. The petitioner in paragraph 19 of the writ petitioner has stated that an appointment to the post of teacher is going to be made on or about 11th/12th March, 1991.

6. The petitioner referred to the guideline as contained in Memo dated 14th September, 1977. Para 20 the said Memo reads as follows :-

'After careful consideration, the Governor is pleased to order that when a primary school teacher dies in harness, one ward of the teacher may be given appointment to the post of a primary school teachers against a suitable vacancy provided the ward fulfils the qualifications for such appointment. The appointment may be made against normal vacancies where posts have not yet been filled up.'

7. It further appear from the said memo that in this context the word qualified wards of teachers meant son/daughter/widow wife who has passed at least School Final examination--(Relaxable in case of S.C./S.T. candidates) and has attained 18 years of age.

8. By Memo dated January 20, 1990 the Deputy Secretary, Government of West Bengal further lays down guidelines to the time limit which reads as follows :

'After careful consideration it has now been decided that application for providing employment in Primary Schools to the wards of a teacher died in harness should be submitted to the District School Board/District Inspector of School--(P.E.) within two years from the date of the death of the teacher concerned.'

9. The appointment of school mother and her qualification has been provided in the guideline made in the Memo dated 23rd December, 1969 which reads thus :

Memo No. 7241 (23) Sc/p (II) Dated, Calcutta, the 23rd Dec, 1969._____5-p-100P-66From : The Director of Public Instruction. West Bengal.

Sub : Rules for appointment of teachers in Primary Schools.

In the rules issued under Notification No. 196 Edn (P) dated the 28th April, 1969, there is no provision for appointment of trained non-matriculate teachers other than persons belonging to Scheduled tribes. But non-matric women candidates belonging to Scheduled Castes and educationally backward classes were previously admitted in Basic Training or other Primary Training institutions and imparted training. Also, under the rules issued under same Notification, for appointment as a School Mother, one must, besides possessing School Mothers' Training Certificate, have passed the Class VIII annual (Promotion) examination. But previously, candidates read upto class VIII also were trained in the School Mothers' Training Centres and appointed as School mothers.

Representations are being received that several trained non-matriculいたes and trained School Mothers who have not passed class VIII examination have not yet got appointment as teachers or School Mothers, as the case may be, and are now considered ineligible because of the new rules now in force. As special case, therefore, the District Inspectors of Schools/District Inspectresses of Schools/District School Boards are hereby permitted to consider such categories of trained teachers and trained School Mothers as eligible for appointment as such in Primary Schools, provided they completed training before the issue of Notification No. 196-Edn (P) dated the 28th April, 1969. These trained non-matriculate persons when appointed as Primary teacher will be treated as 'B category teacher (whether Basic trained or Primary Trained).

It is further to be noted in this connection that no non-matriculate should be admitted to any Training Institute at the Primary level (except in case of Scheduled tribe candidate) and no non-matriculate other than those who have passed at least class VIII annual (promotion) examination should be admitted in school mother training centres.

10. Another Memo issued by Deputy Secretary laid down certain principles, Memo is dated December 14, 1972.

11. The petition also made a clear assertion that Sk. Abdullah the youngest son of Abdul Majid by his first wife is an accused of Murarai P.S. Case No. 44 dated 13.4.90 also noted as G.A. No. 209 of 1990 of the Sub-Divisional Judicial

Magistrate, Rampurhat, Birbhum under Sections 147/148/448/324/326/380/427/506/307 of the Indian Penal Code and Section 9(b)(II) of I.E. Act and further under Sections 25-27 of the Arms Act, on the allegation of rioting with bombs, pipe-guns causing greivous hurt, theft, mischief etc.

12. The respondents No. 4 and 5 through their advocate made their submissions. Mr. Sarkar, appearing for the Chairman, Respondent Nos. 4 and 5. Mr. Sarkar contended that the petitioner's case would have been considered had she been found suitable and had there been no claim by respondent No. 9. It is unfortunate that respondent No. 9 was served with a copy of the petition but he does not contest the writ application. The allegation against Sk. Abdullah is serious. But this court has refrained from making any observation against the respondent No. 9 Sk. Abdullah.

13. After carefully considering the totality of the circumstances and the submissions of the learned counsel appearing for the parties I am of the view that the petitioner is eligible for being selected for mother training and absorption after completion of mother training at Raghunathpur Primary School, Murarai Circle. The respondent Nos. 4 and 5 are, therefore, directed to see that the petitioner is selected for mother training for her absorption in terms of Govt. orders as are referred to above. The case of the petitioner, in the light of the Govt. orders as also the findings reached by this Court, should be considered and while considering the same the respondent Nos. 4 and 5 shall take into account that the petitioner being the widow of Abdul Majid is being eligible for being considered for the mother training as all for the appointment as mother teacher. The case of the petitioner shall be considered within a period of 8 weeks from the date of communication of this order and reasonable order shall be passed after a number of hearing being afforded to her on the basis of the discussion made in this Judgment.

14. I have considered the decision of the Supreme Court in Smt. Phoolwani v. Union of India and Ors. reported in 1991 Lab. IC 392. The learned Judges of the Supreme Court while disposing the Special Leave Petition relied on an earlier Judgment of the Supreme Court in Smt. Sushma Gosain v. Union of India reported

in : (1990)ILLJ169SC . The relevant portion of the Judgment in Smt. Sushma Gosain's case (supra) reads thus :-

'It can be stated unequivocally that in a claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family, such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.'

15. The Court is, therefore, required to examine the case of the petitioner in the context and legal perspective of the case of the widow of Abdul Bari of Asanpur Primary School in Murarai Circle as also the selection of the widow of Surath Ali of village Kalaharpur.

16. The Court cannot allow any administrative injustice to be worked out to the petitioner in a case which involves in depth examination of a case of similar nature. The petitioner is therefore, entitled to the equal protection of law.

17. It is quite appropriate for this court to add a few sentences. The court must not be oblivious of the maxim the law which regulates life must keep pace with the life. Law cannot afford to be static while law marches on. In Packer v. Packer (see 1954 All. ER 15) Lord Denning said :

'What is the argument on the other side? Only this, that no case has been found on which it has been done before. The argument does not appeal to me in the least. If we never do anything which has been done before, we shall never get anywhere. The law will standstill whilst the rest of the world goes on ; and that will be bad for both'.

18. Therefore, I direct that the petitioner is eligible for being selected for mother training for her absorption to the post of mother teacher in Raghunathpur Primary School, Murarai Circle after completion of the mother training by respondent Nos. 4 and 5 within a period of 3 months from the date of communication of this order.

19. This application is thus disposed of without any order as to cost.

20. The learned advocates for the parties are directed to communicate this order to the authority concerned for the implementation of this order within the period as specified above.

21. Certified copy of this order, if applied for, be given to the parties on urgent basis without any delay.

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