

State of West Bengal and ors. Vs. Sumit Das and anr.

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Court : Kolkata

Decided On : Jun-26-2008

Reported in : (2008)3CALLT299(HC),2008(3)CHN1000

Judge : Pranab Kumar Chattopadhyay and ;Tapan Mukherjee, JJ.

Acts : West Bengal School Service Commission Act, 1997 - Section 9

Appeal No. : F.M.A. No. 1465 of 2007

Appellant : State of West Bengal and ors.

Respondent : Sumit Das and anr.

Advocate for Def. : Ekraumul Bari, Adv.

Advocate for Pet/Ap. : Tapabrata Chakraborty and ;Kumaresh Dalal, Adv.

Disposition : Appeal allowed

Judgement :

Pranab Kumar Chattopadhyay, J.

1. The short question that arises in this appeal is whether the subject matter of the writ petition filed by the respondent No. 1 is covered by the earlier Division Bench Judgment of this Hon'ble Court passed on 31st March, 1997 in the appeal bearing M.A. No. 173 of 1997.

2. The respondent No. 1 herein filed the writ petition before this Hon'ble Court claiming regularisation of the service on permanent basis as Assistant Teacher in Language group (English) in the Salbari High School.

3. From the records it appears that the writ petitioner was initially appointed in the post of Assistant Teacher in Language group (English) in the aforesaid school in lien vacancy. Subsequently, the original lien holder tendered her resignation from the said post of Assistant Teacher in Language group (English) and the said resignation was duly accepted by the Managing Committee of the aforesaid school. The writ petitioner thereafter requested the school authorities for approving his appointment in the said post on permanent basis since the aforesaid post of Assistant Teacher in Language group fell vacant on permanent basis due to the resignation of the concerned permanent teacher. The concerned authorities namely, the appellants herein, however, did not take any step pursuant to the aforesaid request made on behalf of the writ petitioner.

4. In the aforesaid circumstances, respondent No. 1 herein filed the writ petition before this Court for issuance of mandatory directions upon the concerned authorities namely, the appellants herein to regularise the service of the said respondent No. 1 upon approving the appointment as Assistant Teacher in Language group (English) in the said school on permanent basis since the lien vacancy converted into a permanent vacancy due to the resignation of the concerned permanent teacher.

5. It was argued on behalf of the writ petitioner before the learned single Judge that the issues raised in the writ petition have already been decided finally by the Division Bench of this Hon'ble Court in the appeal bearing M.A. 173 of 1997. The learned single Judge accepted the aforesaid contentions made on behalf of the writ petitioner and disposed of the writ petition by directing the District Inspector of Schools concerned to approve the appointment of the said writ petitioner on permanent basis in the said post of Assistant Teacher in Language group (English) and also to release all financial benefits.

6. The learned Counsel representing the appellants herein urged before this Court that after resignation of the teacher holding the permanent post of Assistant

Teacher in Language group (English), the initial lien vacancy was converted into a permanent vacancy and such permanent vacancy to the post of Assistant Teacher should be filled up following the procedures prescribed for recruitment of Assistant Teachers. Mr. Tapabrata Chakraborty, learned Counsel representing the appellants herein referred to and relied on a decision of the Supreme Court in the case of Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. reported in : (2006)11LLJ722SC and submits that the service of the writ petitioner could not be regularised and/or approved as a permanent Assistant Teacher in Language group (English) without following the procedures prescribed for recruitment of Assistant Teachers. In the aforesaid Judgment, Hon'ble Supreme Court specifically held:..But, a regular process of recruitment or appointment has to be restored to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

7. Mr. Ekramul Bari, learned Counsel representing the writ petitioner, however, referred to and relied on a recent decision of the Division Bench of this Hon'ble Court in the case of Banibrata Ghosh v. State of West Bengal and Ors. reported in (2007)3 Cal LT 390 : 2007 (2) CHN 836 and submits that the appointment of the writ petitioner in lien vacancy should be regularised and approved on permanent basis when such lien vacancy has been converted 'into a permanent vacancy.

8. We fail to understand how the aforesaid decision of the Division Bench of this Hon'ble Court in the case of Banibrata Ghosh (supra) can be of any assistance to the respondent No. 1/writ petitioner herein.

9. In the aforesaid decision it was never held by this Court that an appointment in lien vacancy would be automatically regularised and approved on permanent basis in the event such lien vacancy is converted into a permanent vacancy due to the resignation of the concerned teacher holding the post on permanent basis. Since the West Bengal School Service Commission Act, 1997 has come into force w.e.f. 01.01.1997, we are of the opinion that the said permanent vacancy in the post of Assistant Teacher in Language group should be filled up on the recommendation

of the regional Commission having Jurisdiction in terms of Section 9 of the said West Bengal School Service Commission Act.

10. Therefore, it cannot be said in the present case that the selection of the writ petitioner in lien vacancy was made following the recruitment procedures which are substantially similar in the case of permanent vacancy unlike the earlier cases decided by the Division Bench of this Hon'ble Court in the case of Bantbrata Ghosh (supra) and also in the appeal bearing M.A. No. 173 of 1997, which were relied upon by the learned single Judge while deciding the writ petition.

11. Furthermore, in the case of Banibrata Ghosh (supra), this Court took specific note of the facts that pursuant to the earlier interim order concerned respondents took final decisions with regard to the regularisation of the service and approval of appointment of the teacher concerned without imposing any condition. In the aforesaid circumstances, the Division Bench held that the learned single Judge while finally deciding the writ petition after lapse of 10 years should not have quashed the said order of regularisation and approval of appointment of the teacher concerned. The relevant paragraphs from the aforesaid decision of the Division Bench of this Court in the case of Banibrata Ghosh (supra) are set out hereunder:

22. Admittedly, pursuant to the earlier interim order passed by this Court, the aforesaid respondents took specific final decisions with regard to the regularisation of service and approval of appointment of the appellant herein without imposing any condition. In any event, the validity and/or correctness of the aforesaid decisions of the respondent authorities cannot be examined by this Court while deciding the writ petition finally when the aforesaid decisions were taken by the said respondents pursuant to the specific order passed earlier by this Court in this writ petition. The respondent authorities instead of complying with the aforesaid decisions passed earlier by this Court could have challenged the same before the appellate forum. The said authorities, however, decided to implement the aforesaid direction passed earlier by this Court and issued unconditional specific final orders regarding regularisation of service and approval of appointment of the appellant herein. In the aforesaid circumstances, neither the respondent

authorities can question the validity and correctness of the said order nor this Court can quash the same by any subsequent order after implementation of its earlier order by the concerned respondents....

25. In any event, the respondent authorities in compliance with the earlier direction passed by this Court already regularised the service and approved the appointment of the appellant way back in 1993 without imposing any condition and therefore, the learned single Judge should not have quashed the same in 2003 after lapse of ten years while deciding the writ petition finally.

12. The decision of the earlier Division Bench in the appeal bearing M.A. No. 173 of 1997, which has been referred to and relied upon by the learned single Judge in the judgment and order under appeal, is clearly distinguishable on facts. While deciding the aforesaid appeal, Hon'ble Division Bench considering the facts involved in the said appeal held as hereunder: The prescribed recruitment rules and the recruitment process gives her right of regularisation in the said post in which she is working....

13. In the present case, however the prescribed recruitment rules and the process do not give right of regularisation to the writ petitioner in the said permanent vacant post of Assistant teacher on the ground that the appellant herein was appointed in the lien vacancy which ultimately converted into a permanent vacancy due to the resignation of the holder of the permanent post. In any event, it cannot be disputed that a regular vacancy is to be filled up following the prescribed recruitment rules.

14. The law has been clearly laid down in this regard by the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Ors. v. Uma Devi (3) and Ors. (supra).

15. Mr. Bari, learned Counsel of the respondent/writ petitioner submits that since the District Inspector of Schools (SE), Jalpaiguri on earlier occasion regularised the service of the concerned teacher under similar circumstances and accorded necessary approval, the said District Inspector of Schools cannot prefer any appeal in the present case in view of the ratio decided in the Judgment reported in

(2001) 10 SCC 231 [Union of India and Ors. v. Kaumudini Narayan Dedal and Anr.).

We are unable to accept the aforesaid contentions made on behalf of the writ petitioner since we do not find that the District Inspector of Schools (SE), Jalpaiguri or any other authority under the State of West Bengal ever accepted on principle on the earlier occasion that a lien vacancy if ultimately converted into a permanent vacancy due to the resignation of the permanent post then the teacher appointed in the said lien vacancy would be automatically regularised and approved as the permanent teacher without taking any further step following the prescribed recruitment rules. The decision cited by Mr. Bari in the case of Union of India and Ors. v. Kaumudini Narayan Dalal and Anr. (supra) has no manner of application in the facts of the present case.

16. For the aforementioned reasons, we are of the opinion that the learned single Judge should not have allowed the writ petition directing approval of appointment of the writ petitioner on permanent basis only on the ground that the said lien vacancy has been converted into a permanent vacancy due to the resignation of the teacher concerned holding the permanent post.

17. In the aforesaid circumstances, we hold that the aforesaid permanent vacancy in the post of Assistant Teacher in Language group (English) should be filled up by the competent authority upon complying with the prescribed recruitment rules and procedures as are applicable in this regard.

18. The judgment and order under appeal passed by the learned single Judge are, therefore, set aside.

19. The concerned school authorities are directed to take immediate appropriate steps to fill up the aforesaid vacancy in the permanent post of Assistant Teacher in Language group (English) upon complying with the prescribed recruitment rules and procedures.

20. This appeal thus stands allowed.

There will be, however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Tapan Mukherjee, J.

21. I agree.

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