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Court : Kolkata

Decided On : Mar-20-2012

Judge : Jyotirmay Bhattacharya

Appeal No. : G.A. No. 3057 of 2011 With W.P. No. 461 of 2010

Appellant : Jagadish Singh

Respondent : The State of West Bengal and Others

Judgement :

The writ petition being W.P. No. 461 of 2010 which was filed by the writ petitioner, was disposed of by this Court ex-parte on 11th January, 2011 by quashing the impugned order passed by the District Inspector of Schools (S.E.), Barrackpore, on 31stJanuary, 2008 being Annexure “P/7” to the writ petition. By the said order, the said District Inspector of Schools was directed to rectify the erroneous entries regarding the date of appointment of the petitioner in the said school, recorded in the Memo dated 23rdOctober, 2002 whereby the list of approved and bonafide teaching and non-teaching staff of the said school was forwarded by the concerned District Inspector of Schools to the Administrator of the said school. By the said order the concerned District Inspector of Schools was also directed to update his records including the approval letter dated 2nd January, 2007 being Annexure “P/5” to this writ petition appearing at page 17 thereof. The said District Inspector of Schools (S.E.) was directed to complete the entire exercise in this regard within four weeks from the date of communication of the said order.

The said District Inspector of Schools, who was respondent no.4 in the said writ petition, subsequently filed this application praying for recall of the said order passed by this Court on 11th January, 2011. The said recall application is now under consideration before this Court.

Let me now consider the merit of this application in the fact of the instant case. The petitioner claimed that the petitioner was appointed as an Assistant Teacher in Science Group in Gouripur Hindu High School on 3rd December, 1985. He further claimed that his appointment as an Assistant Teacher in the said school was approved by the then District Inspector of Schools (S.E.), with effect from 3rd December, 1985 and such approval was communicated to the school authority by the said District Inspector of Schools by his letter under Memo No. 5049/BKP-53 dated 27th December, 1985. By the said communication not only the approval of the service of the writ petitioner with effect from 3rd December, 1985 was communicated to the school authority but also approval of service of five other teachers who were appointed on different dates in December 1985 was communicated to the school authority.

Subsequently the said school was upgraded to a higher secondary school and after its upgradation to higher secondary school, the concerned District Inspector of Schools (S.E.) forwarded a list of approved teaching and non-teaching staff of the said school to the Administrator of the said school on 23rd October, 2002 wherein the petitioner was also included against serial no. 21, however, by mentioning a wrong date of his appointment therein. In column No.3 of the said document it was mentioned that the petitioner was appointed an as Assistant Teacher in the said School on 1st August, 1987. As a matter of fact, since then the school authority started mentioning the date of appointment of the petitioner as 1st August, 1987 instead of 3rd December, 1985, in all records of the school.

Even 1st August, 1987 was mentioned as the petitioner’s date of appointment in the monthly salary requisition statements which were submitted by the school authority to the concerned District Inspector of Schools, every month demanding allocation of fund for payment of salary to the teaching and non-teaching staff of the said school.

The applicant herein has disclosed those documents to show that even the school authority also mentioned the date of appointment of the petitioner as on 1st August, 1987 in the school's record and as such the school authority cannot wriggle out of its admission made in these documents about the date of appointment of the petitioner in the said school. The applicant has also disclosed one letter written by the petitioner himself to the District Inspector of Schools on 31st May, 1990 wherein the applicant allegedly admitted that he was appointed as an Assistant Teacher in the said school on 1st August, 1987 and has been serving there since then. This is the other document which was relied upon by the applicant in support of his claim for recall of the order dated 11th January, 2011. In fact, this document is the sheet anchor of the applicant in support of his claim of recall of the said order. The applicant claimed that had those documents been disclosed before the Court at the time of hearing of the writ petition, a different conclusion could have been arrived by the Court while disposing of the writ petition. Let me now consider the effect of the alleged admission made by the writ petition in the said letter. A statement can be regarded as admission of the author of such statement when such admission is clear and unambiguous and the same was made by the author of such statement spontaneously. But when the author of a letter makes some statements for enjoying certain benefits out of it, such statements are self serving statements and cannot be regarded as an admission of the author of such statements. The petitioner, no doubt, stated that he was appointed in the said school on 1st August, 1987 but at the same time he stated that his appointment was approved by the concerned D.I of School with effect 3rd December, 1985. He complained in the said letter that the money which was received by the school for the period from 3rd December, 1985 to 31st, July, 1987, was not paid to him.

He invited the said District Inspector of Schools to recover the payment which was received by the school on account of the petitioner during the said period. In fact, he mentioned his date of appointment as 1st August, 1987 in the said letter for availing of the revised pay scale as per Rules framed by the Government on 7th March, 1990. Considering the text of the said letter, as a whole, this Court is of the view that the statements made in the said letter as to the date of his appointment cannot be regarded as an admission of the writ petitioner inasmuch as such

admissions are not only ambiguous but also such statements were made by him for obtaining some benefits regarding his pay revision as per Government Rules of 1990. Thus, those stalemates are self serving statements of the petitioner which cannot be regarded as his admission under the Evidence Act.

Let me now consider the effect of the other document which has been disclosed by the applicant in the recall application i.e. the salary requisition sheet of the school concerned wherein the school has also mentioned the date of the petitioner's appointment as 1st August, 1987.

It is no doubt true that in those documents, the date of appointment of the petitioner's service was mentioned as 1st August, 1987 but at the same time this Court cannot ignore the resolution which was adopted by the school authority on 30th August, 2008 being Annexure "R/9" to the affidavit in opposition wherein it was unanimously resolved that the concerned District Inspector of Schools should be moved for correction of the date of appointment of the petitioner, so that his basic pay is revised accordingly. That apart letter written by the teacher-in-charge of the said school to the District Inspector of Schools (S.E.) on 27th December, 2006 also cannot be lost sight of, as by the said letter, the school authority also requested the said District Inspector of Schools to correct the Board's record regarding wrong entry of the date of appointment of six teachers of the said school including that of the petitioner. The petitioner's date of appointment in the said school on 03.12.1985 was confirmed by the school authority in both the said resolution and the letter written by the teacher-in-charge on 27.12.2006. The audit report of the school account for the period of 1985-86 being Annexure "R-10" of the affidavit in opposition also cannot be lost sight of as the name of the petitioner was also included as an Assistant Teacher of the said school in the said audit report showing his date of appointment on 3rd December, 1985.

Despite discloser of those documents by the writ petition in their affidavit in opposition, the applicant has not chosen to file any reply to challenge the correctness of the entries of the date of appointment of the petitioner in those documents. Thus, considering the entries of the petitioner's date of appointment recorded in those documents which still remain unchallenged, this Court is of the

view that the applicant has miserably failed to establish his claim that the writ petitioner was, in fact, not appointed on 3rd December, 1985 but was appointed on 1st December, 1987.

Over and above the genuineness of the approval letter which was issued by the

concerned D.I. of school on 27th December, 1985 has not been challenged by the applicant in the recall application. Though Mr. Banerjee, learned Advocate, appearing for the applicant submitted that the copy of the approval letter which was supplied to the petitioner by his client under the Right to Information Act, cannot be regarded as an approval letter as the original document which is available in the official record, does not bear the signature of the concerned District Inspector of Schools. But such submission of Mr. Banerjee cannot be accepted as the original document which was received by the school from the concerned District Inspector of School which has also been produced before this Court, shows that the said original document contains the signature of the District Inspector of Schools. Inspection of the said document (in original) was also taken by the learned Advocate on record of the applicant but still then the applicant has not taken any step to challenge the genuineness of the said document. The applicant has also miserably failed to prove that the signature appearing in the said document is not the signature of the then District Inspector of Schools or the person who signed the said document was not the District Inspector of Schools at the relevant time. That apart, the list of approved teachers which was published by the District Inspector of Schools on 23rdOctober, 2002 appearing page 41 of the affidavit in opposition shows that in the third column of the said document the date of appointment of the petitioner was mentioned as 1st August, 1987, though in the fourth column of the said document 3rd December, 1985 was mentioned as the date of approval of the petitioner's service. In the said column the reference of the Approval Memo which was given as Memo No. 5049 dated 27th December, 1985 tallies with the reference number mentioned in the copy of the approval memo which was supplied by the District Inspector of Schools, to the petitioner under the Right to Information Act. Let me now analyse the effect of the said document to find out the correctness of the applicant's contention regarding the petitioner's date of appointment as on 1st December, 1987.

I have already indicated above that in column no. 3 of the said document, the date of appointment of the petitioner was mentioned as 1st August, 1987 and in column no.4 the date of approval of the service of the petitioner was mentioned on 3rd December, 1985 by giving the reference of the Memo no. and the date as Memo No. 5049 dated 27thDecember, 1985 therein. How this is possible? If somebody is appointed in 1987 his appointment cannot be approved in 1985 with effect from 3rd December, 1985.

The service approval date and the reference of Memo by which approval of service of the petitioner was communicated to the school authority as mentioned in the said document of the District Inspector of Schools also tallies with the entries made in the copy of approval letter dated 27.12.1985, which was supplied to the petitioner by the District Inspector of Schools under the Right to Information Act. As such this Court conclusively holds that the approval letter dated 27.12.1985 was a genuine document and the same was acted upon. Thus, this Court has no other alternative but to hold that the petitioner was appointed in 1985 as per the appointment letter issued by the school authority on 28thNovember, 1985 vide Annexure “R/1” to the affidavit in opposition and his appointment was approved by the District Inspector of Schools (S.E.) with effect from 3rd December, 1985.

This Court, thus, does not find any error in the judgment which was passed by this Court on 11th January, 2011 in the writ petition and thus, does not find any justification to recall the said order.

The application for recall is absolutely a malafide one and the same is rejected.

The recall application is, thus, disposed of.

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