

APO No. 147 of 2019
GA No.1103 of 2020
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

THE MANAGING COMMITTEE,
SHREE MAHESWARI VIDYALAYA & ORS.
VS.
ANIL KUMAR JHA AND ORS.

BEFORE:
The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ANIRUDDHA ROY
Date : September 23, 2020.

Appearance:
Mr. Shakti Pada Jana, Adv.

Mr. Anjan Bhattacharya, Adv.
Ms. Anita Shaw, Adv.

The Court: The appeal is directed against an order of July 15, 2019 by which a decision rendered on April 11, 2018 by the Commissioner of School Education, West Bengal was set aside. In essence, by the order impugned herein, the Single Bench has directed the writ petitioner-respondent to be approved as a teacher in the commerce stream of the higher secondary department of the appellant school despite there being no vacancy for any teacher in such subject.

The writ petitioner had challenged the decision not to approve him as a regular teacher by way of previous petitions. Pursuant to an order passed in WP No.789 of 2016 on July 12, 2017, the Commissioner reassessed the matter. In the reasoned decision of the Commissioner of April 11, 2018, such official

noticed that the number of students in the school was decreasing over a period of time and the teachers and the assistant teachers together were well in excess of the number of teachers necessary to impart education to the enrolled students. The government bears the dearness allowance of the teachers of the relevant school.

The writ petitioner refers to a document of March 15, 2012 issued by the school to the Director of School Education indicating that the petitioner was one of the assistant teachers in the commerce stream of the higher secondary section of the school whereas the two other assistant teachers, Chiranjib Kumar Prasad and Snigdha Dasgupta (nee Dutta) who had both B. Com. And B. Ed. Degrees, had been assigned duties in the secondary section of the school. The petitioner next points out the anomaly that was brought about by a document which refers to the position as at August 1, 2014. Though the petitioner's name is included as the fourth entry in a chart containing seven names, the said Chiranjib Kumar Prasad and Snigdha Dasgupta (nee Dutta) had been placed as the first two in the list of teachers in the commerce stream of the higher secondary section.

According to the petitioner, he was inducted into the school as an assistant teacher in the year 2001. He has better qualifications than both Prasad and Dasgupta and since Prasad and Dasgupta were inducted in 2002 or thereafter, such persons could not have overtaken the petitioner and filled up vacancies in the commerce stream of the higher secondary section without the petitioner being accommodated first as a regular teacher. The petitioner emphasises that it is the admitted position that while the petitioner was associated with the higher secondary stream from the inception of the

petitioner's induction into the school, Prasad and Dasgupta were assigned duties as assistant teachers in the secondary section and could not have jumped over the petitioner and be approved as regular teachers against vacant posts in the commerce section, particularly, since the petitioner was better qualified than the other two.

The present writ petition was instituted in the year 2019 and despite a reference at paragraph 11 of the petition that the benefits conferred on Prasad and Dasgupta may have been undeserving, there is no direct challenge in the writ petition to the said two other teachers being previously accommodated against vacant posts. Indeed, there could not have been such a challenge as the other two were inducted against vacant posts in the higher secondary section of the school in 2014 and the present petition was filed in 2019.

Though the writ petitioner insists that the underlying theme of his successive writ petitions, including the one filed in 2016, was that two teachers had been arbitrarily brought ahead of the writ petitioner, the primary grievance of the writ petitioner even in the 2016 petition appears to be the failure on the part of the appropriate authorities to approve the petitioner's appointment as a regular teacher. In the light of the petitioner's prayer, without there being a frontal challenge to the appointments of Prasad and Dasgupta as regular teachers in the higher secondary section of the school ahead of the petitioner, the matter had to be considered only in the context of the petitioner's plea for approval against a settled position which showed both Prasad and Dasgupta entrenched in their positions.

If such was the exercise that the Commissioner was required to undertake pursuant to the order dated July 12, 2017 passed on WP No.789 of 2016, the resultant order of April 11, 2018 indicates adequate reasons for the petitioner not being accommodated. By the order impugned herein what has been done is to direct the petitioner to be approved against the vacancy arising out of the retirement or resignation of a teacher who taught economics or mathematics in the higher secondary section and despite the petitioner's M. Com. Degree, the petitioner does not appear to have the requisite qualification to teach economics or mathematics. Indeed, it has always been the petitioner's case to be inducted on a permanent basis to teach commerce.

It is the admitted position that of the seven teachers in the commerce stream of the higher secondary section of the school Ram Asish Singh and Shiv Raj Singh have retired or resigned. However, Ram Asish Singh was the economics teacher and Shiv Raj Singh was the mathematics teacher. If the writ petitioner is to be accommodated against either vacancy which has arisen upon the death or resignation of Ram Asish Singh or Shiv Raj Singh, that would not be permissible since those posts are reserved for economics and mathematics teachers. There is no vacancy as at present against a commerce teacher. There is no doubt that the petitioner, by virtue of his long association with the school and his post graduate qualification, eminently qualifies to be considered for a permanent post in the commerce stream of the higher secondary section; but the petitioner has to wait till a vacancy arises in such regard. As of now there is no vacancy; the two vacancies being for economics and mathematics teachers. The petitioner as a core commerce man cannot be appointed as either. As a consequence, the order impugned is set aside. The petitioner will

suffer no prejudice and should not be unfairly treated by the school because the petitioner has approached the Court. When the first vacancy in the commerce subject of the higher secondary section of the school next arises, the petitioner's case must be considered.

APO No.147 of 2019 along with the interim application, GA No.1103 of 2020, are disposed of.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ANIRUDDHA ROY, J.)

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