

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:- Hon'ble Justice I. P. Mukerji
Hon'ble Justice Kausik Chanda

FMA No. 1020 of 2012

Smt. Ratna Saha
Vs.
The State of West Bengal & Ors.

For the Appellant : **Mr. Lakshmi Kanta Pal,**
Mr. Bandhu Brata Bhula, Advs.

**For the Respondents/
Opposite Parties** : **Mr. Tapan Kumar Mukherjee, Sr. Adv.**
Mr. Somnath Naskar, Adv.

Judgment on : **14.01.2021**

Kausik Chanda, J.:-

The appellant was appointed as Headmistress of an unrecognized secondary school, namely Palaspai Anchal Gita Rani Dhara Balika Vidyalaya in Hooghly district on February 9, 1984. The school was recognised by the West Bengal Board of Secondary Education with effect from May 01, 1992. When the school was recognised, the appellant's service was approved as the Teacher-in-Charge with effect from the said date instead of Headmistress as she had completed about 8 years of service and did not have the required 10 years teaching experience at the time of recognition of the school.

(2) The relevant District Inspector of Schools by a Memo No. 2080 dated December 31, 1993, requested the Director of School Education West Bengal to consider approval of appointment of the appellant as Headmistress. The relevant part of the said letter dated December 31, 1993 is reproduced below:-

“Now the question arises whether on the basis of the direction of the Hon’ble Court Smt. Saha be approved as the headmistress of the school in relaxation of the provisions contained in the G.O. No. 33 Edn (S) dated 7.3.1998 prescribing the qualification of the Headmaster/Headmistress and in consideration of the fact that she has been rendering her services as Headmistress w.e.f. 9.2.1984. Thus if the fact of her services rendered w.e.f. 9.2.1984 may be taken to be account as a very special case she might be approved as Headmistress w.e.f. 9.2.1994 i.e. completion of 10 years of services in conjunction of unapproved and approved service taken together.”

(3) Such request was turned down by the Director of School Education on July 11, 1994, by one line observation that the appellant had no requisite experience of teaching.

(4) The appellant, thereafter, filed an application under Article 226 of the Constitution of India being W.P. No. 8328 (W) of 2002 praying for regularisation of her service as Headmistress of the said school which was disposed of by a learned Single Judge of this Court on July 01, 2002, giving a direction upon the Director of School Education, West Bengal to dispose of the representation made by the appellant by passing a speaking and reasoned order within a period of eight weeks from the date of such representation.

(5) Pending consideration before the Director of School Education, West Bengal, some guardians of the wards of the said school filed a writ application being W.P. No. 12314 (W) of 2002 (In Re.: Anita Pattanayak - versus- State of West Bengal) against the appellant praying, inter alia, for restraining the Director School Education and other authorities of the State from appointing the appellant as Headmistress of the school.

(6) A learned Single Judge of this Court passed an interim order on the said application on September 17, 2002, the relevant part of the said order is quoted below:-

“The respondent no. 9 had not been appointed and recognized to have been appointed as Headmaster of the recognised institution at any point of time. In that view of the matter, the question of the respondent no. 9 being appointed as headmistress of the institution does not and cannot arise. This appears to be the prima facie view of mine, and accordingly, I direct that until further orders, no one shall be appointed in any teaching post of the institution in question until she has been recognised to be appointed in such teaching post by the School service commission.”

(7) The Director of School Education in compliance of the order passed on July 01, 2002 in W.P. No. 8328 (W) of 2002, disposed of the case of the appellant by an order dated December 13, 2002, observing, inter alia, as follows:

“The petitioner is an M.A. in Political Science as well as in Music is being taught in the school as a subject besides, she had English and Bengali at the degree level. She passed M.A. in Political Science in 1979 and M.A. in Rabindra Sangeet from Rabindra Bharati University in 1983 she passed B.ED. Examination from the University of Calcutta in 1981 she has completed 10 years teaching service/experience in a recognised High School on 1-5-2002. Thus, as on this day, she is qualified for being appointed as Headmistress. But in terms of the directions given by Hon’ble Mr. Justice Barin Ghosh in W.P. NO. 12314 (W) of 2002 dated 17.9.2002, the question of the petitioner’s being appointed as Headmistress of the institution does not and cannot arise.”

(8) The writ petition being W.P. No. 12314 (W) of 2002 (**Anita Pattanayak versus State of West Bengal**) was, however, dismissed on September 16, 2004, by a learned Single Judge of this Court holding, inter alia, that the writ petitioners had no locus-standi to file such a writ petition. The appeal against the said order was also dismissed on September 23, 2009, by a Division Bench of this Court.

(9) In the year 2005, after the dismissal order dated September 16, 2004, the appellant filed the present writ application for implementation of the order dated December 13, 1993 passed by the Director of School Education praying, inter alia, approval of her appointment as the Headmistress of the school with effect from May 01, 2002 along with all consequential service benefits.

(10) By the order impugned in this appeal, the learned Single Judge dismissed the said application holding that the appellant had completed 10 years teaching service only on or about May 01, 2002, but the School Service Commission Act, 1997 came into effect from November 01, 1997. Therefore, the appellant obtained requisite qualification to be considered as Headmistress after the School Service Commission Act, 1997 had come into force. Therefore, the appellant could not be appointed as Headmistress of the relevant school.

(11) To assail the order of the learned Single Judge, the appellant submits that the learned Single Judge has failed to take into consideration the observation made by the Director School Education in his order dated December 13, 2002. The Director of School Education categorically held that the appellant was eligible to be appointed as the Headmistress of the school but due to interim order passed on September 17, 2002 he could not appoint the appellant as the Headmistress. Since the writ petition itself and the appeal were dismissed, there was no legal bar to appoint the appellant as the

Headmistress. It has, further, been submitted that the School Service Commission Act, 1997 was not applicable to this case. It has been suggested that the appellant had retired from the service and she should be given the monetary benefits by revising her pension after notional fixation of her pay scale at least treating her as the Headmistress on the date of her retirement i.e September 30, 2014.

(12) The State opposes the prayer submitting that the petitioner was never appointed as the Headmistress of the school and as such no financial benefit can be given to her as the Headmistress of the school.

(13) The State submits that when the petitioner was appointed as the teacher-in-charge of the school, the Management of recognised Non-Government Institution (Aided and Unaided) Rules, 1969 was in force. A teacher, merely by completion of 10 years service as teaching staff of a school, automatically did not qualify to be appointed as Headmaster or Headmistress unless he or she was successful in the selection process competing with the other eligible teachers.

(14) The State further contends that in the year 1997 when the School Service Commission came into being, the appellant had completed only four years of approved service which meant she was at that point of time not even eligible to participate in the selection process for the post of Headmistress as per the recruitment rules framed under the Management of recognised Non-Government Institution (Aided and Unaided) Rules, 1969. Therefore, she did not acquire any vested right in her favour to be appointed as Headmistress under the old rules which could be taken away by the School Service Commission Act, 1997.

(15) The State urges that observations of the Director of School Education in his order dated December 13, 2002 with regard to the eligibility of the appellant to be appointed as Headmistress was,

therefore, not in accordance with law and no mandamus can be issued to enforce such order.

(16) Before we delve into the merit of the case it should be borne in mind that appointment of organising teachers is not a fresh appointment. It is a regularisation of service as a consequence of recognition of the school. Right of such regularisation of organising teachers flows from various circulars issued by the State itself from time to time even after the School Service Commission Act, 1997 became operative.

(17) In this case, the appellant was appointed as Headmistress on February 09, 1984. The school was recognised on May 01, 1992 and within two years from that date the appellant acquired 10 years of teaching experience taking into consideration the service rendered by her before the school was recognised. The request of the concerned District Inspector of Schools made by the communication dated December 31, 1993 was turned down by the Director of School Education though the regularisation of appointment of the appellant as the Teacher-in-Charge was an express acknowledgement of the service rendered by the appellant before the school was recognised. It was illogical to suggest that the appellant could be appointed as Teacher-in-Charge considering the service rendered by her before the recognition of the school but the same service could not be counted towards her experience for appointment of Headmistress of the school

(18) The Director of School Education, while considering the case of the appellant pursuant to the order dated July 01, 2002, of this Court, took note of a government circular being G.O. No. 302-SE(S) dated 05.03.2001 wherein it was, inter alia, provided that Headmaster of a Junior High School, who did not have requisite qualification of a Headmaster of a Secondary School, might be appointed as Teacher-in-

Charge, if the school was upgraded as Secondary School. Such Teacher-in-Charge might get approval as Headmaster of the upgraded school if he acquired the qualification and experience required for the post of Headmaster of a High School within a period of 3 years from the date of upgradation of the school.

(19) The appellant was initially appointed as Headmistress on February 9, 1984. The school was recognised with effect from May 1, 1992 and the appointment of the appellant was approved as Teacher-in-Charge of the school on the same date. She acquired the requisite 10 years of teaching experience within two years from the date of recognition of school. The controversy before the Director of School Education revolved around as to the effective date of the regularisation of the initial appointment of the appellant as the Headmistress consequent upon recognition of the school. In the facts scenario as stated above the School Service Commission Act, 1997 which was operative from November 1, 1997, had no manner of application.

(20) The Director of School Education, however, by his order dated December 13, 2002, held that the appellant had completed 10 years of teaching in the recognised school on May 01, 2002, and as such she was qualified for being appointed as a Headmistress from that day.

(21) When the State authority itself was of the considered view that the appellant's service was entitled to be regularised as a Headmistress from May 1, 2002, and the appellant sought implementation of the said order by filing the present writ petition, the learned Single Judge ought not to have declined to grant benefit of the order on the ground of School Service Commission Act, 1997 as it had already been discussed that the appellant's case was not attracted by the said Act. Fact remains that the appellant had had the requisite academic qualification and experience to be appointed as Headmistress. She was the head of the organisation even

before the recognition of the school. She performed all duties of the Headmistress as the Teacher-in-charge of the school from the date on which the school was recognised till her retirement. She had to weather the frivolous litigations filed with the sole object to resist her appointment as Headmistress of the school. Throughout her service career she had been subjected to the ignominy of discharging the duties of a Headmistress without enjoying the status and monetary benefits attached to the said post.

(22) To subserve the interest of justice, the order of the learned Single Judge is set aside and the appeal is allowed directing the respondents to pay the monthly pension of the appellant treating her to be appointed as the Headmistress of the school on May 01, 2002, together with arrear pension within a period of eight weeks from date.

(23) Accordingly, F.M.A No. 1020 of 2012 is allowed without any order as to costs.

(24) Urgent certified website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Kausik Chanda, J)

I. P. MUKERJI, J.-

I have had the privilege of reading in draft the judgment proposed to be delivered by my learned brother. I am in agreement with the conclusion reached by his lordship.

I would like to add a few words of my own. The appellant appears to have served as an organizer teacher from 9th February, 1984. On 1st October, 1992 the school was accorded recognition by the respondent authorities with effect from 1st May, 1992.

On 30th December, 1993 the appellant was appointed as teacher-in-charge of the school with effect from 1st May, 1992.

On 17th September, 2002 this court in another writ application [WP 12314(W) of 2002] passed an interim order that no one should be appointed in any teaching post in inter alia, the said school until he or she was appointed by the School Service Commission.

In obedience to the order of this court made on 1st July, 2002 in an earlier writ [WP 8328(W) of 2002], on 5th December, 2002 the Director of School Education, West Bengal considered the case of the appellant. He noted that she was qualified for being appointed as headmistress but because of the said interim order dated 17th September, 2002 she could not be so appointed. On 16th September, 2004 the writ application [WP 12314(W) of 2002] in which the interim order dated 17th September, 2002 was made, was dismissed by this court.

Now, I quote the notification dated 21st September, 2007 made by the School Education Department, Secondary Branch, Government of West Bengal in exercise of its power conferred by clause (d) of sub-section (2) read with sub-section (1) of Section 17 of the West Bengal School Service Commission Act, 1997:

“3. Method of recruitment.- *The appointment of persons to the post mentioned in column (2) of Schedule I shall be made by selection (direct recruitment) through the Regional Commission in the manner as specified in rule 7.*

4. Names of post, qualification and age.- *(1) The name of post and its qualification shall, subject to rule 5, be such as specified respectively in columns (2) and (3) of Schedule I:*

Provided that a person having the desirable qualification mentioned in column (2) against the posts mentioned in Sl. Nos. 4, 5 and 6 of column (1) of Schedule I shall, if qualified in written examination, get preference over the candidate, who has qualified in written examination but has no desirable qualification.

(2) The age-limit for the post referred to in column (2) shall be such as specified in column (4) of Schedule I:

Provided that the person who is already in service on the approved post of Teacher or non-teaching staff of any School or Madrasah may apply for the post of Assistant Teacher with maximum age of 55 years as on 1st January of the year of advertisement.

7. Manner of selection of Teacher.- (1) Selection to the post of the Teacher shall be made on the basis of the results of the Regional Level Selection Test comprising written examination conducted by the Central Commission, evaluation of qualifications and personality tests of the candidates in the manner as specified in Schedule II.

(2) The Central Commission may, in its discretion, fix qualifying marks, to be scored by the candidates, in written examination or in aggregate or, in both and relax the qualifying marks on reasonable grounds for reasons to be recorded in writing.”

SCHEDULE I

[See rules 3 and 4]

Sl. No.	Name of posts	Educational qualification including professional qualifications	Age limit
1.	Headmaster/ Headmistress of High /Higher Secondary School and High Madrasah.	Essential: (i) Master’s Degree from a UGC recognized University with at least 45% marks both at the Secondary Level and Higher Secondary Level, 40% marks in the Honours subject at the Honours Level or 45% marks at the Pass Level for a candidate without having Honours Degree and 40% marks at the Post Graduate Level, with degree in Bachelor of Teaching/Bachelor of Education/Post Graduate Basic Training from any recognized University or any training recognized by the State Government as equivalent to Bachelor of Teaching/ Bachelor of Education/ Post-Graduate Basic Training from a Teachers’ Training Institution duly recognized by the National Council for Teacher Education (NCTE)/ Rehabilitation Council of India (RCI) in the relevant academic session: <i>Provided that the above criteria of marks shall not apply to a Head Master/ Head Mistress in approved service in Jr. High/High/Higher Secondary School/Jr. High/High Madrasah;</i> (ii) Ten years’ continuous teaching	Upto 55 years

		<i>experience in approved service in a Higher Secondary /High School/High Madrasah/Jr. High Madrasah/ Jr. High School/Senior Madrasah recognized by the West Bengal Board of Secondary Education/West Bengal Council of Higher Secondary Education/ West Bengal Board of Madrasah Education on the date of advertisement.</i> Desirable: <i>Knowledge of Islamic Studies and culture for the post of Headmaster/Headmistress of High Madrasah.”</i>	
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The said rules provide for information regarding existing and future vacancies, to notify the vacancies by advertisement, the form of application to be made by candidates, submission of application, selection of candidates etc. (see Rules 8, 9, 10, 11 and 13 and the selection process for the post of Headmaster etc.)

After coming into force of the said Act and the notification made thereunder, in the usual course, a vacancy in the post of a Headmaster/Headmistress of a school was to be filled up following the above procedure.

However, take the example of a school which was unrecognized and was granted recognition by the government prior to coming into force of that Act. Also assume that the school had a teacher-in-charge like the appellant. It would be absurd, if on recognition of the school, the organizing staff including the Headmaster or Headmistress were turned out of the school, to be replaced by a new set of teachers including a Headmaster recruited by the above procedure. By the notification dated 5th March, 2001 the government conceived of this situation and took the decision that when a school was upgraded, the Headmaster would be eligible to function as such if he was possessed of the requisite

qualification and experience. This notification was applied to the case of the appellant by the Director in his decision dated 13th December, 2002 where he said that the appellant, having the necessary qualification and 10 years' teaching experience was eligible to be appointed as headmaster/headmistress but could not be so appointed because of the operation of the said interim order.

The order of the Director did not say that the appellant was eligible to be appointed but had to undergo the selection process under the said Rules.

The appellant was entitled to believe that on vacation of the interim order, the decision of the director would be given effect to by appointing her as the Headmistress. Having waited for the appointment to be made and the appointment not having been made, she preferred the instant writ on or about 11th May, 2005 from which this appeal arises. In the writ application she sought a writ of mandamus commanding the respondents to "grant approval of the appointment of the petitioner as the Headmistress of the school with effect from 1st May, 2002".

In the writ the respondents did not say that the order of the director was invalid. They did not file any affidavit-in-opposition. It can be safely presumed that they accepted the premises on which the Director based his order.

Some six years after filing of the writ, the matter was heard before the learned single judge. At that time, for the first time, a submission was made from the bar that the appellant had to undergo a selection process under the said Act and Rules.

Without going into any other question, I am of the view that the respondents directly or indirectly had led the appellant to believe that the decision of the director was final and that it could not be given effect to because of the said interim order of this court. It follows that the

appellant was made to believe that on vacation of the interim order the decision of the Director would be carried out by appointing her as the Headmistress. In my opinion, this gave rise to a legitimate expectation in the appellant. Moreover, by their conduct the respondents are estopped from denying or implementing the order of the director.

It is here that equity should intervene to relieve the appellant of her hardship.

I endorse the order proposed by my learned brother.

(I. P. MUKERJI, J.)