

04.08.2022

Sl.No. 83
Ct.No.3
Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1574 of 2017

State of West Bengal & Ors.
VS
Shri Jaharlal Mondal
With
CAN/5/2018 (Old CAN 4226 of 2018)

Mr. Biswabrata Basu Mallick
Mr. Avishek Prasad

...for the appellants

Mr. Kamalesh Bhattacharya
Mr. S.P. Pahari
Mr. A. Pradhan
Mr. G. Purkayastha

...for the respondent/
writ petitioner no. 1

Mr. Sankar Prasad Dalapati
Mr. Sourav Mondal

...for the respondent nos. 4,5

Re: CAN/5/2018 (Old CAN 4226 of 2018)

The principal question which is involved in this appeal is whether the appointment of the respondent/writ petitioner as an assistant teacher of Nayabad High School (H.S.), District – South 24-Parganas, was illegal or irregular on the principles formulated in the Uma Devi case, reported in (2006) 4 SCC, Page 1.

The Secretary of the Managing Committee of the school by a letter dated 2nd March, 1986 appointed the respondent to the above post.

Mr. Bhattacharya, learned advocate appearing for the respondent/writ petitioner submits that he has already retired.

By the impugned judgment and order dated 2nd June, 2016, a learned single judge of this court directed the District Inspector of Schools (S.E.), South 24-Parganas to approve the appointment of the respondent/writ petitioner “in the vacant post in the said school” within three months of communication of the order.

One observation in the said impugned judgment and order is very relevant. It is this: “since no affidavit-in-opposition has been called for, the allegations contained in the writ petition shall be deemed not to have been admitted by the respondents”.

It appears from the records that there was an earlier round of litigation between the parties. By an order dated 4th December, 2013, in a writ application, the government was asked to consider the case of the respondent/writ petitioner. This resulted in a decision dated 2nd May, 2014 from the District Inspector of Schools (S.E.), South 24-Parganas rejecting the respondents case.

This decision had been made the subject matter of challenge in the writ in which the impugned judgment and order was passed.

On perusal of the above records, it appears that there is a bundle of dispute of facts. The very appointment of the respondent is disputed by the school. It says that the appointment letter was forged and fabricated. The District Inspector of Schools (S.E.), South 24-Parganas claims that there was no vacancy against which the respondent could be appointed.

Both learned counsel for the State and the school submit in one voice that the respondent never taught in the school.

All these assertions are very strongly denied by Mr. Bhattacharya, learned advocate appearing for the respondent/writ petitioner. He contends that the documents would show that the school took service from the respondent writ petitioner for a long period of time. His name would appear in the attendance register, in the result sheets and answer scripts. The respondent/writ petitioner's salary was paid unofficially by the guardians of the students.

All these facts can only be resolved upon filing of affidavits. The writ application ought not to have been disposed of without inviting affidavits.

In those circumstances, the impugned judgment and order dated 2nd June, 2016 is set aside.

We remand the writ application to the Hon'ble single judge to be heard afresh on filing of affidavits.

Affidavit-in-opposition is to be filed by 22nd August, 2022.

Affidavit-in-reply may be filed by 31st August, 2022.

The directions for affidavits are peremptory.

The writ application may be mentioned before the learned single judge for hearing, subject to the convenience of the court.

We also want to keep one point open before the learned single judge. If it is found that in spite of illegal appointment, the Managing Committee of the Nayabad High School (H.S), Dist. South 24-Parganas had permitted the respondent to teach and had taken service from him without taking any steps to stop him from rendering such service, the question of monetary compensation for taking this kind of service can also be considered by the court. But our observation is to be taken as tentative, subject to full determination of the question on facts and law by the learned single judge.

The appeal and the connected application are, accordingly, disposed of.

(Subhendu Samanta,J.) (I. P. Mukerji,J.)