

23.11.2022

Sl.No. 12

Ct.No.3

Amalranjan

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 2233 of 2014

Tapan Kumar Banerjee

VS

The State of West Bengal & Ors.

With

CAN/2/2014 (Old CAN 6871 of 2014)

Mr. Ekramul Bari

Mr. S.P. Lahiri

...for the appellant

None appears for the respondents.

On 20th July, 2000, the appellant was appointed as a primary school assistant teacher under the Bardhaman District Primary School Council. The appointment was on purely temporary basis subject to verification of qualification and age. About two years later in 2002 the Council got information that this appointment was obtained by the appellant on the basis of his marksheet which was not “genuine”.

On 12th June, 2002 a show cause notice was issued by the Council to him charging him with having appointment “by producing fraudulent marksheet”. The appellant replied to that show cause notice. A personal hearing was granted to him on 16th July, 2002. On 18th July, 2002, the Council came to a decision that the

said marksheet was indeed a fabricated document. The appointment of the appellant was cancelled on 22nd July, 2002. A criminal proceeding was started by the concerned authority against the appellant. It ended on 24th May, 2010 with the acquittal of the appellant.

Thereafter the instant writ application (WP 5583 (W) of 2014, Tapan Kumar Banerjee Vs. State of West Bengal & Ors.) was preferred by the appellant asking for his reinstatement. The learned single Judge deciding the writ application on 6th May, 2014 observed that the appellant had not challenged his termination and that if he had any cause of action to espouse, he ought not to have waited till the criminal trial was concluded. The writ application was dismissed.

Mr. Lahiri, learned advocate for the appellant submits that on the basis of the acquittal of the appellant the order of cancellation of his service should be set aside, he should be treated to have been in employment throughout the period till retirement and his arrear salary pension etc. be directed to be paid.

We find from the appointment letter dated 20th July, 2000 that the appellant's appointment was on probation for two years. The District Primary School Council has stated in the

document dated 22nd July, 2002 terminating his service that the appointment was on a temporary basis subject to verification of his qualification. The appellant ought to have substantively challenged this decision of the Council before the appropriate authority, which was not done by him. Four years after the order of the learned criminal court acquitted him was pronounced, did he challenge the termination by filing a writ application.

Mr. Lahiri submits that the cause of action for a writ application praying for reinstatement occurred only on pronouncement of the acquittal order by the learned criminal court.

We are unable to accept this submission. A substantive proceeding ought to have been taken up by the appellant challenging that termination order. The factum of pendency of the criminal proceeding was to be pointed out to the authority before which the civil proceeding was pending. If during such pendency the learned criminal court acquitted the appellant that together with the fact whether the acquittal was honourable or not would be a very relevant fact for consideration by the said authority.

This procedure was not followed. However, for the ends of justice we direct that the appellant would be at liberty to make an

appropriate application before the Bardhaman District Primary School Council by 15th December, 2022, bringing to its notice the said acquittal order passed by the learned criminal court on 24th May, 2010.

We direct the Council to take a stand in the matter on the basis of the said order of the learned criminal court by 15th February, 2023 and communicate the same to the appellant.

The appeal and the connected application are disposed of.

(Biswaroop Chowdhury,J.) (I. P. Mukerji,J.)