

WPA 25180 of 2015

Saroj Kumar Panigrahi & Anr.
vs.
The State of West Bengal & Ors.

Mr. Uttam Kumar Bhattacharyya
Mr. Kaustav Mishra
.....for the petitioners

Ms. Chaitali Bhattacharya
Mr. Kartik Chandra Kapas
....for the State-respondents

The present writ petition is preferred by the two organizing staff of upgraded section of a Secondary School claiming regularization in view of their initial appointment in the upgraded section which was recognized subsequent to their appointment. The school in question was a IV Class Junior High School and subsequently upgraded as High School having Classes IX and X with effect from 1st May, 1999 and subsequently with effect from 1st May, 2000.

Petitioner No. 1, namely, Saroj Kumar Panigrahi having academic qualification of B.Sc (Pure Science) and B Ed. was appointed as an Assistant Teacher on 11th March, 1996 and

petitioner No. 2, Sandhya Roy was appointed as Metron with effect from 2nd January, 1979. While preferring this writ petition both of them claimed regularization as organizing teaching and non-teaching staff of the school upon setting aside the decision of the Secretary, School Education Department, Government of West Bengal, being the respondent No. 2 under Memo dated 16th July, 2015.

Mr. Uttam Kumar Bhattacharyya, learned advocate representing the petitioner has submitted that during pendency of this writ petition, the petitioner No. 2 crossed the age of superannuation on 3rd January, 2019. Therefore, her case can not be considered for regularization. However, the petitioner No. 1 is still within the prescribed age limit considering the date of superannuation of a teaching staff. Therefore, case of petitioner No. 1 needs to be considered for regularization.

In support of the case of regularization as made out in the writ petition, it has been submitted that the issue was considered previously by learned Single Judge of this Court as well as Hon'ble Division Bench and ultimately

traveled to the Hon'ble Supreme Court in connection with Civil Appeal No. 7901 of 2010, which was disposed of on 19th February, 2015. Reliance has been placed on the relevant part of the said order of the Hon'ble Supreme Court, which is quoted below:

“The appellants, in fact, were appointed, as it appears from the facts of the case, in such School by the Managing Committee of the Junior High School as at that point of time was Class IX and X previously recognized by the Authorities Meaning thereby, the West Bengal Board of Secondary Education subsequent thereto, it appears to us that the said School was upgraded and was duly recognized by the State Secondary Education Board. In view of that, it appears to us that the appellants since working for such a long time in the said School, their cases should be considered by the Authorities in the light of the provisions of law taking into consideration the West Bengal School Service Commission Act, 1997 and in our opinion at the time of such consideration, it would be the

pleasure of the State Authorities to find out whether the appellants who have filed this appeal before us are still with the School or not. We, however, make it clear that the State Authorities without being influenced with the Orders so passed by the High Court on the basis of Judgment reported in 2006(4) SCC 1 shall deal with the matter and pass a reasoned order in the matter in accordance with law after giving personal hearing to the appellants herein. If they find that the appellants were working in the School, in that case, they shall consider the case of the appellants sympathetically.

The Appeal is disposed of in the afore-stated terms.”

It has been submitted that pursuant to such order of the Apex Court, the respondent No. 2 decided the matter against the petitioners and refused to grant approval in favour of the petitioners by issuing Memo dated 16th July, 2015, which is the subject matter of challenge in the present writ petition in addition to claim for regularization.

Previously, while considering the issue this Court directed Ms. Chaitali Bhattacharya, learned Senior Government Advocate to submit a report in the form of affidavit in order to indicate the availability of approved posts in the school in question against which claim of the petitioner No.1 for regularization can be considered. Pursuant to such direction on behalf of the State-respondents, an Affidavit has been affirmed wherefrom it appears that there are three teaching posts lying vacant in the school at present – one is due the retirement of the Head Master on 31st May, 2014 and another two posts of Assistant Teachers are lying vacant due to retirement of one Sri Samir Kumar Kar Mahapatra and another Sri Debabrata Giri; one teaching post is meant for Assistant Teacher in Bio Science another post of Assistant Teacher is for Physical Education.

In this backdrop the matter is heard today at length in presence of the learned advocates representing the petitioners and the State-respondents.

Though reliance has been placed on the order of the Apex Court dated 19th February, 2015, but in the said order in no uncertain term it was observed that the appellants since working for long time in the school in question, their cases should be considered by the authorities in the light of the provisions of law taking into consideration the West Bengal School Service Commission Act 1997.

In view of such observation made by the Apex Court, this Court has posed query of Mr. Bhattacharyya, representing the petitioners that how the said enactment of 1997 helps the petitioners in the matter of regularization when reliance has been placed on Section 10 of the School Service Commission Act, 1997. For better understanding, Section 10 of the School Service Commission Act, 1997 is reproduced below:

“10. *Protection of Teachers* –

Notwithstanding anything contained elsewhere in this Act the terms and conditions of service of Teachers in the employment of a school immediately before commencement to this Act shall not be varied to the disadvantage of

such Teachers in so far as such terms and conditions relate to the appointment of such Teachers to the posts held by them immediately before the commencement of this Act.”

On consideration of the provisions of Section 10, it does not appear that it helps the petitioner No. 1 in any manner in the matter of obtaining a writ of mandamus relating to regularization of his service upon treating him as a bonafide organizing teacher. The purport of Section 10 confers the right upon the teachers in employment of a school immediately prior to commencement of the Act to continue under the same capacity without varying the terms and conditions of the service of such teaching staff. In the present case, indisputably the petitioner No. 1 was working as unapproved organizing teacher at the time of promulgation of West Bengal School Service Commission Act 1997. Therefore, Section 10 does not come in aid of the petitioner No. 1 for regularization of service.

In addition thereto, reliance has also been placed on behalf of the State-respondents upon an unreported judgement of the Hon’ble Division

Bench dated 6th July, 2018 on an intra-court appeal being **MAT 1626 of 2017 [District Inspector of Schools (Secondary Education), Burdwan & Ors. vs. Abdul Barik Shaikh & Ors.]**. The purport of the said judgment of the Hon'ble Division Bench goes to show that the judgment delivered by the Hon'ble Division Bench in the case of Manindra Nath Sinha & Ors. Vs. State of West Bengal & Ors. reported in (2006)4CHN 513 having been affirmed by the Hon'ble Apex Court needs to be followed by all Benches of this Court in the cases involving similar fact situation. This Court finds it apt to quote paragraph 19 of **Abdul Barik Shaikh (supra)** below:

“19. Applying the law laid down here, we hold that Manindra Nath Sinha (supra) having been affirmed by the Supreme Court, all Benches of this Court in cases involving similar fact situation are bound to follow the same as a binding precedent and any decision of a learned Judge or Judges, which runs counter to the dicta in Manindra Nath Sinha (supra), Smritikana Maity (supra), Gita Banik

and Gopal Singh (supra), is not good law.”

In Abdul Barik Shaikh (supra), the Hon’ble Division Bench took into consideration the relevant judgments delivered by this Court in the matter of regularization of service of organizing teaching and non-teaching staff appointed in upgraded section of a Government recognized Secondary School on its upgradation. Therefore, this Court is not separately dealing with those judgments and relying upon other judgments as referred to in paragraph 4 of Abdul Barik Shaikh (supra).

This Court has also tried to ascertain upon giving direction to the State-respondents to file a report in the form of affidavit, whether the posts are lying vacant in the School in question against which the claim of petitioner no. 1 can be considered. It appears from paragraph 7 of the said affidavit affirmed on 21st June, 2022 that apart from the post of Head Master which is lying vacant, there are two posts of Assistant Teachers lying vacant presently in the school in question. One is earmarked for Assistant Teacher of Bio Science and another is in Work

Education and Physical Education group. The qualification of petitioner no. 1 is B.Sc. (Pure Science) B. Ed. Therefore, considering the nature of vacancies of teaching posts available in the school in question it appears that the petitioner No. 1 cannot be accommodated in any one of the said two posts lying vacant.

This Court has also perused the decision of the respondent No. 2 as contained in Memo dated 16th July, 2015. Upon considering the entire gamut of the issue and also taking into consideration the observation made by the Hon'ble Supreme Court in the order dated 19th February, 2015, the respondent no. 2 found that since the petitioners were not appointed in conformity with the relevant rules applicable at the material point of time, even the claim of the petitioners is considered sympathetically, no relief can be granted to them.

In view of aforesaid discussion, this Court does not find any flaw in the decision of the respondent No. 2 while considering the claim of the petitioners being organizing teachers, specially taking into consideration of the

decision rendered in Abdul Barik Shaikh (supra).

Accordingly, this Court does not find any merit in the writ petitioner and the same stands dismissed.

However, there will be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Saugata Bhattacharyya, J.)