

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

And

The Hon'ble Justice Supratim Bhattacharya

FMA 3278 of 2015

With

IA No.CAN 1 of 2015

(Old No.. CAN 6553 of 2015)

With

IA No. CAN 2 of 2015

(Old No. CAN 12094 of 2015)

With

IA No. CAN 3 of 2020

Tarak Chandra Das

-Vs-

State of West Bengal & Ors.

(Assigned)

For the Appellant : Mr. Santi Ranjan Das
Mr. Kshetra Prasad Mukhopadhyay
Mr. Sayantan Rakshit

For the State : Mr. Supriyo Chattopadhyay
Mr. Suman Dey

Heard On : 09.11.2022

Judgement Delivered On : 20.02.2023

Supratim Bhattacharya, J.:- The instant appeal has been preferred against the Order and Judgment passed by the Hon'ble Single Bench on 09.06.2015 in writ petition no. WP 28115 (W) of 2012.

By the impugned Judgment and Order the Hon'ble Single Bench was pleased to dismiss the said writ petition praying for granting an order regularizing the writ petitioner to the post of a teacher in a primary school under the District Primary School Council, North-24-Parganas.

The facts of the present case are that one Tarak Chandra Das claiming himself to be an Organizing Teacher of a school being appointed by the Chairman of the local Municipality as per the decision of the people of the locality, is seeking to have himself regularized.

The Learned Counsel appearing on behalf of the appellant/writ petitioner has submitted that the said writ petitioner is an Organizing Teacher being appointed by the Chairman of the local Municipality on being recommended by the people of the locality. He has further submitted that the appellant/writ petitioner has not yet been regularized and prays for regularizing him to the post of a teacher. He has further submitted that the Hon'ble Apex Court had directed the Reviewing Committee to regularize the Organizing Teachers who have not yet been regularized and who are eligible for being regularized after scrutinizing their testimonials.

The Learned Counsel appearing on behalf of the State respondents has submitted that the petitioner relied on the Government Notification No.539-SE (Primary) dated 04.08.1997 and claimed his appointment as a Primary School Teacher under old

Rule 3D (*vide* Notification No. 975 dated 26.10.1971). It has further been submitted that the said Notification No.539-SE (Primary) dated 04.08.1997 specifically states that in cases where schools had been recognized prior to coming into force of new Rule 3D, that is before the date of the relevant Notification being No. 713-ED (P) dated 11.09.1980, the Organizer Teachers who had been working in those schools and were eligible for appointment as per provisions of old Rule 3D may submit application to the respective Primary School Councils who will consider their cases. He has further submitted that the appellant/writ petitioner in his affidavit affirmed on 19.05.2022 has mentioned his age to be 58 years. So at the relevant point of time, that is during the year 1980, the said appellant writ petitioner was 16 years old, which is quite astonishing.

The Learned Counsel has further submitted that the writ petitioner has submitted that he was appointed as per decision of the people of the locality which is also not at all acceptable. He has also submitted that the Hon'ble Single Bench by the impugned Order has expressed surprise about the fact that the people of the

locality started recommending somebody for being appointed as a Primary Teacher and there is no such case or rule by which the writ petitioner's service could be regularized. Relying on such submissions Learned Counsel has assailed the impugned order.

From the contentions of the parties it reveals that the appellant has come with the plea that he is an Organizing Teacher of a school being appointed by the Chairman of the local municipality and the people of the locality took the decision as regards his appointment. The said appellant has prayed for regularizing him as teacher being an Organizing Teacher. It is confusing to note that the people of the locality took the decision as regards to the appointment of the appellant/ petitioner which raises doubt in the mind of this Court too, on the basis of which the Hon'ble Single Bench also rejected the prayer of the writ petitioner.

As regards to regularizing the Organizing Teachers in the post of primary teachers the Hon'ble Apex Court has passed several Orders among which the orders dated 16.04.2015, 28.01.2016 and 06.10.2016 can be referred to for the purpose of this discussion.

The Order passed by the Hon'ble Apex Court dated 28.01.2016 reads as follows:-

"The case has peculiar facts and circumstances.

In pursuance of order dated 2nd December 2015, the verification committee has verified the details with regard to 1257 organizing teachers and has come to its final conclusion that out of 1257, 203 organizing teachers, who were parties in the petition filed before the Calcutta High Court, are below the age of 60 years as on today and they are also qualified to become teachers as per rules which were in force as on 14th September 1995. Names of those 203 organizing teachers have been given in the list at Annexure R-6 to the report of the verification committee constituted in terms of the order dated 2nd December 2015. The report has been handed over to us in Court today which is taken on record.

The said organizing teachers shall submit relevant documents concerning their age and their qualification, to the verification committee within 4 weeks from today and after verification thereof in presence of the concerned Organizing Teachers, the Verification Committee shall come to a final conclusion with regard to veracity of the certificates and thereafter shall recommend the names of the qualifying Organized Teachers

to the State within four weeks thereafter. Upon receipt of the said list, the State shall give appointment to the persons recommended by the verification committee within 4 weeks from the date of receipt of the list.

It has been submitted by the Learned Counsel appearing for some of the Organizing Teachers who are not within the list of afore-stated 203 persons that they are also eligible for appointment but because of some mistake their names have not been included in the list.

If it is so it would be open to them to approach the verification Committee on or before 29th February, 2016, so as to show that they are duly qualified as other Organizing Teachers as per rules in force as on 14th September, 1995 and they are below the age of 60 years as on today. We are sure that as and when such an application is made the Verification Committee will look into their grievance and take appropriate action as soon as possible, preferably within six weeks thereafter.

So far as other 5616 Organizing Teachers (as per the list furnished by Mr. Amarjit Singh Bedi, the Learned Counsel), who claimed to be parties before the High Court in writ petition No. 15632 of 1998, are concerned, it has been submitted that all relevant details with regard to their qualification and age, details

of which are to be examined by the Verification Committee, have already been given to the Learned Counsel appearing for the respondent- State. The verification details shall be put in a tabular form as per order dated 2nd December, 2015..... ”

The Order passed by the Hon’ble Apex Court dated 16.04.2015 reads as follows:-

“The applicants shall give the following details along with an affidavit with regard to the organizer teachers who claimed right to be appointed as primary teacher in pursuance of order passed by this Court dated 2nd February 2011 in SLP (C) No. 15253 of 2006 and connected matter.

- 1. The name and address of the organizer teacher and the date on which he became the member of the association concerned before the High Court.*
- 2. Number of the petition wherein association was the petitioner.*
- 3. Date of birth of the teacher concerned.*
- 4. The school in which he worked as an organizer teacher and the period of work.*
- 5. The evidence to show that the said teacher had become member of the association before the petition was filed in the High Court.*

The afore-stated details shall be furnished by the Learned Counsel for the applicant to the Learned Counsel appearing for the State of

West Bengal Board of Primary Education within two weeks from today.

The information provided by the Learned Counsel for the applicant shall be verified by respondent- Board and they shall file its response within two weeks thereafter.....”

The Order passed by the Hon’ble Apex Court dated 06.10.2016 reads as follows:-

“We have heard the Learned Counsel for the parties at length. Upon hearing the concerned counsel and upon perusal of the relevant records and the orders passed by this Court from time to time we had passed the following order on 28th January 2016...

‘In pursuance of order dated 2nd December 2015 the verification Committee has verified the details with regard to 1257 Organizing Teachers and has come to its final conclusion that out of 1257, 203 Organizing Teachers who were parties in the petition filed before the Calcutta High Court are below the age of 60 years as on today and they are also qualified to become teachers as per rules which were in force as on 14th September, 1995. Names of those 203 Organizing Teachers have been given in the list at Annexure R-6 to the report of the Verification Committee’

We direct that the 173 candidates, as referred to in our order dated 28.01.2016 passed in I.A. numbers 2 and 3 of 2015 in I.A. number 13/2013 in SLP (C) No. 15253/2006 shall be appointed as Primary Teachers with effect from 01.10.2016 and their appointment letters shall be given to them before 31st October 2016.

The Order passed by the Hon'ble Apex Court dated 03.05.2018 reads as follows:-

"..... 7. It is the case of the appellants that despite the direction issued by this Court no verification whatsoever has been conducted in their cases. However, it is the stand of the Board and the State that no information whatsoever had been furnished so as to enable the committee to verify the records.

Having heard the Learned Counsel appearing for the appellants and the Learned Counsel appearing for the Board and the State of the West Bengal, we are of the view that there is no point in continuing the litigations before this Court. The only dispute is with regard to verification. In view of the serious dispute on verification, we are of the view that the remaining grievance regarding verification should be independently looked into by an appropriate authority. We direct the Secretary to the West Bengal State Legal Services Authority to verify the remaining

grievance herein and the intervenors/ impleading applicants as on 25.04.2018.it will be open to him to adopt any method for verification.

The Secretary to the West Bengal State Legal Services Authority after notice to the West Bengal Board of Primary Education, will complete the verification process in respect of the appellants and the intervenors/impleading applicants before this Court as on 25.04.2018 and submit a report to the Government, Education Department.

This process shall be completed within four months from today. The Secretary to the Government will take the required action for appointment, if any within another one month.

No Court shall entertain any further challenge on the report thus submitted to the West Bengal State Legal Services Authority and there shall be no further dispute in this regard. The Secretary is also directed to not to entertain any fresh applications or fresh record.....”

Having heard the parties and considering the materials placed, this Court notices the following.

That it is clear from the record that the writ petition being WP No. 28115 (W) of 2012 was dismissed by the Hon’ble Single Bench

on the 9th of June, 2015 without at the relevant point of time being in a position to appreciate the effect of the orders passed by the Hon'ble Apex Court on the 28th of January, 2016, 16th of April, 2016 and the 6th of October, 2016. It is pertinent to further notice that the primary issue in both the writ petitions as decided by the Hon'ble Single Bench and the pronouncements of the Hon'ble Supreme Court (*supra*) relate to the Organizing Teachers.

While this Court is not in a position to appreciate whether the Organizing Teachers who were before the Hon'ble Apex Court and the present appellant are identically circumstanced, it falls to reason that at the same time the present appellant is entitled to claim the benefit of the verification process as initiated and laid down by the three orders of the Hon'ble Apex Court (*supra*).

In the above conspectus of facts and the legal pronouncements applicable to such facts, this Court, notwithstanding the orders passed by the Hon'ble Single Bench, permits the present appellant/the writ petitioner to approach the appropriate Court seeking a parity of treatment.

The above view of this Court stands fortified by the clear decision of the Hon'ble Apex Court *vide* its order dated 6th of October, 2016 (*supra*) to the effect that no Court shall entertain any further challenge to the report submitted by the West Bengal State Legal Services Authority and there shall be no further dispute in this regard. This Court is also mindful of the direction upon the Secretary, West Bengal State Legal Services Authority, not to entertain any fresh applications and fresh records.

Last but not the least, the Orders of the Hon'ble Apex Court dated 28th January, 2016, 16th of April, 2016 and 6th of October, 2016 are subsequent to the decision of the Hon'ble Single Bench dated 9th of June, 2015 (*supra*) as impugned in this appeal. In the above view of the matter this Court is of the view that the appellant/the writ petitioner deserves an opportunity to ventilate his claim before the appropriate Court notwithstanding the order of dismissal passed by the Hon'ble Single Bench.

FMA 3278 of 2015 with IA No.CAN 1 of 2015 (Old No. CAN 6553 of 2015) with IA No. CAN 2 of 2015 (Old No. CAN 12094 of 2015) with IA No. CAN 3 of 2020 stand accordingly disposed of.

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree.

(Subrata Talukdar, J.)

(Supratim Bhattacharya, J.)