

OD-1

WPO/205/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

REKHA AGARWAL

-Versus-

THE STATE OF WEST BENGAL AND ORS.

BEFORE

The Hon'ble Justice PARTHA SARATHI CHATTERJEE

Date: 8th August, 2023

APPEARANCE:

Mr. Anjan Bhattacharyya, Adv.

Ms. Anita Shaw, Adv.

...for the petitioner.

Mr. Yash Vardhan Deora, Adv.

...for the State.

The Court: In invocation of the jurisdiction of the Court under Article 226 of the Constitution of India, the writ petitioner questions the legality and/or sustainability of the reasoned order passed by the District Inspector of Schools (Secondary Education), Kolkata (hereinafter referred to as 'D.I.') in deference to the order passed by this Court in a writ petition being WPO/201/2017 which was communicated to the petitioner under a memo. vide. dated 10.3.2021 (Annexure-P-7 to the writ petition).

Despite opportunity given in the order dated 15th September, 2021, the respondents chose not to file any affidavit-in-opposition.

Necessitous facts required to be adumbrated for the purpose of effective adjudication of this writ petition are that the petitioner, who was graduated in Calcutta University and also pursued B.Ed course, was appointed as an Assistant Teacher in Balika Siksha Sadan, a D.A. getting school, on temporary basis and subsequent thereto, her appointment was confirmed by the school authority on 1st July, 2012.

Balika Siksha Sadan(hereinafter referred to as the school)is a D.A. getting private school. The school authority pays the salary and other allowances to the teaching and non-teaching staffs from its own resources and/or fund and the Government of West Bengal pays D.A. to the approved teaching and non-teaching staffs.

By a memo. vide. dated 20th September, 2001, Government of West Bengal permitted the authorities of D.A. getting schools to fill up the vacant posts within the sanctioned strength by placing qualified teachers already working in the schools but not in receipt of D.A. , inter alia, on the conditions that before placement against the vacancy within the sanctioned strength it is to be confirmed

that the teachers to be placed within the sanctioned strength had minimum qualification and was within the prescribed age limit at the time of initial appointment.

In order to get D.A., appointment of a teaching staff is required to be approved by the concerned D.I. The writ petitioner was placed against the vacancy within the sanctioned strength. The school authority, seeking such approval of appointment of the writ petitioner, made applications on 21st January, 2014 and then on 23rd March, 2015, but the appointment of the petitioner has not been approved nor has the D.A. component been released in favour of the writ petitioner till the date.

Aggrieved thereby, the writ petitioner was constrained to knock the door of the writ Court by taking out a writ petition being WP No.1317 of 2015 which was disposed of by an order dated 4th December, 2015 passed by Samapti Chatterjee, J. (as Her Ladyship then was) by directing the D.I. of Schools (S.E), Kolkata to take steps in accordance with law to accord approval to the appointment of the petitioner in the post of Assistant Teacher, Hindi within a specific time frame.

In compliance with the said direction, the D.I. of Schools (S.E) passed a reasoned order dated 9th February, 2017

declaring that the petitioner was appointed by the Managing Committee of the School 'on purely temporary basis and was confirmed later on but without following the law' and for this reason, the appointment of the petitioner could not be regularised and/or approved and no relief could be given to the petitioner.

Assailing the said reasoned order dated 09.02.2017, the writ petitioner along with two other similarly circumstanced candidates preferred another writ petition being WPO/201/2017 which was disposed of by Sabyasachi Bhattacharya J. on 4th December, 2020. Extract of relevant portion of the order dated 4.12.2020 is quoted below:

"It is apparent from the cited judgment that the relaxation of the Rules regarding age limit for approval is a well-settled position of law. The grounds indicated in the impugned order of the District Inspector strictly adhered to the guidelines and qualifications and flouted the principle laid down repeatedly by this Court, whereby a humane approach ought to have been taken in the matter.

It is relevant to record the said judgment, which are cited by the petitioner, in this context:

(i) Judgment dated April 2, 2003 passed by Girish Chandra Gupta (J.) (since retired) in WP No.7498(w) of 2002;

(ii) Judgment dated July 3, 2013 passed by Ashoke Kumar Dasadhikari (since retired) in WP No.1101 of 2019 and by the Division Bench Hon'ble Justice Rakesh Tiwari (since retired) and the Hon'ble Justice Shivakant Prasad in APOT 28 of 2014 (GA 119 of 2014; WP 1101 of 2019)

In the present case, the humane approach is missing and the Rules have been enforced in a strict fashion, contrary to settle legal principle. In such view of the matter, WP No.201 of 2017 is allowed, thereby setting aside the order dated February 9, 2017 passed vide memo No."778/Law" by the District Inspector of Schools (S.E.) Kolkata and directing the respondent no.3 to reconsider the approval of the petitioner, in the light of the judgments cited by the petitioner, by adopting a humane approach and by considering whether the approval of the petitioner is, in any way, detrimental to public interest."

Being approached with the said order, the D.I. of Schools (S.E.) passed a reasoned order, which was communicated to the petitioner under a memo vide. no. 114/1(5)/Law dated 10.03.2021, reiterating the same stand to the effect that the concerned school appointed the petitioner without following the rules and the petitioner crossed 40 years of age on the date of her appointment at the school and hence, she cannot be approved in the post of Assistant Teacher in the said school.

Mr. Bhattacharyya, learned advocate appearing for the petitioner submits that the D.I. of School was directed to consider the case of approval of appointment of the petitioner with a humane approach and in the light of the judgments referred to in the decision passed in WPO/201/2017. However, the prayer for approval of appointment of the petitioner in the subject post has not been considered in the manner prescribed by this Court in WPO/201/2017. He submits that such reasoned order cannot be sustained and is liable to be set aside and a further direction be given upon the concerned authority to consider the case of approval of the petitioner afresh.

Mr. Deora, learned advocate representing the State submits that on the date of initial appointment of the petitioner, the petitioner crossed the age limit being 40 years and for this reason, the appointment of the petitioner has not been approved and he submits that there is no scope of interference with the order.

Questioning the defensibility of an order passed by a co-ordinate Bench in respect of similarly situated candidates, an appeal being APOT/28/2014 was preferred by the State of West Bengal which was disposed of by the Hon'ble

Division Bench presided by Rakesh Tiwari J.(as His Lordship then was), inter alia, by passing the following order:

"By the impugned judgment and order dated July 3, 2013, the learned writ court by taking note of the decision of the Hon'ble Apex Court in the case of Shaida Hassan vs. State of U.P., was pleaded to direct the concerned D.I. including all the authorities concerned to approve the appointment of the writ petitioner with effect from April 1, 2005 since when the petitioner's appointment was confirmed by the concerned school after condoning the age bar. The D.I. was also directed to release the arrear of D.A. of the petitioner with effect from 2009 bearing in mind the observations as made by the Court that a human approach should be taken in all deserving cases when no prejudice had been caused either to the institution or to the students or the State by reason of the petitioner being over aged and furthermore when there is no rule governing the field.

In our considered view, the learned Trial Court rightly directed the D.I. to approve the appointment of the writ petitioner/respondent as we do not find any ground to interfere with the impugned judgment and order of the learned Trial Court as the impugned order is not devoid of any merit.

The appeal and the connected application accordingly stand dismissed without any order as to costs."

In compliance with the order passed in WPO/201/2017, a reasoned order was passed by the D.I. of Schools making an observation that paragraph 3 of G.O.No.1691-SE(E) dated 20th September, 2001 clearly delineates that before placement it is to be confirmed that the teachers to be placed within the sanctioned strength had minimum qualification and was within the prescribed age limit at the time of initial appointment and the petitioner crossed 40 years of age on the date of her appointment at the school, hence the D.I. of School was not in a position to give any relief to the writ petitioner.

It is axiomatic that if any Court of law directs any authority to act in a particular manner, the said authority has no way out to consider the said matter in a different manner or in a different way. The D.I. of School was directed to consider the case of approval of appointment of the petitioner in the light of the judgments referred to in the order. Nowhere in the order it is reflected that the judgments referred to in the order passed in WPO/201/2017 was considered and the case of approval of appointment was considered and disposed of in the light of those judgments.

I may profitably refer a judgment of the Hon'ble Supreme Court of India delivered in case of *E.T. Sunup -vs- C.A.N.S.S. Employees Association* reported in AIR 2005 SC 115 wherein it was observed that it has become a tendency with the Government Officer to somehow or the other circumvent the orders of the court which shows complete lack of grace in accepting the orders of the Court.

The settled proposition of law is that one order of the court is to be complied with in letter and spirit. In the case at hand, in the guise of compliance of the order dated 4.12.2020, the same order has been passed by the D.I. of Schools concerned but with different words.

The candidate who does not have requisite educational qualification and the candidate who is over aged stand on different footing. Considering this aspect, the Hon'ble Division Bench while disposing of the appeal being APOT 28 of 2014 was pleased to observed that '*a human approach should be taken in all deserving cases when no prejudice had been caused either to the institution or to the students or the State by reason of the petitioner being over aged*'.

There is no scintilla of doubt that the petitioner is a deserved candidate and has been teaching the students in the school since 2012 without any blemish and she has been placed

in the vacancy arises within the sanctioned strength and the school authority has made recommendation for approval of her appointment to enable her to get the D.A and hence, in this case, the authority concerned was directed on repetitive occasions to take human approach instead of enforcing the rules in strict fashion.

For the reasons stated, the order dated 10th March, 2021 passed by the District Inspector of Schools (S.E.), Kolkata impugned in the writ petition cannot be sustained and hence, the same is quashed.

The Secretary, School Education Department, Government of West Bengal is directed to consider the case of approval of appointment of the petitioner in the light of the judgments referred to in WPO/201/2017 and also in the light of the judgment rendered in WPO/201/2017 after affording an opportunity of hearing to the petitioner within a period of four weeks from the date of communication of this order.

The petitioner is directed to produce a copy of this writ petition and the copies of the judgments referred to in WPO/201/2017 in the office of the Secretary, School Education Department, Government of West Bengal positively within ten days from date.

If the Secretary decides the case of approval of the appointment of the petitioner in favour of the petitioner, he shall take next follow-up action so that the appointment of the petitioner can be approved. In that event, needless to mention, all arrear D.A., as admissible to the petitioner shall be extended to her forthwith. However, if he decides the case against the petitioner, he shall pass a speaking order and shall communicate the same to the petitioner within a period of two weeks from the date of taking such decision.

Accordingly, WPO/205 of 2021 stands disposed of.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(PARTHA SARATHI CHATTERJEE, J.)