

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 1034 of 1998
+
IA No. CAN 4 of 2024

The Secretary, Raghunathpur High School & Anr.
versus
Shri Mihir Kumar Hazra & Ors.

For the Appellants : *Mr. Arabind Chatterjee, Ld. Sr. Adv.,*
Mr. Swarnendu Chatterjee,
Mr. Nilanjan Adhikari,
Mr. A. Mukherjee.

For the Respondent No.1 : *Mrs. Keya Bhattacharya,*
Mr. Ashok Kr. Pandey.

For the State : *Mr. Tapan Kumar Mukherjee, Ld. AGP,*
Mr. S. Naskar,
Ms. Debdooti Dutta.

Hearing is concluded on : *10th May, 2024.*

Judgment On : **25th June, 2024**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by the functionaries of the Raghunathpur High School (hereinafter referred to as said school) being the

Secretary and the President of the Managing Committee, challenging an order dated 06.07.1995 passed by the learned Single Judge in a writ petition preferred by one, Sri Mihir Kumar Hazra (hereinafter referred to as Mihir)/ the respondent no. 1 herein *inter alia* praying for a direction upon the appellants and the State authorities to approve and regularise his service in the post of an Assistant Teacher in the said school with effect from 16.11.1987.

2. The following dates would be very relevant for the adjudication of the *lis* :

26.07.1976 – Memo issued by the District Inspector of Schools (S.E), 24-Parganas (South) (hereinafter referred to as the DI) granting permission to the said school for filling up vacancies in different groups as per staff pattern in the following manner – Language: 4, Mathematics and Science: 3+1, Social Science: 2, Work-Education: 2, H.M.: 1, Total: 13 against 7 class units;

19.07.1987 – Resolution adopted by the Managing Committee of the said school pertaining to appointment of Mihir;

16.11.1987 – Memo issued by the Secretary of the said school appointing Mihir, a graduate in Bio (Science), as an Assistant Teacher in Science Group;

07.05.1990 – The Secretary of the said school wrote to the DI to grant approval to such appointment of Mihir enclosing the resolution copy;

16.06.1992 – The Secretary of the said school issued a reminder to the DI for approval of Mihir's appointment;

16.09.1992 – Writ Petition being C.O. No. 972 (W) of 1992 affirmed by Mihir;

11.11.1992 – Particulars required in connection with approval of appointment of Mihir forwarded to DI;

30.11.1992 – Mihir was forcibly driven out by the functionaries of the said school and such fact stands registered in a written complaint lodged by him;

13.01.1993 – An interim order passed in the said writ petition directing that the *'services of the petitioner will not be interfered with and he will be entitled to receive the current salary'*;

19.11.1993 – Affidavit-in-opposition filed on behalf of the respondent nos. 5 and 6 being the Secretary and the President of the Managing Committee;

24.11.1993 – Resolution adopted by the Managing Committee of the said school recording alleged interpolation and erasure in the contents of the minutes of the meeting dated 19.07.1987 and stating that the staff attendance register pertaining to the period from May, 1987 till August, 1989, is missing;

03.12.1993 – A surprise visit was conducted on behalf of the State respondents by two inspecting officers from the office of the DI;

09.12.1993 – Memo issued by the DI to the Secretary of the said school to clarify the interpolation and erasure of some words in the resolutions dated 19.07.87 and 12.02.89;

26.06.1995 - Affidavit-in-opposition filed on behalf of the State authorities being the respondent nos. 1, 2 and 3;

06.07.1995 – The writ petition was disposed by the learned Single Judge directing the DI to accord necessary approval to Mihir's appointment in the post of Assistant Teacher in Bio (Science) within a month from date of communication of the order;

July, 1995 – An appeal being FMAT 2270 of 1995 (re-numbered as FMA 1034 of 1998) along with a stay application filed by the functionaries of the said school challenging the order dated 06.07.1995;

27.11.1995 – Affidavit-in-opposition filed by Mihir to the application for stay;

14.12.1995 – Affidavit-in-reply filed on behalf of the appellants;

05.01.1996 – Order passed in the said appeal by a Coordinate Bench of this Court refusing to stay the operation of the order impugned as the learned advocate appearing for the writ petitioner/respondent undertook that in the event, the appeal succeeds, his client shall refund the entire salary which would be paid by the appellant and/or State;

19.09.1996 – Memo issued by the DI according provisional approval to Mihir in the post of Assistant Teacher in the said school with effect from 06.07.1995 till disposal of the appeal;

27.06.2006 – The appeal was dismissed for default by a Coordinate Bench of this Court;

21.05.2007 - Representation submitted by Mihir to the Headmaster of the said school with a prayer to allow him to rejoin his duties;

06.09.2010 – Writ petition being W.P. 19110 (W) of 2010 preferred by Mihir, *inter alia*, praying for a direction upon the DI to confirm the provisional approval granted in favour of Mihir and to allow him to rejoin the said school;

04.10.2010 – Writ Court passed an interim order directing the school authorities to permit Mihir to resume his duties with a further observation that Mihir shall be entitled to salary for the period he renders service and that the question of payment of arrears shall depend on the outcome of the writ petition;

30.06.2011 – A contempt application affirmed by Mihir alleging violation of the order dated 04.10.2010;

14.03.2012 – A Coordinate Bench of this Court allows the applications for restoration of appeal and for condonation of delay preferred by the appellants (CAN No. 9292 of 2010 and CAN 9820 of 2010);

27.07.2012 – Notice issued by the Hon'ble Supreme Court in the Special Leave Petition (hereinafter referred to as the SLP) preferred by Mihir;

29.11.2023 – The SLP disposed of as not pressed with liberty to take all the pleas as may be available before the Division Bench of the Hon'ble High Court;

09.01.2024 – An application being CAN 4 of 2024 preferred by the appellants to bring on record, the order passed by the Hon'ble Supreme Court on 29.11.2023 and other relevant documents as per the leave granted by the Hon'ble Supreme Court;

30.01.2024 – Affidavit-in-opposition filed by Mihir to the application being CAN 4 of 2024;

27.03.2024 – Affidavit-in-opposition filed by the DI;

12.04.2024 – An affidavit-in-exception filed by Mihir to the affidavit-in-opposition filed by the DI;

3. Mr. Chatterjee, learned senior advocate appearing for the appellants submits that Mihir did not have the essential educational qualification for appointment and approval to the post of Assistant Teacher in Biology in the said school and he had been illegally appointed by the then Secretary of the Managing Committee of the said school by a letter dated 16.11.1987 issued in his personal capacity without any discussion or deliberation with the members of the Managing Committee of the said school. The said letter of appointment does not even refer to any resolution of the Managing Committee. The said letter, thus, did not confer any indefeasible right upon Mihir to continue as an Assistant Teacher of the said school.

4. He argues that the purported resolution dated 16.11.1987 upon which reliance has been placed by Mihir in support of his appointment, suffers from the vice of interpolation and erasure and the same does not fortify Mihir's appointment in the said school.

5. He contends that the government orders issued by the competent authority detailing the procedure of appointment and the Management Rules have not been followed towards alleged appointment of Mihir in the post of Assistant Teacher. For filling up any post of Assistant Teacher, the school is required to obtain prior permission for filling up the vacancy from the DI and to then send a requisition to the concerned Employment Exchange for sponsorship of names of eligible candidates. The candidates sponsored, are thereafter called for an interview before a Selection Committee constituted by the Managing Committee of the school. The Selection Committee upon interviewing the candidates is required to constitute a panel of three eligible candidates and to forward the same to the Managing Committee for approval. After the Managing Committee approves such decision of the Selection Committee, the panel along with all relevant documents are forwarded to the DI. After scrutiny of all such documents, the DI, approves the panel. It is only after such grant of approval, the first empaneled candidate is asked to join the school. The Rules prescribe a period of validity of such panel. In the event, the first empaneled candidate does not join the school, the second empaneled candidate is granted an opportunity to join and if such candidate also fails to join, the third empaneled candidate is offered such appointment. The entire exercise, however, is required to be completed within the period of validity of the panel. The above procedure as laid down under the Rules has not been followed. No requisition was sent to the exchange. No competitive interview was conducted. Neither any panel was prepared by the Selection Committee nor any such panel was approved by the Managing Committee. In the said

conspectus, the mere issuance of the letter dated 16.11.1987 did not confer any legal right upon Mihir to claim appointment and approval as Assistant Teacher of the said school. The procedure, as discussed, has however been altered subsequently due to promulgation of the West Bengal School Service Commission Act, 1997.

6. Mr. Chatterjee argues that a perusal of the memo dated 26.07.1976 would reveal that there were two existing teachers, in the Science Group, amongst whom one was a teacher in Bio (Science), namely, Abdur Razzaq Khan. As such, there was no existing sanctioned vacancy in the post of Assistant Teacher of Bio (Science) on the date the purported letter of appointment dated 16.11.1987 was issued in favour of Mihir. The issuance of such letter of appointment by the Secretary, in his individual capacity, was thus *mala fide* and an act of fraud and the learned Single Judge erred in law in accepting the said appointment letter as sacrosanct being oblivious of the fact that there was no sanctioned vacancy in the post of Assistant Teacher in Bio-Science to accommodate the appointee. Such appointment is nothing but an instance of backdoor entry and ought not to have been protected. Such arguments, as advanced, were glossed over by the learned Single Judge and no finding was returned. Such infirmity warrants interference in appeal.

7. Mr. Mukherjee, learned Additional Government Pleader, appearing for State respondents adopts the submissions of Mr. Chatterjee and submits that no legal right of Mihir had been infringed in any manner whatsoever warranting interference of this Court. A surprise inspection was conducted

on behalf of the DI and upon perusal of the records of the said school, it was found that the contents of various resolutions had been interpolated and erased with a *mala fide* intent to accommodate Mihir as an Assistant Teacher in Bio (Science). In support of such contention, reliance has been placed upon a memo dated 09.12.1993 issued by the DI.

8. Drawing our attention to a memo dated 29.10.2013, Mr. Mukherjee submits that in terms of an order dated 21.10.2013 of the DI, a further inspection was conducted on 22.10.2013 and there was no trace of any appointment letter in the available records of the said school. Six retired teachers, who were present on the date of inspection, had also given written declaration stating that they had never seen Mihir in the said school. The purported letter dated 16.11.1987 was issued *suo moto* by the then Secretary of the said school by manipulating and tampering with the resolutions. The Secretary had illegally acted in a manner which would benefit a private party at the cost of the State authorities.

9. He argues that while passing the impugned order the learned Single Judge did not consider the staff pattern and availability of sanctioned vacancies at the relevant point of time. The post of Assistant Teacher in Bio (Science) had already been filled up on 05.05.1976 by appointing one Md. Abdul Razzak Khan and as such there was no sanctioned vacancy for accommodation of Mihir and that too without obtaining prior permission of the DI.

9A. He contends that non-preference of an appeal against the impugned order by the State authorities does not estop them from challenging the

findings of the learned Single Judge. In support of such contention, he has placed reliance upon the judgment delivered in the case of *Ravinder Kumar Sharman v. State of Assam & Ors.*, reported in (1999) 7 SCC 435.

10. Mrs. Bhattacharya, learned advocate appearing for Mihir submits that in the writ petition, an affidavit-in-opposition was affirmed on behalf of the State authorities on 19.11.1993 stating *inter alia*, as follows:

‘6. That be it noted that the post against which the petitioner was appointed as an Assistant Teacher in Science Group (Bio) was a vacant permanent post sanctioned by D.I. of Schools 24-Parganas (South) by Memo No. GA/1537 dt. 26.7.1976.

7. That in compliance with the assurance given by the School Authority to the petitioner for obtaining approval and regularization of his appointment as an Assistant Teacher in Science Group (Bio), the School Authorities used to send letters to the said D.I. of Schools time to time to that effect. This approved case was submitted by the then Secretary and Teacher-in-Charge of the School on 11.11.1992 to the office of the D.I. of Schools for consideration.

8. That subsequently the petitioner moved an application under Article 226 of the Constitution of India out of which the instant Civil Order arises in which Hon’ble Mr. Justice Susanta Chatterjee as His Lordship then was pleased to pass an order on 13.01.1993 and to direct *inter-alia* the respondents including the school authorities not to interfere with service of the petitioners and to release his current salary and respondents are directed to file affidavit-in-opposition within five weeks from date.

9. That it is a matter of great regret that the petitioner for no fault of his has been driven out from the said school forcibly on 30.11.1992 for which the petitioner has been compelled to lodge a complaint on 1.12.93, at Randrebarazar Police Station, District – 24-Parganas (South) being G.O. No. 6.

10. That the statements made in paragraphs 1, 2 and 3 and 4 of this affidavit are true to my knowledge and those in paragraphs 5, 6, 7, 8 and 9 are true to my information derived from the records of the case which I verily believe to be true.'

Upon affirmation of such facts, the DI cannot turn back and take a different stand by affirming a further affidavit about three decades after affirmation of the first affidavit.

11. She further argues that on the basis of the appointment letter issued on 16.11.1987, Mihir joined the post of Assistant Teacher in Bio (Science) and his continuance in the said post even though protected by an interim order passed on 13.01.1993, was interfered with and he was forcibly thrown out of the said school on 30.11.1993. Even after refusal of stay in the appeal on 05.01.1996, the authorities did not allow Mihir to resume his duties. On a purported plea of pendency of an appeal, Mihir's claim was kept in the doldrums without even complying with the order dated 04.10.2010 passed in the other writ petition preferred by Mihir. It is well-settled that any act of the authorities in defiance of the orders passed by the competent Court is a nullity. In spite of repeated orders directing the appellants to allow Mihir to continue in service, the appellants maintained a deceptive silence and Mihir suffered the distraught pain and was kept in animated tenterhooks in

anticipation of an employment and faced stone walled response from an apathetic administration. For the long pendency of the matter before the Court, Mihir was ultimately deprived of his right to serve as an Assistant Teacher since he attained the age of superannuation in the month of March, 2024.

12. In the dispensation of justice, Courts are prevented from innovating at pleasure. Neither can they don the helmet of a *'knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness.'* At all times, Courts are expected to draw *'inspiration from consecrated principles'* [See *'The Nature of Judicial Process'* by Benjamin Cardozo-J]. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. Equity regards as done, which should have been done. Bearing such principle in mind, this Court cannot help but observe that there may arise certain situations which require untangling of a complicated mesh of competing rights; where the Court may be required to innovate, not at pleasure but within the realm of perennial common law principles of equity and good conscience, so as to arrive at an equilibrium of rights i.e., find the best possible solution. Today, this Court finds itself in the midst of one of such situations.

13. Having heard the learned advocates representing the respective parties, the following realities emerge:

In spite of the interim the order passed in the first writ petition on 13.01.1993, the order dated 05.01.1996 passed in the stay application in connection with the appeal and the order dated 04.10.2010 passed in the

second writ petition, Mihir had not been allowed to resume his duties as Assistant Teacher of the said school. The dispute pertaining to appointment and approval of Mihir has continued from the year 1987 till date and in the midst thereof, Mihir has attained the age of superannuation. As such, he does not have the age and ability to pursue any other calling for his livelihood.

At the same time, as Mihir had not served in the said school with all continuity from the date of his appointment in the year 1987 till the date of his superannuation in the year of 2024, issuance of any direction to treat him in continuous service and to grant all consequential benefits would severely affect the State exchequer and that too for the laches on the part of the school authorities. It would also be an impossibility to issue direction for preparation of service book after admitted cessation of employer employee relationship and for conferring the benefits of the pension scheme upon Mihir. Payment of pensionary benefits is not a matter of course. Wedged between such circumstances and as award of compensation in a proceeding under Article 226 is a remedy available in public law, in our opinion, a balance would be maintained and the interest of justice would be subserved through issuance of a direction upon the respondents to pay compensation more so when the Constitution, through its Preamble, guarantees to all its people '*Justice*', in the deliverance of which, the Courts have developed a nuanced compensatory jurisprudence through a catena of judgments, for a wide compass of situations [See the judgment delivered in the case of

Satyanand Singh vs. Union of India and others, reported in AIR 2024 SC 1659].

14. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law laid down in the case of *Ravinder Kumar Sharma (Supra)*, however, the same is not applicable to the facts of the present case since in the order impugned no finding adverse to the stand of the State respondents, as detailed in the affidavit filed on their behalf, was arrived at by the learned Single Judge.

15. With these observations in mind, this Court shall now take note of the submissions advanced on behalf of the respective parties.

16. The adjudicatory field of the writ Court is solely on the basis of “*affidavit evidence*” [See the judgment delivered in the case of *Barium Chemicals Ltd. and another –vs- Company Law Board and others*, reported in AIR 1967 SC 295]. When a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the respondent, must plead and prove such facts by evidence which must appear from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the counter-affidavit, the Court will not entertain the point. [See the judgment delivered in the case of

Bharat Singh and others –vs- State of Haryana and others, reported in (1988) 4 SCC 534].

17. Dealing with the averments made in the writ petition, the State respondents clearly admitted that the post against which Mihir was appointed was a vacant permanent post sanctioned by DI *vide* a memo dated 26.07.1976 and that for no fault on his part, he was driven out of the said school forcibly on 13.11.1992 though prior thereto, the school authorities had themselves approached the DI for approval of appointment of Mihir. The name of Mihir was forwarded for approval in the prescribed proforma signed by the Secretary and Headmaster of the said school on 11.11.1992 stating *inter alia*, that Mihir had served in the said school prior to issuance of the letter of appointment for a period of 4 years and 11 months and that he had been appointed in a post sanctioned *vide* memo dated 26.07.1976. In the said conspectus, the argument that the letter of appointment issued by the then Secretary of the said school did not confer any right upon Mihir was rightly discounted by the learned Single Judge.

18. Indisputably, three posts in Mathematics and Science Group were sanctioned by the competent authority, as would be explicit from the memo dated 26.07.1976 issued by the DI. It had been the contention of the appellants as well as the State respondents that one, Md. Abdul Razzak Khan was appointed and approved as a Bio (Science) Teacher in the said school on 05.05.1976. From such sequence, it is thus explicit that even after appointment of Md. Abdul Razzak Khan, additional posts were sanctioned in the Mathematics and Science Group *vide* memo dated 26.07.1976 and

accordingly, the learned Single Judge rightly discounted the contention of the school that there was no existing sanctioned vacancy at the time of purported issuance of the letter of appointment on 16.11.1987 in favour of Mihir.

19. Mr. Chatterjee as well as Mr. Mukherjee had strenuously argued that there were interpolations and erasure of words in the resolution adopted in the meeting of the Managing Committee of the said school on 19.07.1987, on the strength of which, the letter of appointment was purportedly issued in favour of Mihir. Such fact was, however, not averred in the affidavit-in-opposition affirmed on behalf of the school authorities on 19.11.1993. Such alleged fact was brought on record for the first time in the stay application filed in connection with the appeal. No explanation is forthcoming as to why the said issue was neither averred in the opposition nor argued before the learned Single Judge. In the said conspectus and in the backdrop of the specific statement in the affidavit-in-opposition filed on behalf of the State respondents that Mihir was duly appointed in a vacant permanent post sanctioned by DI, the argument advanced on behalf of the appellants and the State respondents loses its force more so when the fact of purported inspection conducted on 03.12.1993 was not reflected in the affidavit-in-opposition affirmed on behalf of the State authorities on 26.06.1995. Mihir was not a fresh entrant in the school. Before issuance of the letter of appointment, Mihir had worked for more than four years, as would be explicit from the proforma for approval of appointment forwarded by the school authorities. To meet the exigencies, Mihir was appointed. Neither the

appellants nor the DI had produced any document to establish that for appointment to the post of a Science teacher in a high school, training qualification was mandatory in the year 1987.

20. Admittedly, in consonance with the order dated 05.01.1996 passed by the Coordinate Bench of this Court in the stay application, the DI himself *vide* a memo dated 19.09.1996, granted provisional approval to the appointment of Mihir in the post of Assistant Teacher in the said school with effect from 06.07.1995. Such provisional approval was not withdrawn by the approving authority. The past service rendered by Mihir, as would be explicit from the memo dated 11.11.92, also lends credence to his absorption. In the backdrop of such admitted facts, the sustainability of such approval cannot be challenged on the rudiments of facts which did not feature in the pleadings exchanged by the parties in the writ petition, moreso when there is no allegation of fraud against Mihir.

21. Any direction to regularise the entire tenure of service of Mihir from 1987 till 2024 and to grant all consequential benefits including pension would cause a greater loss and prejudice to the State authorities than the issuance of any direction upon them to pay of a lump sum amount to Mihir.

22. Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation in a proceeding under Article 226 is a remedy available in public law. The quantum of compensation would, however, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved. This Court is conscious that in this proceeding the

actual amount of loss suffered by Mihir cannot be calculated minutely and that the only endeavour should be to '*apply balm on the wound*'. Considering the peculiar facts and circumstances of the case and long pendency of the litigation for a period of more than 30 years, we are of the view that ends of justice would be met if the State Government is directed to pay a lump sum amount of Rs. 10 lakhs to Mihir.

23. Accordingly, this Court directs the State respondents to disburse an amount of Rs. 10 lakhs in favour of Mihir, within a period of four weeks from the date of communication of this order.

24. With the above observations and directions, the appeal along with the connected application and treating the writ petition, being WP 19110 (W) of 2010, as on day's list, are disposed of.

25. There shall, however, be no order as to costs.

26. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)