

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on: March 17, 2010

W.P.No.4391(W) of 2010

Krishna Gopal Pramanick

-vs-

The State of West Bengal & Ors.

POINTS:

Regularization of service-----Appointment as a temporary teacher by the school-----Refusal by District Inspector of Schools to approve the same-----Regularization, who can claim-----
Petitioner, if is entitled to regularization of service-----Service Law.

FACTS:

The petitioner in this Article 226 petition is seeking a Mandamus commanding the respondents to approve his appointment as an Assistant Teacher of Bio Science in Ahmadpur Sri Ramkrishna High School in Ahmadpur of the district Birbhum by regularization.

The Managing Committee of the institute appointed him as an Assistant Teacher of Bio Science by issuing a letter and by giving uninterrupted service and in view of the successive resolutions adopted by the institute recommending regularization of his service, he acquired a right to approval of his appointment. The refusal of the District Inspector of Schools concerned to approve his appointment was arbitrary, unfair and unreasonable.

HELD:

It is evident that the Managing Committee of the institute appointed the petitioner on a purely temporary basis. It is not the petitioner's case that he was selected and appointed according to the Recruitment Rules to a sanctioned post. A right to approval of appointment can be claimed only by an employee selected and appointed according to the Recruitment Rules. The Recruitment Rules do not provide for absorption into the institute's employment by regularization of service of an employee appointed on a temporary basis. There is no source wherefrom the petitioner's claimed right to approval of his appointment can flow.

PARA-4

In reality, the petitioner is seeking enforcement of a non-existent right. No Mandamus can be issued by the High Court under Article 226 for enforcement of a nonexistent right. Nothing ever prevented or will prevent the petitioner from participating as a candidate, if eligible, in the selection process duly initiated for filling any vacancy in the institute. But he is not entitled to an

appointment on a permanent basis through an extra legal method. In the name of regularization of service a selection process for making an appointment to the post of Assistant Teacher of Bio Science cannot be initiated de hors the recruitment rules limiting the opportunity of appointment only to one candidate, the petitioner.

PARA-5

Mr. D.N. Bose and Mr. Ashutosh Pal, for the petitioner.
Mrs. Shanti Das and Ms. Sanjukta Roy, for the state.

The Court:

1. The petitioner in this art.226 petition dated February 26, 2010 is seeking a mandamus commanding the respondents to approve his appointment as an Assistant Teacher of Bio Science in Ahmadpur Sri Ramkrishna High School in Ahmadpur of the district Birbhum by regularisation.

2. His case is this. The managing committee of the institute appointed him as an Assistant Teacher of Bio Science by issuing a letter dated August 8, 1988, Annexure A at p.23. By giving uninterrupted service and in view of the successive resolutions adopted by the institute recommending regularisation of his service, he acquired a right to approval of his appointment. The refusal of the district inspector of schools concerned to approve his appointment is arbitrary, unfair and unreasonable. In his previous cases filed under art.226 this court was of the view that his case should be considered.

3. The question is whether the petitioner has a right to approval of his appointment by regularisation of his service.

4. It is evident from the letter dated August 8, 1988 that the managing committee of the institute appointed the petitioner on a purely temporary basis. It is not the petitioner's case that he was selected and appointed according to the recruitment rules to a sanctioned post. A right to approval of appointment can be claimed only by an employee selected and appointed according to the recruitment rules. The recruitment rules do not provide for absorption into the institute's employment by regularisation of service of an employee appointed on a temporary basis. I am, therefore, unable to see any source wherefrom the petitioner's claimed right to approval of his appointment can flow.

5. In reality, the petitioner is seeking enforcement of a non-existent right. No mandamus can be issued by the high court under art.226 for enforcement of a nonexistent right. Nothing ever prevented or will prevent the petitioner from participating as a candidate, if eligible, in the selection process duly initiated for filling any vacancy in the institute. But he is not entitled to an appointment on a permanent basis through an extra legal method. In the name of regularization of service a selection process for making an appointment to the post of Assistant Teacher of Bio Science cannot be initiated de hors the recruitment rules limiting the opportunity of appointment only to one candidate, the petitioner.

For these reasons, the petition is dismissed. No costs. Certified xerox according to law.

(Jayanta Kumar Biswas, J