

Constitutional Writ
PRESENT: The Hon'ble JUSTICE I.P. MUKERJI
Judgment on: 11.06.2010
W.P. NO. 16941(W) OF 2005
PHANI BHUSAN MONDAL & ORS.
Versus
THE STATE OF WEST BENGAL & ORS.
WITH
W.P. NO. 25065 (W) OF 2008
ASAD ALI & ORS.
Versus
STATE OF WEST BENGAL & ORS.

POINTS

Appointment – Petitioners claim that they were the organizer teachers of the school – Circular for regularisation if applies – Recognised school meaning of –West Bengal Board of Secondary Education Act 1963, Management of Recognised Non-government Institutions (Aided and Unaided) Rules 1969.

FACTS

The school in question is Kanua Bhawanipur High School, Post Office Isadpur, in District – Malda. Classes up to VI were recognised as early as from 1967. Classes VI and VII were so recognised from 1973. How class VIII was recognised as nobody has raised this question in this writ application. The dispute arose after recognition of classes IX and X from 1st May, 2005. The government calls this stage by stage recognition as “up gradation” of the school. Much prior to such recognition a District Level Inspection Team (DLIT) conducted an inspection of the school in 1997 and found that writ petitioner Nos. 1, 2, 3 and 6 were rendering services in the school. On the basis of this report the writ petitioners claim regular appointment.

HELD

If an educational institution is granted aid by the state, then that institution has interalia to make appointment of its teaching and non teaching staff

according to the statute or administrative rules made by the government.

Para 2

The circulars for regularisation of teachers and non-teaching employees who are bona fide employed in a particular school upon its recognition are very rational. A school before recognition is a private school, privately owned and privately managed. From the moment it is recognised, governmental control pervades it. Now, suppose class IX and X, are sought to be recognised by the government, as in this case. These classes or grades are bound to have a body of teaching and non-teaching staff. The moment the school is recognised the above Management of Recognised Non-government Institutions (Aided and Unaided) Rules 1969 and the said West Bengal School Service Commission Act, 1997 would govern appointments in that school.

Para 6

Teachers who were found employed during inspection of the school would be termed as an organizer teacher

Para 16

Writ Petition is partly allowed by directing the respondent authorities and each of them to regularise or formalise the appointment of the writ petitioner Nos. 1,2,3 and 6, within a period of 8 weeks from the date of communication of the order. As there is no evidence from the report of the State Inspection Team about the employment of writ petitioner Nos.4,5,7 and 8, writ application by them is accordingly dismissed.

Para 17

CASES CITED

1. Headmistress, Garifa Arati Academy for Girls' – v – Gita Banik reported in 2008(1) CLJ 453

2. Manindra Nath Sinha & Ors – v – State of West Bengal & Ors. reported in (2006)4 CHN 513.

3. State of West Bengal & Ors. –v – Harendranath Mondal & Ors, reported in (2008)1 CHN 582

4. Secretary, State of Karnataka – v – Uma Devi (3): 2006 4 SCC 1

5. State of West Bengal & ors. –Vs Gopal Singh & ors, (2008) 1 WBLR (Cal) 229

6. State of West Bengal – v – Smritikana Maity reported in (2008)1 CHN 582

7. Sri Bhudev Biswas vs State of West Bengal & ors reported in (2006)2 Cal LT 231 paragraph 8 which was followed by the High Court in an unreported judgment dated 29th April 2010 *Lakshman Chandra Singha & Anr – v - The State of West Bengal & Ors*

For the petitioners : Mr. Partha Chakraborty

For the State : Mr. Santi Das,
[in W.P. No. 16941(W) of 2005] Ms. Sanjkuta Roy

For the State : Mr. Saikat Banerjee
[in W.P. No. 25065(W) of 2008]

I.P. MUKERJI, J.

1) These two writ applications are being decided by this common judgment.

2) Over the years, the Government of West Bengal has made a very comprehensive and rational body of legislation and administrative rules for educational institutions, for their recognition, management, appointment of staff, granting of aids and acquiring qualifications by students. We are here concerned with a non government aided secondary school which is part of that system. Two fundamental elements of the educational policy of the Government of West Bengal have to be looked into to decide this writ application. One is the policy of providing government aid to educational institutions. The other is its making recommendation for recognition of educational institutions. On its recommendation, the concerned board of education under the respective Acts, recognizes an educational institution for

the purpose interalia of allowing students of that school to sit for the board examination and qualifying in it. Very often these two types of recognition are overlapping or made concurrently. An institution may be recognised by the board on the recommendation of the State Government as well as granted aid by it more or less at the same time. If an educational institution is granted aid by the state, then that institution has interalia to make appointment of its teaching and non teaching staff according to the statute or administrative rules made by the government. For example, the West Bengal School Service Commission Act, 1997. An educational institution might remain completely private in its management, without seeking any aid from the government. Yet that institution may be recognised by the board for the purpose of taking of examination by its students. However, if a particular educational institution is recognised by the board as well as aided by the government financially, then appointments to that institution, as stated by me above have to be made according to governmental rules.

3)The state legislature enacted the West Bengal Board of Secondary Education Act, 1963. Under that Act it framed rules called the Management of Recognised Non-government Institutions (Aided and Unaided) Rules 1969. There is also a body of administrative circulars/ executive instructions, orders etc. regarding regular appointment of those teachers who were bona fide teaching in a particular school just prior to its recognition by the said government. These circulars are valid and operative. The legality of these circulars is not in question in this writ application. According to these administrative orders there is provision for inspection of a school or part of a school by a district level inspection team, when the question of recognition of that school or part of school, is being considered by the government. The purpose of such inspection by this team is to verify facts and satisfy themselves as to the teaching and non-teaching staff who are bona fide working in the school at the time of its recognition. The policy of the government is if these teachers or non-teaching staff are found bona fide employed in the school at the time of its consideration for recognition, they would be appointed as teachers or non teaching staff of the recognised school, subject to fulfillment of certain conditions.

4)In fact circular No. 895-Edn(S)/4A-53/87 dated 30th September 1992 of the Education Department, Government of West Bengal is as follows:

“To : The Director of School Education, West Bengal Sub: Approval of appointment of Organiser Teacher and nonteaching staff in Secondary Schools upgraded by the West Bengal Board of Secondary Education.

The question of according approval of the Organiser Teachers/non-teaching staff of the Secondary Schools upgraded by the West Bengal Board of Secondary Education on the recommendation of the State Government has been engaging the attention of Government for sometime past.

2. On careful consideration of all the aspects of the matter it has since been decided by the State Government that the following principles shall apply in the matter of granting approval to the appointments of organising teachers and non-teaching staff of non-Government Secondary Schools (Jr. High Schools) consequent upon such schools being upgraded by the West Bengal Board of secondary Education on the recommendation of the State Government.

Upon upgradation of recognised 2-Class Jr. High Schools/4 Class Jr. High Schools qualified teaching and non-teaching staff as have been appointed by the schools for running of the unrecognized higher classes if any, may also be considered as organising staff for approval of their appointment subject to the following conditions.

(i) The name(s) of such teacher(s) and non-teaching staff are recommended in the final inspection report leading to such upgradation;

(ii) Such staff possessed the prescribed minimum qualification for their respective posts as the time of initial appointment;

(iii) Such staff were within the prescribed as limit on the date of initial appointment as was existing on that date;

(iv) Such teaching and non-teaching staff shall be approved in order to seniority (as recorded in the inspection report) strictly conforming to the existing approved staff pattern.

3. No exception to the aforesaid norms shall be made in any case without specific prior approval of the State Government.

4. The order issues in supersession of the previous Government order issued in this regard i.e. upgradation of non-Government Secondary High Schools (Jr. High Schools) as well as orders/instructions issued by the director of School Education.

5. The order shall take effect immediately”

4) There is the intervention of another Act entitled West Bengal School Service Commission Act 1997 which says that appointment to the post of teachers in a recognised and aided non government school has to be made by its managing committee on the recommendation of the regional commission.

5) There is also provision for recognition of a school by stages. Schools or grades up to class V or class VI may be recognised initially. Thereafter, other grades may be recognised.

6) In my opinion, the above circulars for regularisation of teachers and non-teaching employees who are bona fide employed in a particular school upon its recognition are very rational. A school before recognition is a private school, privately owned and privately managed. From the moment it is recognised, governmental control pervades it. Now, suppose class IX and X, are sought to be recognised by the government, as in this case. These classes or grades are bound to have a body of teaching and non-teaching staff. The moment the school is recognised the above Management of Recognised Non-government Institutions (Aided and Unaided) Rules 1969 and the said West Bengal School Service Commission Act, 1997 would govern appointments in that school.

Therefore, for teachers to be regularly appointed recommendation has to come from the commission and then only can they be regularly appointed.

7) Suppose, the service commission does not recommend them. They are immediately thrown out of employment. Therefore, these circulars providing for absorption of these bona fide staff of the school at the time of its recognition, are very just and reasonable.

8) The school in question is Kanua Bhawanipur High School, Post Office Isadpur, in District – Malda. Classes up to VI were recognised as early as from 1967. Classes VI and VII were so recognised from 1973. I do not know how class VIII was recognised as nobody has raised this question in this writ application. The dispute arose after recognition of classes IX and X from 1st

May, 2005. The government calls this stage by stage recognition as “up gradation” of the school. Much prior to such recognition a District Level Inspection Team (DLIT) conducted an inspection of the school in 1997 and found that writ petitioner Nos. 1, 2, 3 and 6 were rendering services in the school. On the basis of this report the writ petitioners claim regular appointment.

9)The respective dates of appointment of the said writ petitioners in the school are as follows:

“Name of Person Date of issuance of (Writ petitioner) Appointment letter

- 1. Ashad Ali 18.05.1979**
- 2. Phani Bhusan Mondal 10.02.1984**
- 3. Jayanta Sarkar 25.09.1995**
- 6. Smt. Mukti Roy 23.09.1995”**

10)The issue in this writ application arises out of refusal of the government to absorb or regularly appoint writ petitioners who are allegedly employees of the school, after its recognition.

11)The state has not filed any affidavit-in-opposition to either of these writ petitions. The facts pleaded there stand unchallenged. But at the time of hearing Mr. Saikat Banerjee, advocate appearing for the state has made very extensive arguments opposing the prayers in the writ applications. He has also filed a very elaborate written submission.

12)He has contended that that the writ petitioners cannot be called the “organizer staff” of the school, relying on **Headmistress, Garifa Arati Academy for Girls’ – v – Gita Banik reported in 2008(1) CLJ 453**. According to that decision an organizer teacher is one who was serving in the unrecognised school or its unrecognised part from the date of its inception. Other teachers who joined after establishment of the school are to be called “teacher in position”.

13)Mr. Banerjee has also relied on the case of **Manindra Nath Sinha & Ors – v – State of West Bengal & Ors.** reported in (2006)4 CHN 513. He submits that all the above circulars have been declared illegal by that decision. He has also cited **State of West Bengal & Ors. – v – Smritikana Maity & Ors. with State of West Bengal & Ors. –v – Harendranath Mondal & Ors,** reported in (2008)1 CHN 582 and submitted that if the initial appointment was illegal the writ petitioners could not claim regularisation on the basis of the above circulars. He has also followed up this argument by citing **Secretary, State of Karnataka – v – Uma Devi (3): 2006 4 SCC 1.** He has also cited **State of West Bengal & ors. –Vs Gopal Singh & ors,** reported in (2008) 1 WBLR (Cal) 229 to say that organising staff must be teachers in the first resolution of the organising managing committee.

DISCUSSION AND CONCLUSIONS

14)In the absence of any affidavit-in-opposition by the state there is no challenge whatsoever to the District Level Inspecting Team (DLIT) report which found the writ petitioner Nos. 1,2,3 and 6 as bona fide employed in that particular school for quite sometime before inspection. Further, there is no case that these writ petitioners were illegally or irregularly appointed by the managing committee of the school. When this particular fact stands established this case is different in facts from **Manindra Nath Sinha & ors – vs. – State of West Bengal & ors,** reported in 2006 (4) CHN 513 which held that the organising managing committee of the school in question was not a legally constituted organizing committee and therefore appointments by the so called organising managing committee of the school could not vest the petitioners in that writ application with a right of regular appointment. The judgment said that the appointment in question in that appeal was dehorse the existing statutory enactment. I do not think that the judgment declared any administrative order or circular as illegal. Such also was the finding in facts in **State of West Bengal – v – Smritikana Maity** reported in (2008)1 CHN 582 which held that the appointment in question was made by an illegally constituted managing committee of the school.

The school in question got recognition of its primary section in 1967. From 1967 it was running classes IX and X, as will appear from paragraph 4 of the petition. About 30 years passed between the first recognition of the school and the inspection which was made in 1997. Now about 43 years have passed. I do not think that any teacher who had participated in the founding of the school could be found teaching now. Therefore, as far as the other two decisions as to who are to be treated as organizer staff, **Headmistress, Garifa Arati Academy for Girls' – v – Gita Banik reported in 2008(1) CLJ 453** and **West Bengal State of West Bengal & ors. –Vs – Gopal Singh & ors**, reported in **(2008) 1 WBLR (Cal) 229** are concerned, I would observe that those decisions define “organizer teacher” in the facts and circumstances of those cases. In the **Garifa Arati Academy** case the school was recognised up to primary level with effect from 1st January, 1974, upto class VII from 1st January 1979. The inspection of the school was made on 20th December, 1981 and 11th April 1983. The concerned teacher was appointed on 26th August, 1982 and joined the school on 1st September 1982. Therefore, primary part of the school was recognised only six or seven years before the rest of it was inspected for recognition. Now, in this type of school it is very relevant that those who are there at the time of inception of the school are to be treated as organiser teachers. Because when the gap of years is not much between establishment or part recognition of the school and its inspection for recognition, no teacher or other staff has a reasonable duration of teaching or working in the school. There is possibility of non bona fide teachers and staff claiming regularisation. Therefore, it is also reasonable when this gap is very short to treat the founders of the school as the organiser members. In the case of **State of West Bengal & ors. –Vs – Gopal Singh & ors** (Supra) it does not appear from the facts as to when the school was established and when it tried to claim recognition. Therefore, these decisions have to be taken on their peculiar facts.

15) According to the above circular dated 30th September 1992 organiser teachers are those teachers who bonafide teach in the unrecognised part of a school, undergoing recognition by stages. The school in question is such a school. The above circular applies to this school and was not placed before the Division Bench deciding the above two cases as to who is an organiser teacher.

16)Therefore, the ratio of the case **Sri Bhudev Biswas vs State of West Bengal & ors** reported in (2006)2 Cal LT 231 paragraph 8 which was followed by me in an unreported judgment dated 29th April 2010 *Lakshman Chandra Singha & Anr – v - The State of West Bengal & Ors.* holding that teachers who were found employed during inspection of the school would be termed as an organizer teacher, would be more appropriate in the facts of this case.

17)Therefore, I would partly allowed the writ by directing the respondent authorities and each of them to regularise or formalise the appointment of the writ petitioner Nos. 1,2,3 and 6, within a period of 8 weeks from the date of communication of the order. As there is no evidence from the report of the State Inspection Team about the employment of writ petitioner Nos. 4,5,7 and 8, writ application by them is accordingly dismissed. There will be no order as to costs.

18)Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

(I.P. MUKERJI, J.)