

Paschimbanga Prathamik Sikshak Sikshan Prapts Bakar-O-Sikshak Samiti and Others

Vs

President, West Bengal Primary School Council and Others

Civil Appeals Nos. 11521-22 and 11523 of 1995

(S. C. Agarwal, M. K. Kukherjee JJ)

05.12.1995

JUDGMENT

M. K. MUKHERJEE, J. -

IA No. 2 of 1994 in SLP (C) No. 14944 of 1994

1. The application is allowed. The applicant-Respondent 5 be transposed as Petitioner 6. Office will amend the cause title of the petition accordingly.

SLPs (C) Nos. 8911-12 of 1994 with SLP (C) No. 14944 of 1994

2. Special leave granted.

3. These appeals are directed against the common judgment and order dated 30-3-1994 rendered by the Calcutta High Court disposing of a number of letters patent appeals and writ petitions. Facts relevant for disposal of the appeals are as under.

4. In 1983 two writ petitions were filed in the High Court by the appellants herein on behalf of and at the instance of a large number of applicants seeking appointments as Assistant Teachers in different primary schools of West Bengal, being run and managed by District Primary School Boards/Councils within their respective territories. They contended that though they had the requisite educational qualifications and basic trainings for such appointments the Boards/Councils were preparing panels and giving appointments to untrained applicants and persons of their own choice in utter disregard of the rules framed and circulars issued in that behalf. A learned Singh Judge of the High Court allowed the writ petitions by a judgment dated 28-9-1989 with a finding that the appointment of untrained candidates as Assistant Teachers in the primary schools was unauthorised and illegal and a direction that the respondents should appoint only trained candidates in the recognised primary schools in the different districts of the State against existing vacancies.

5. Assailing the above judgment of the learned Single Judge the respondents preferred a letters patent appeal before a Division Bench of the High Court which was disposed of on 10-5-1991 with the following directions :

"Accordingly, taking all the facts and circumstances into consideration, I direct the different District School Boards and the authorities concerned to take immediate steps for preparation of fresh panels in accordance with law and in terms of the rules referred to above. I further direct that all appointments against the additional posts sanctioned by the State Government from time to time due

to enhancement in the roll strength in the existing schools in different districts be filled up by the trained candidates only. So far as the normal vacancies existing in the schools are concerned, at least 50% must be filled up by trained candidates only. In respect of remaining 50% of such vacancies, untrained candidates should be considered along with trained candidates on some rational and reasonable principle."

6. Against the above judgment and order the appellants moved this Court by filing special leave petitions which were disposed of on 30-9-1991 with the following observations and directions :

"There are certain rules which relate to selection of teachers. The Division Bench of the High Court has dealt with the manner and procedure of the selection. Taking note of the fact that there are a good number of vacancies existing and rules have been made prescribing the process to be followed, the court has laid down that 50% of the normal vacancies should be filled up by the trained teachers and all additional vacancies should go to them and the remainder of the 50% of the normal vacancies could be filled by trained and untrained teachers. In a part of its decision the Division Bench has indicated what actually is meant by the term 'rational and reasonable principle'. We gather that in terms of the directions of the Division Bench, panels have now been drawn up. We are of the view that, if and when, the panels are under challenge it should be open to the aggrieved parties to take their definite stand one way or the other depending upon the facts of the case, but the general guidelines given by the High Court do not require to be disturbed."

7. On a clarification sought of the above order this Court made the following order on 27-4-1992 :

"If there are any panels drawn which are inconsistent with the directions dated 10-5-1991 of the Division Bench of the High Court and if any appointments are made from such inconsistent panels, it will be open for the petitioners to challenge the same before the High Court."

8. Thereafter some of the appellants herein again moved a writ petition before a learned Judge of the High Court alleging that the respondents were preparing panels and giving appointments in utter disregard of the earlier order of the Division Bench of the High Court dated 10-5-1991 as affirmed by the Supreme Court and contrary to the rules framed and circulars issued in that behalf and prayed for cancellation of the panels so prepared and illegal appointments given. On that petition an interim order was made on 24-9-1992 to the effect that the district authorities should prepare panels in accordance with the order of the Division Bench dated 10-5-1991 after giving an opportunity to all the members of the writ petitions to appear before the Interview Board. An interim injunction restraining the respondents from issuing any appointment letter was also passed. Similar interim orders were issued on other writ petitions filed on behalf of the applicants. Against the interim orders passed on some of those petitions, the respondents filed letters patent appeals before a Division Bench of the High Court and obtained their stay. In course of hearing of one of those matters the Division Bench felt that the appeals, as also all the connected writ petitions, should be heard together and ordered accordingly.

9. In course of the hearing of the matters, it having been brought to the notice of the Division Bench that the panels were being prepared in utter breach of the directions given by the earlier Division Bench of the High Court in its order dated 10-5-1991 and the extant rules and circulars and that the legitimate claims and aspirations of the trained teachers were being ignored, the Bench appointed

two special officers to submit an illustrative inspection report about the preparation of panels of two of the districts, namely, Midnapur and Howrah. On perusal of the reports submitted by the two officers the Division Bench found that there were gross irregularities in regard to the preparation of panel so far as Midnapur District was concerned (some of the instances of such irregularity have been detailed in the impugned judgment). On such finding the Bench gave the following directions :

"As regards District Midnapur, it has been submitted that the Director, School Education (Primary) has already granted his approval in the matter and as such, question of reopening the same does not and cannot arise. We are, however, not inclined to accept this contention as advanced by Mr Bhuiya appearing for the Midnapur School Council. This Court cannot lend a deaf ear and a blind eye to the irregularities as noted in the report of the Special Officers. The approval, if any, cannot thus be sustained and the same, therefore, is set aside and cancelled. The Director of School Education (Primary) is directed to consider the matter afresh and it is hereby ordered accordingly. This reconsideration of the matter by the Director shall be effected having due regard to the report of the Special Officers and in the event the Director is of the view that the report of the Special Officers and the instances mentioned therein require further consideration, he would do so and recast the panel accordingly. This order is passed upon consideration of the fact that this Court ought not to usurp the power of the Director in the matter of grant of approval. The Director is to act strictly in accordance with law having due regard to the provisions of law and the judgment of this Court in the earlier matter as noted above."

10. In respect of the panel prepared for the district of Howrah, the Bench observed that it could not be said to be that irregular though certain instances had been brought to its light; but the irregularities did not constitute a major problem for the purpose of giving effect to the panel. The Bench however directed the Director of School Education (Primary) to consider the observations of the Special Officers and proceed to grant approval to the appointments in terms of the panels upon proper verification of the anomalies as pointed out by the Special Officers. The Court further stated as under :

"Be it recorded here that we are not trying to assess the suitability of the candidates; but the irregularities cannot be obliterated. We have been given to understand during the course of hearing that the Director of School Education (Primary) has already given his approval in regard to the panel, but in our view, the matter ought to be examined further in the light of the report of the Special Officers and the Director of School Education (Primary) should recast the panel, if necessary, upon removal of the anomalies, if there be any, and if the Director considers the same to be an anomaly at all."

As regards the other districts the Court had this to say :

"As regards the other districts, we do not have any basic material before us so as to declare the selection process as irregular, but considering the experiences of the two districts, we direct that the Director of School Education (Primary) should also consider the matter in regard to the grant of approval to the panel prepared by the Council and pass orders in accordance with law having due regard to the judgment of this Court as noted above."

11. The above judgment of the Division Bench is under challenge in these appeals at the instance of the appellants and their grievance is that having found that there were gross irregularities in the preparation of the panels for the district of Midnapur, the Division Bench ought to have quashed the panel and issued directions for preparation of fresh panel instead of recasting only. They further contended that irregularities of similar magnitude were committed in respect of all the districts wherever panels were prepared and appointments given, including the district of Howrah and, therefore, all such panels were required to be quashed and fresh panels prepared in accordance with law, keeping in view the rules and circulars relating to the appointment of primary teachers and the earlier Division Bench judgment of the High Court dated 10-5-1991 referred to above.

12. After the special leave petitions, out of which the instant appeals arise, were filed this Court passed the following order on 17-2-1995 :

"The matter was considered by the High Court specially in the context of two districts, namely, Midnapur and Howrah and certain irregularities were found by the High Court in the matter of preparation of panel for these two districts on the basis of reports of Special Officers appointed by the High Court to undertake inspection of examination sheets and the relevant records relating to the selection. No such inspection was undertaken by the High Court in respect of other districts. Since irregularities in the matter of selection are alleged to have been committed in other districts also, we consider it appropriate that a sample inspection be made with regard to the selections that have been made in rest of the districts other than Midnapur and Howrah. We, therefore, direct the District Judge of the district concerned to nominate two experienced advocates practising in his court as Special Officers to conduct a sample inspection of the relevant record relating to selection and preparation of panel for appointment of Assistant Teachers in that district. The sample inspection should be broad-based to cover the various circles in the district. The report of the Special Officers after the said inspection may be forwarded to this Court by the District Judge concerned within four weeks from the date of the receipt of this order. The President, West Bengal Primary School Council (Respondent 1), as well as the Director of School Education (Primary) (Respondent 4), are directed to make available the relevant records to the District Judge concerned for the purpose of completing the inspection as directed by this Court.

List after six weeks."

13. By subsequent orders this sample inspection was limited to panels prepared for the districts of Malda, Cooch-Bihar, Birbhum, Hooghly, Purulia and Burdwan. In compliance with the above direction the learned Advocates nominated by the District Judges have submitted their respective reports.

14. With the assistance of the learned counsel for the parties we have carefully gone through the reports regarding the preparation of the panels of the districts referred to above. Our such exercise persuades us to hold that except in the district of Malda there has not been any large-scale illegalities or irregularities in the preparation of panels so as to entitle us to quash the same altogether. The same cannot be said, however, in respect of the district of Malda as we find that all norms of fairplay and adherence to rules have been given a go-by in preparing the panel. So far as the district of Midnapur is concerned we have already noticed that the High Court has found gross irregularities in preparing the same and we find no reason to differ from the view expressed by the learned

Judges. It is, of course, true that except in the above two districts, namely, Malda and Midnapur there are some instances of irregularities in the preparation of the panels for the other districts aforementioned but considering the number of candidates who were called for interview it cannot be said that the irregularities were of such a magnitude that the entire panel should be held to be bad. But, keeping in view the nature of the irregularities and the illegalities committed in the preparation of the panels in the districts of Malda and Midnapur, we feel that the mere recasting of the panels, as directed by the High Court in respect of the panel of Midnapur would not meet the ends of justice and the legitimate aspirations of the bona fide and deserving candidates. We, therefore, quash the panels for recruitment to the post of primary school teachers in the districts of Malda and Midnapur and direct the respective Board/Councils to prepare fresh panels in accordance with law, keeping in view the directions of the High Court in its earlier judgment dated 10-5-1991 and give appointments from those panels only. As the applicants, at whose instance the writ petitions were filed in the High Court by their societies, which ultimately gave rise to the present appeals, have been ventilating their legitimate grievances for a number of years it is just and desirable that they should not be debarred from being considered for appointment solely on the ground that they have crossed the age bar provided under the rules, notifications or circulars, as the case may be. Needless to say that this direction of ours is to be complied with while preparing the initial panels in terms of this order and not subsequent panels. Since the matter is long pending the panels should be prepared within a period of six months from today. Any appointments already made from the panels of the above two districts may be continued on the clear understanding that such appointments shall stand terminated on corresponding appointments being made from the fresh panels unless, of course, such appointees also qualify to be empanelled therein. As regards the other districts concerned we, however, make it clear that the directions given by the High Court in the impugned judgment for being complied with before giving appointment from the panel prepared for the district of Howrah, will also apply to them and in complying with the above directions the respondents shall keep in view the observations and findings of the Special Officers appointed by this Court.

15. Before we part with this judgment we wish to place on record that in course of the hearing of these appeals a grievance was raised on behalf of the appellants that some appointments have been made even from outside the panels and that directions may be issued annulling those appointments. We are unable to entertain the above grievance as it was not raised earlier. However, the appellants, if so advised, may agitate their such grievance in the appropriate forum.

16. The appeals are thus disposed of. There will be no order as to costs.

IAs Nos. 22-23 of 1995 in SLPs (C) Nos. 8911-12 of 1994.

17. Since the connected appeals have been disposed of no order need be passed on these applications which also stand disposed of.