

20.12.2023
Sl No.6
Court No.8
(gc)

FMA 821 of 2017
CAN 1 of 2017 (Old No: CAN 2241 of 2017)

The State of West Bengal & Ors.
Vs.
Kalidhan Banerjee & Ors.

Mr. Supriyo Chattopadhyay, Ld. A.G.P.,
Mr. Rezaul Hossain,
...for the Appellants.
Mr. Biswabrata Basu Mallick, Ld. A.G.P.,
...for the D.P.S.C., Hooghly.
Mr. Ranjit Kumar Jaiswal,
Mr. Nandalal Pradhan,
...for the Respondents.
Mr. Suresh Ch. Manna,
...for the Respondents/Writ Petitioners.

1. The appeal is arising out of an order dated 25th January, 2016 as corrected on 5th February, 2016 in connection with the contempt rule issued in WPCRC No.422(W) of 2015 arising out of WP No.32959(W) of 2014 (Kalidhan Banerjee & Ors. Vs. Nirmalendu Adhikari & Ors.).
2. On 25th January, 2016, an order was passed by the learned Single Judge in the contempt petition directing the Chairman of the Hooghly District Primary School Council to grant approval to sixty-six persons in compliance of an order passed in the writ petition on 9th January, 2015. They are the writ petitioners. It is not in dispute that the Chairman, D.P.S.C.,

Hooghly on 8th January, 2014 after referring to various orders passed in similar matters by the Hon'ble High Court as well as the Hon'ble Supreme Court forwarded their names to the Commissioner of School Education for further necessary action. In recommending their case, the Chairman, D.P.S.C., Hooghly had taken into consideration the following facts as would appear from the said letter and for the purpose of brevity are set out hereinbelow:-

“(1) The writ petitioners are Sixty One of 205 in earlier Writ Petition being C.O. No.4323 of 1994 disposed of by an order dated 7th June, 1995 by Justice Altamas Kabir, as his Lordship then was.

(2) By an order dated 7th June, 1995, the earlier order dated 29th of November, 1994, was recalled and modify to an extent. Thus, C.O. No.4323 of 1994 was disposed of as under.

(3) (a) In the light of the Division Bench Order dated in May, 1991, reported in 1991(1) CL.J. 479, directing consideration of the case of the petitioners whose cases were not considered at the time of preparation of panel, to prepare a supplementary panel, if permitted in law within two months from communication of the order and appoint thereafter from

supplementary panel, if earlier panel exhausted.

(b) Modified to the extent that in the event of 197 candidates amongst 205 whose names were sponsored and considered, there are some names have not been considered, ad hoc committee, Hooghly District Primary School Council shall consider the cases for preparation of panel.

(c) The Employment Exchange was to see whether the names of remaining eight candidates were wrongly omitted.

(d) The Judgment and Order dated in May, 1991 was affirmed by the Honourable Supreme Court and the same was reported in 1996 (7) SCC 333.

4. The present 61 writ petitioners are those out of 197 candidates who did not get appointment. Their right to ventilate was clarified as available the Judgment reported 1996(7) SCC 333. The writ petitioners therefore has paid for mandatory directions upon the Council for issuing appointment letter in their favour of.

5. From the records it appears that the present writ petitioners along with other trained candidates have filed a writ petition in the Honourable High Court at Calcutta being C.O. No.13340 of 1983 and same was allowed by the Honourable Justice B.C. Roy, as his Lordship then was. The rule which was

issued in the said writ application was finally disposed of by the Honourable Justice Mohitosh Majumdar, as his Lordship then was directing the Councils to panel the candidates against the vacancies in the district of the State of West Bengal with immediate effect in such a manner that trained candidates are given an appointment in the recognized pri-Schools of each district to fill up the vacancies for which the panel is prepared and reference shall be given to the trained candidates. The matter went up in appeal before the Supreme Court and the Supreme Court in the Judgment reported in 1996(7) SCC 333 held that the Writ Petitioners who had been ventilating their illegitimate grievance for a number of years should not be debarred from being considered for appointment solely on the ground that they have crossed the age bar.”

3. In spite of such recommendation, the Commissioner of School Education did not take any decision as a result whereof a writ petition was filed being WP 32959(W) of 2014 in which on 9th January, 2015 an order was passed by directing the Commissioner of School Education to take a decision within two weeks from the date of communication of the said order and to communicate his decision to the writ petitioners by one week thereafter. The

Commissioner of School Education in purported compliance of the said order passed an order on 19th August, 2015 directing the D.P.S.C., Hooghly once again to verify the claims of the present writ petitioners following the existing policy of the State Government prevailing at the material point of time and pass reasoned order supported with cogent reasons in accordance with law.

4. The Commissioner of School Education appears to have taken into consideration the letter dated 8th January, 2014 and 1st August, 2014. The Commissioner has, *inter alia*, recorded the submission on behalf of the writ petitioners that they were applicants against advertisement dated 12th March, 1981 issued by the then President, District School Board, Hooghly and the panel for appointment to the posts of primary school teacher was prepared in 1983. They have been approaching the Court since then for ventilating their grievances and ultimately on 9th January, 2015, an order was passed directing the Commissioner of School Education to take a decision with regard to the

recommendation made by the Chairman, D.P.S.C., Hooghly.

5. The petitioner has filed a contempt petition for non-compliance of the order dated 9th January, 2015. In the contempt proceeding, it has been recorded that the petitioners have been successful up-to the Hon'ble Supreme Court and are fighting litigation for about 26 years and they have been running from pillar to post for their appointment. They have been denied appointment in spite of orders existing in their favour. The Hon'ble Single Judge has taken into consideration the letter dated 8th January, 2014 by the Chairman, Hooghly District Primary School Council intimating that the petitioners are eligible for approval. Two years passed. Thereafter, without any steps being taken, the new Commissioner of School Education unaware of the aforesaid development had passed a cryptic order in purported compliance of the order dated 17th June, 2015 and the learned Single Judge was of the view that it was not compliance of the order passed by His Lordship.
6. The direction of the learned Single Judge upon the Commissioner of School

Education to “bring the approval letter in Court on the adjourned date” has resulted in the appeal being filed. The aforesaid order was corrected subsequently on 5th February, 2016. However, the correction was with regard to the inadvertent typographical errors. The substance of the order, however, remained unaltered.

7. Surprisingly, the appeal was filed on 28th February, 2017 almost after one year and the record would show that on 7th June, 2017 when the matter was listed first, the appellants were not represented. The matter is pending since then. On 5th December, 2023 upon noticing that the Commissioner of School Education in its letter dated 17th January, 2017 requested the Chairman, D.P.S.C., Hooghly to send necessary information as sought in the Memos dated 2nd February, 2016 and 19th February, 2016 respectively in relation to the queries made in the said letter and finding that no explanation has been offered on behalf of the Commissioner of the School Education or the Chairman, D.P.S.C., Hooghly thereafter we directed the said authorities to be present with an affidavit explaining their conduct. The

affidavit and submission creates utter confusion with regard to the real status of the matter. It seems that both the authorities are completely oblivious of their duties and responsibilities and could not offer any explanation for not responding to the letter dated 17th January, 2017. In fact, confusion prevailed in Court as well as the Chairperson DPSC, Hooghly had failed to offer any explanation for not responding to the urgency raised by the Commissioner of School Education as to find out whether the appellants have furnished any information as required in terms of the letter dated 2nd February, 2016. The communication dated 17th January, 2017 would unmistakably show that a tabular form prepared by the Commissioner of School Education with the help of the documents submitted by the learned Advocate representing the petitioners were shared with the Chairman of D.P.S.C., Hooghly with a request to respond to the said queries. However, the Chairman of D.P.S.C., Hooghly ignored the said correspondence. The last sentence of the said letter dated 17th January, 2017 reads as follows:-

“This should be treated as extremely urgent.”

8. In spite of such specific direction from the Commissioner of School Education, the Chairman of D.P.S.C., Hooghly did not feel it necessary to assist the Commissioner of School Education in arriving at a just decision in terms of the order passed by the learned Single Judge. In a contempt proceeding, it is no answer that they have complied with the order and hence a fresh cause of action arises by reason of such order. In fact, the Commissioner was directed to take a decision on the basis of the recommendation of the Chairman of D.P.S.C., Hooghly but the Chairman failed to take a decision in absence of materials made available by the Chairman of D.P.S.C., Hooghly. The Chairman of D.P.S.C., Hooghly was, in fact, requested once again to verify the claims of the present writ petitioners following the existing policy of the State Government prevailing at the material point of time and pass reasoned order supported with cogent reasons in accordance with law. Once the learned Single Judge has directed the Commissioner of School Education to take

a decision, he had no authority to delegate it to the Chairman, D.P.S.C., Hooghly. In any event, the subsequent developments clearly show a complete apathy and neglect on the part of the Chairman, D.P.S.C., Hooghly in providing necessary details to the Commissioner of School Education, West Bengal to comply with the order passed by the learned Single Judge. We have been informed that the contempt proceeding is pending.

9. The affidavits filed by the Chairperson, D.P.S.C. Hooghly and the Commissioner of School Education are conspicuously silent that the development had taken place after the communication dated 17th January, 2017. It seems that they are completely oblivious about the existence of the said letter and it clearly shows the manner in which responsible Officers of the State deal with important matters. The Commissioner of School Education did not offer any explanation for not pursuing the matter with the Chairman, D.P.S.C., Hooghly for non-compliance with the requisition dated 17th January, 2017.
10. We are unhappy with the conduct of the Commissioner of School Education as well

as the Chairman, D.P.S.C., Hooghly, the manner in which they have proceeded with the matter. The Chairperson D.P.S.C has acted irresponsibly. The alleged contemnors are now attempting to nullify the documents on which the petitioners relied and were being considered by the Chairman while preparing and forwarding the draft to the Chairperson D.P.S.C. to respond urgently. They cannot escape the contempt proceeding by relying upon absence of relevant documents at this stage. However, no final order has been passed in the contempt proceeding. The contempt proceeding shall be listed before the learned Single Judge having the determination to dispose of this matter as the fact remains that the petitioners have suffered due to the lackadaisical and irresponsible behaviour of the Chairman, D.P.S.C., Hooghly and the Commissioner of School Education, West Bengal.

11. Both the alleged contemnors are holding public office and it is expected that they would comply with the order in true letter and spirit.
12. The appeal stands dismissed with costs assessed at Rs.50,000/- to be paid by the

Commissioner of School Education and Chairperson D.P.S.C. Hooghly in equal proportion to the writ petitioners from their own resources and not from the public exchequer.

13. However, the payment of costs as directed, however, is reserved and postponed till the disposal of the contempt application on merits. In the event the learned Single Judge is of the view that the alleged contemnors have wilfully and deliberately violated the order in addition to any sentence appropriate to the act of contempt, the aforesaid costs shall be payable by the each of the alleged contemnors.
14. Accordingly, the appeal and the application stand dismissed.
15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)