

A

STATE OF WEST BENGAL AND ANR.

v.

ALPANA ROY AND ORS.

SEPTEMBER 26, 2005

B

[ARIJIT PASAYAT AND G.P. MATHUR, JJ.]

Service Law:

C

Regularization of services of a teacher—Filing of writ petition by the incumbent—Single Judge of the High Court directing the Education Board/ Authorities to examine genuineness of the claim—Report submitted by the Board indicating that the appointment, as claimed by the incumbent, was in gross violation of the statutory rules—Single Judge directing the Board to regularize the service of the incumbent—Affirmed by the Division Bench of the High Court—On appeal, Held: Single Judge set aside the report even without indicating any reasons—Though approving authority owes responsibility to take into account relevant governing statutes before according its approval to appointment, but the High Court has proceeded as if approval is an empty formality—Granting of such approval also entails certain financial implications—High Court erred in not examining the basic issues involved in the case—In the absence of approval of the designated authority for regularization of services of the incumbent, directions of the High Court for regularization of her services not maintainable.

E

Judgment—Absence of reasons—Implication of—Discussed.

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Respondent No. 1, working as teacher in a School, filed a Writ Petition before the Calcutta High Court for directions to the West Bengal Board of Primary Education for regularization of her services. Single Judge of the High Court directed the Board to examine the genuineness of the claim of the petitioner that she was appointed by the Managing Committee of the School.

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The Board submitted a report stating that the appointment of the petitioner was in gross violation of the statutory rules, orders and procedure for appointment of teachers. The report of the Board was totally brushed aside by the High Court directing the Chairman, District Primary School Council to re-consider the case of regularization of services of the petitioner in the light of the fact that she had been working for a long time. Appellant/State

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authorities challenged the order of Single Judge of the High Court. By the impugned order, Division Bench affirmed the order of the Single Judge. Hence the present appeal. A

Appellant-State/authorities contended that the Board found that the document purported to be the order of appointment is in fact manipulated/fabricated document; that no resolution of the Managing Committee was produced in confirmation of the proposed appointment; that the findings recorded by the Board were set aside by the Single Judge of the High Court without indicating any reason thereto; that the Rules governing the field clearly provide that the appointing authority is the Board; and that after having accepted the position that without obtaining approval of the Board no appointment could be made, the question of regularization of services of the incumbent does not arise. B C

Respondent-writ petitioner contended that she has rendered service for nearly quarter of a century without any salary; that she had challenged the correctness of the findings of the Board regarding manipulation of the order of appointment, but the High Court did not consider that aspect. D

Allowing the appeal, the Court

HELD: 1.1. Both the Single Judge and the Division Bench have overlooked the basic features of the case and have proceeded to grant relief to the writ petitioner. The Board, on examination of all relevant documents, came to hold that the document which was claimed to be the order of appointment was a fabricated one. Further, no resolution of the Managing Committee was produced. The Single Judge set aside the report even without indicating any reasons and directed that approval to writ petitioner's appointment should be accorded. [486-F, G] E F

1.2. It is the function of the authority/body granting approval to examine whether in a particular case, approval is to be accorded. The approving authority's function is not formal one. It has a duty to decide whether approval is to be accorded, taking into account governing statutes. The High Court has proceeded as if approval is an empty formality. On according of the approval certain financial implications of the State come into operation. Without pointing out as to how the decision of the Board was wrong, the High Court should not have set aside the order. The Division Bench even did not consider these aspects and held that even if there was no document, the appellants cannot take advantage of the legal principles after such a long lapse H

A of time. The conclusion is clearly confusing. [486-G; 487-A-B]

B 1.3. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable. [487-C]

Breen v. Amalgamated Engineering Union, [1971] 1 All E.R. 1148 and *Alexander Machinery (Dudley) Ltd. v. Crabtree*, (1974) LCR 120, referred to.

C 2. It is not necessary to go into the question as to who is the appointing authority. Dispute was raised in that regard. The undisputed position being that it was designated functionary of the State to accord approval. In the absence of any approval the direction as given by the High Court for regularizing the services of respondent No. 1-writ petitioner, cannot be maintained. The High Court was clearly in error in holding that even if the initial appointment was illegal, in view of the purported fact that the school required some more teachers, there was deemed acceptance of the appointment.

[487-G; 488-A, B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5895 of 2005.

E From the Judgment and Order dated 10.9.2003 of the Calcutta High Court in M.A.T. No. 4117 of 1999.

Tapash Ray and Satish Vig for the Appellants.

F Bijan Kumar Ghosh, Kanak Chatterjee and Rajesh Srivastava (NP) for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

G The State of West Bengal and its functionaries have challenged the correctness of the order passed by a Division Bench of the Calcutta High Court affirming the judgment passed by learned Single Judge.

The factual background in a nutshell is as under:

H Respondent No. 1 (hereafter referred to as the 'writ petitioner') filed a

Writ Petition bearing No. C.O. 11932 (W) of 1989 before the Calcutta High Court. While the writ petition was pending, interim orders were passed directing the West Bengal Board of Primary Education (in short the 'Board') to consider whether the claim of the writ petitioner that she was appointed by the Managing Committee of the School i.e. Tangra Prathamik Vidyatan, Calcutta with effect from 2.1.1976, was correct. After examining various documents and taking into account the statements of the writ petitioner and the Secretary of the Managing Committee of the School it was noted that the document claimed to be the original appointment letter contained several over-writings and appeared to be a manipulated and fabricated document. Further, the resolution of the Managing Committee in respect of the proposed appointment was not produced. In the so-called letter of appointment also, there was no reference to any resolution of the Managing Committee for making the appointment. It was also noted that the school was recognized with effect from 1.1.1974 and several conditions were stipulated. One of these conditions stipulated was that no additional teacher was to be appointed or suspended from service without the prior approval of the Directorate of Education. In the list of approved teachers, name of the writ petitioner did not find place. All appointments to the post of primary teachers were to be made from the panel prepared by the District Primary School Council duly approved by the Director of School Education, West Bengal. In view of the factual position, as noted, it was held that the appointment, if any, as claimed by the writ petitioner is in gross violation of the statutory rules, orders and procedures and there was no genuine grievance which could be considered. The writ petition was disposed of by order dated 22nd November, 1999. The report of the Board was totally brushed aside and a direction was given to the Chairman, District Primary School Council to re-consider the case in the light of the fact that she was working for a long time and to regularize her appointment in the said post within a stipulated time, after giving the writ petitioner an opportunity of hearing and after passing a reasoned order. Though it was pointed out by the present appellants that in view of the findings recorded by the Board, the question of regularization does not arise, the High Court was of the view that the said order of the Board was the subject matter of challenge and the order was set aside subject to decision in the writ petition. No reason was indicated as to why the order of the Board was being set aside. That order of learned Single Judge was challenged by the present appellants before the Division Bench. By the impugned order, the Division Bench held that the object of rendering primary education cannot be lost sight of and merely because the writ petitioner's name was not included in the panel of selected teachers, she cannot be deprived of the benefits of her claim. It was noted that there is a

A dispute as to whether the Managing Committee was appointing authority or the District School Board was the appointing authority. The High Court held that since the name of the writ petitioner was included in the list of unapproved teachers for a long time, this gives her right for approval even if her appointment was made *de hors* the Rules. There may not be any right on the appointee to claim regularization, but the State cannot take advantage of any legal principle and deny approval. Accordingly, the view of learned Single Judge was affirmed.

In support of the appeal, learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. It was found by the Board that the document purported to be the order of appointment is a manipulated and fabricated document and no resolution of the Managing Committee was produced as regards the proposed appointment. The findings recorded by the Board in this regard were set aside without indicating any reason by the learned Single Judge. The Division Bench did not go into that question at all and proceeded on other premises which have also no relevance. The Rules governing the field clearly provide that the appointing authority is the Board. After having accepted the position that without approval the appointment cannot be made, the question of regularization does not arise, the Division Bench should not have dismissed the appeal.

Per contra, learned counsel for respondent No. 1- writ petitioner submitted that the writ petitioner has rendered service for nearly quarter of a century without any salary. The writ petitioner had challenged the correctness of the Board's view regarding manipulation of the order of appointment. If the High Court has not considered that aspect, the writ petitioner cannot be blamed. In any event, according to him, this is not a fit case for interference.

We find that both learned Single Judge and the Division Bench have overlooked the basic features of the case and have proceeded to grant relief to the writ petitioner. The Board, on examination of all relevant documents, came to hold that the document which was claimed to be the order of appointment was a fabricated one. Further, no resolution of the Managing Committee was produced. Learned Single Judge set aside the report even without indicating any reasons and directed that approval to writ petitioner's appointment should be accorded. It is the function of the body granting approval to examine whether in a particular case, approval is to be accorded. The approving authority's function is not formal one. It has a duty to decide whether approval is to be accorded, taking into account governing statutes.

The High Court has proceeded as if approval is an empty formality. On according of the approval certain financial implications of the State come into operation. Without pointing out as to how the decision of the Board was wrong, the High Court should not have set aside the order. The Division Bench even did not consider these aspects and held that even if there was no document, the appellants cannot take advantage of the legal principles after such a long lapse of time. The conclusion is clearly confusing.

Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union*, [1971] 1 All E.R. 1148 observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree*, (1974) LCR 120 it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

In the present case it is not necessary to go into the question as to who is the appointing authority. Dispute was raised in that regard. The undisputed position being that it was designated functionary of the State to accord approval, in the absence of any approval the direction as given by the High Court for regularizing the services of respondent No. 1 -writ petitioner, cannot be maintained. The reasoning of the High Court that there was no overt action on the part of the District Inspector of Schools to regulate initial recruitment

A process or in the absence of any direction or intimation about initiation of regular recruitment has no relevance to the dispute at hand. There appears to be non-application of mind by the learned Single Judge and the Division Bench to the basic issues. The High Court was clearly in error in holding that even if the initial appointment was illegal, in view of the purported fact that the school required some more teachers, there was deemed acceptance of the appointment. This view is also indefensible. Order of the learned Single Judge and judgment of affirmation by the Division Bench are set aside. The appeal is allowed but without any order as to costs.

S.K.S.

Appeal allowed.

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