

Writ Appeal
Judgement on---30.4.2010
F.M.A.597 of 2009
With
C.A.N.1758 of 2009.

Points:

Residential certificate: For appointment of a para teacher whether residential certificate issued by the authority before the advertisement is required- Constitution of India Art.226

Facts:

The respondent no.13 was not permanently residing within the area of the concerned Village Education Centre and the residential certificates issued in favour of the said respondent no.13 by different authorities could not be relied upon since the same were not issued before the publication of the advertisement for the post of additional para teacher in the concerned school. On the earlier occasion, while considering the previous writ petition filed by the petitioner herein being W.P.No.9569 (W) of 2008, a learned Judge of this Court directed the District Magistrate to look into the grievances of the appellant/writ petitioner and take a decision strictly in accordance with the law after giving an opportunity of hearing to all the parties and also look into the letter dated 6th July, 2007 which was issued by the Block Development Officer, Amta-I.

The District Magistrate, Howrah and District Project Director, Sarva Sikshya Abhijan, Howrah upon hearing all the respective parties including the appellant/writ petitioner and the respondent no.13 herein came to the specific findings that the grievance of the appellant/writ petitioner is devoid of any merit.

Held :

It was not a condition precedent that a candidate should submit residential certificate issued by the competent authority before publication of the advertisement. From the employment notice issued by the concerned school it appears that a candidate is required to submit residential certificate issued by the Pradhan of the local Gram Panchayat. There is no dispute that the

competent authority issued residential certificates in favour of the respondent No. 13 which the said District Magistrate on enquiry found valid and acceptable for appointment to the said post of additional para teacher in terms of the said advertisement. Para--9

Cases sited:

Dipitimayee Parida Vs. State of Orissa & Ors-----(2009)
2 WBLR (SC) 59

Sandhya Rani Biswas Vs. Tarak Chandra Ghosh and Anr. in
F.A.261 of 2006 with CAN 3502 of 2008

Mr. Rabindra Narayan Dutta,
Mr. Hare Krishna Halder.
...For the Appellant/
Petitioner.

Mr. S. Banerjee,
Ms. Moupiya De.
...For the State.

Mr. Tulsidas Maity.
...For the Respondent
Nos.4 & 5.

Mr. Jhumur Chakraborty.
...For the Respondent
Nos.9, 10 & 11.

Mr. K. K.Dutt,
Ms. N. Ghosh.
...For the Respondent
No.13.

The Court:

Being aggrieved by and dissatisfied with the order dated 3rd November, 2008 passed by a learned Judge of this Court in W.P.No.23259 (W) of 2008, writ petitioner preferred the instant appeal and also filed a stay application in connection with the said appeal. The said appeal and the connected application have been listed before us today for hearing.

2) It has been argued on behalf of the learned Advocate representing the appellant/writ petitioner that the respondent no.13 was not permanently residing within the area of the concerned Village Education Centre and the residential certificates issued in favour of the said respondent no.13 by different authorities could not be relied upon since the same were not issued before the publication of the advertisement for the post of additional para teacher in the concerned school.

3) On the earlier occasion, while considering the previous writ petition filed by the petitioner herein being W.P.No.9569 (W) of 2008, a learned Judge of this Court directed the District Magistrate to look into the grievances of the appellant/writ petitioner and take a decision strictly in accordance with the law after giving an opportunity of hearing to all the parties and also look into the letter dated 6th July, 2007 which was issued by the Block Development Officer, Amta-I.

4) From the records we find that the District Magistrate, Howrah and District Project Director, Sarva Sikshya Abhijan, Howrah upon hearing all the respective parties including the appellant/writ petitioner and the respondent no.13 herein came to the specific findings that the grievance of the appellant/writ petitioner is devoid of any merit. The findings of the said District Magistrate as specifically recorded in his order are set out hereunder:

“Findings –

As per the enquiry report sent by the BDO,

Amta-I vide Memo No.1967 Dated3/09/07, residential proof of Binata Ghuku is considered as valid.

The Pradhan of Amta GP issued the residential certificate to Binata Ghuku after verification of all the matter and as per existing rule of SSM, any elected member can issue residential certificate to candidate for applying in the post of Para Teacher hence it will also be considered as valid documents for Binata Ghuku.

As per the Educational qualification of Sib Goswami (Petitioner) for Geography Post, he passed the Economic Geography which is not equivalent to the Geography subject teach in school and as per existing rule one person must study a subject in graduation level for which he/she has applied in Upper Primary Schools.

Considering the all above noted facts the grievance of Sib Goswami (Petitioner) is nullified from this end & Binata Ghuku should continue her duty as Para Teacher at Amta Pitamber High School as per previous decision.”

5) It has been argued on behalf of the appellant that the said District Magistrate, Howrah while deciding the grievances of the appellant relied upon further documents which the learned Single Judge on the earlier occasion did not permit. However, the learned Single Judge in the order under appeal made it clear that the Court did not debar either the District Magistrate or the B.D.O. from calling for or submitting a fresh enquiry report.

6) Undisputedly, the District Magistrate, Howrah after giving a reasonable opportunity of hearing to all the concerned parties including the appellant/writ petitioner and the respondent no.13 herein and further

considering the relevant records and documents came to the specific finding that the documents submitted by the respondent no.13 as proof of the residence are all valid documents. The said District Magistrate, Howrah further came to the specific conclusion that the appellant/writ petitioner did not fulfil the requisite educational qualification for the post of Geography teacher in the concerned school since the appellant/writ petitioner passed the Economics Geography which according to the District Magistrate, Howrah cannot be treated as equivalent to the Geography subject.

7) Considering the aforesaid report of the District Magistrate, Howrah, learned Single Judge refused to grant any relief to the appellant/writ petitioner and accordingly dismissed the said writ petition.

8) Going through the report of the District Magistrate, Howrah we are also satisfied that the respondent no.13 fulfilled the eligibility criteria for appointment to the post of additional para teacher and the documents submitted by the respondent no.13 relating to the residence were proved to be valid on due enquiry.

9) Furthermore, it was not a condition precedent that a candidate should submit residential certificate issued by the competent authority before publication of the advertisement. From the employment notice issued by the concerned school we find that a candidate is required to submit residential certificate issued by the Pradhan of the local Gram Panchayat. There is no dispute that the competent authority issued residential certificates in favour of the respondent No. 13 which the said District Magistrate on enquiry found valid and acceptable for appointment to the said post of additional para teacher in terms of the said advertisement.

10) In the aforesaid circumstances, the learned Single Judge has rightly refused to interfere with the findings of the District Magistrate, Howrah.

11) The learned Advocate of the appellant/petitioner referred to a decision of the Hon'ble Supreme Court in the case of *Dipitimayee Parida Vs. State of Orissa & Ors.*, reported in (2009) 2 WBLR (SC) 59 and submits that the concerned authority should not have awarded 8 marks to the respondent no.13 on account of the residence specially when the said respondent no.13 was not a resident of the concerned area which we refuse to accept since the District Magistrate, Howrah on proper enquiry specifically held that the documents submitted by the respondent no.13 as proof of residence are valid documents. Therefore, the aforesaid decision cited by the learned Advocate of the appellant has no manner of application in the facts of the present case.

12) The learned Advocate of the appellant/writ petitioner also relied on a decision of the Division Bench of this Court in the case of *Sandhya Rani Biswas Vs. Tarak Chandra Ghosh and Anr.* in F.A.261 of 2006 with CAN 3502 of 2008 and submits that fact not disputed need not be proved. In the present case, according to the appellant/petitioner, respondent no.13 did not specifically deny the allegations in the affidavit-in-opposition and, therefore, the charge levelled against the said respondent no.13 by the appellant/writ petitioner should be deemed to be admitted.

13) We are, however, unable to accept the aforesaid contentions of the learned Advocate of the appellant/writ petitioner since the District Magistrate, Howrah upon hearing the respective parties and on examination of the documents submitted by the respective parties arrived at the specific finding that the documents submitted by the respondent no.13 as

proof of residence are all valid documents and furthermore, the appellant/writ petitioner did not satisfy the required educational qualification for the post of Geography teacher in the school in question.

14) For the aforementioned reasons, we do not find any error and/or infirmity in the decision of the learned Single Judge and, therefore, we refuse to interfere with the same.

15) In the aforesaid circumstances, both the appeal and the connected stay application stand dismissed as we do not find any merit in the same.

16) In the facts of the present case, there will be no order as to costs.

Photostat plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.

(Pranab Kumar Chattopadhyay, J.)

(Syamal Kanti Chakrabarti, J.)