

73
13.06.2024
Ct. No. 11
rrc

MAT 2184 of 2023
with
IA No. CAN 1 of 2023
[Dr. Achina Kundu (nee Majumdar Bhattacharyya)
Vs. Md. Danish Farooqui & Ors.]

Mr. Soumya Majumdar
Mr. Souvik Nandi
Mr. Indranil Nandi
Mr. Sayak Konar

..... For the Appellant

Mr. Sirsanya Bandyopadhyay

.... For the State

Mr. Vivekananda Bose
Mr. Sankha Biswas
Mr. Ankan Das
Mr. Abhrajit Roychowdhury

**.... For the writ petitioner/
Respondent**

Mr. Subhranghsu Panda
Ms. Mithu Singha Mahapatra

... For the W.B.C.S.C.

Ms. Debjani Ghosal

.... For the U.G.C.

Mr. Nilotpal Chatterjee
Mr. Satyaki Banerjee

..... For the Calcutta University

Mr. Neil Basu
Mr. Rahul Kumar Singh

..... For the respondent nos. 28 to 31

The present appeal has been preferred by the appellant challenging the orders dated 5th October, 2023 and 6th October, 2023 passed in a writ petition being WPA 24026 of 2023. The appellant herein was impleaded as respondent no. 26 in the said writ petition and by the

orders impugned, the service of the appellant, who was working as a Reader in the Jogesh Chandra Chowdhury Law College (hereinafter referred to as the said college), was terminated and she was restrained from entering into the college premises.

The said writ petition was preferred by a student pursuing the LL.B. Course in the said college, *inter alia*, praying for revocation of the recommendation towards appointment of the Principal and other teaching staff of the said college, who did not have the requisite qualification to serve in their respective posts. The writ petition came up for hearing before the learned single Judge on 5th October, 2023 and in the absence of the respondent no. 26, the order of termination was passed. In the next order dated 6th October, 2023, the learned single Judge upon perusal of further documents observed that *'the observation of this court as to not having proper qualification for the teacher (Dr. Achina Kundu) of a college was correct'*.

The Principal of the said college earlier preferred an appeal being MAT 2009 of 2023 challenging the said orders in which similar directions were passed against her. By an order dated 11th October, 2023, the direction towards removal of the Principal and the direction restraining her from entering the college premises, were set aside and the learned single Judge was directed to decide the writ petition granting liberty to the parties to

file their respective affidavits. The writ petition being WPA 24026 of 2023 was thereafter dismissed by an order dated 12th October, 2023 with a cost of Rs.1,00,000/-. In the midst thereof, the appellant herein preferred an appeal being MAT 2038 of 2023 challenging the orders impugned in the present appeal. In view of dismissal of the writ petition on 12th October, 2023, the said appeal was dismissed as withdrawn by an order dated 13th October, 2023. Thereafter, a review application was preferred by the writ petitioner/respondent no. 1 herein and the same upon contested hearing was allowed by an order dated 17th October, 2023, recalling the order of dismissal of the writ petition and the same was directed to be placed in the original file and number with all interim orders that were passed in the said writ petition. Thereafter, the present appeal has been preferred.

Drawing our attention to the averments made in the paragraphs 6 and 7 of the stay application, Mr. Majumder, learned advocate appearing for the appellant submits that the writ petition was moved on 5th October, 2023 without service of any copy of the same upon her. The subsequent order dated 6th October, 2023 was also obtained in the absence of the appellant and without effecting proper service.

He argues that in the absence of the appellant, the learned single Judge ought not to have passed an order of termination against her in hot haste without even

granting an opportunity of hearing and as such the order being palpably violative of the principles of natural justice is not sustainable in law.

He contends that the writ petition itself was not maintainable since no legal right of the petitioner was infringed and the writ petition was preferred suppressing material facts.

Mr. Bose, learned advocate appearing for the respondent no.1 vehemently opposes the appellant's prayer and submits that the present appeal itself is not maintainable. Having withdrawn the earlier appeal preferred against the self-same orders, the present appeal could not have been preferred by the appellant moreso when the order passed in review by which the earlier interim orders were reimposed had not been challenged by the appellant. There exists no justifiable reason to permit the appellant to invoke the appellate jurisdiction again. In support of such contention reliance has been placed upon the judgments delivered in the cases of *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior & Ors.*, reported in (1987) 1 SCC 5 and *M. J. Exporters Private Limited Vs. Union of India & Ors.*, reported in (2021) 13 SCC 543.

Drawing our attention to the contents of paragraphs 7 and 8 of the impugned order dated 5th October, 2023, Mr. Bose submits that the appellant herself admitted that she did not have the appropriate qualification to be

appointed to the post of Reader. In view thereof, the orders impugned do not, in fact, cause any prejudice to the appellant moreso when the fact that she does not have the appropriate qualification is reflected from an order dated 18th March, 2020 passed by the Special Secretary to the Government of West Bengal, Higher Education Department pursuant to an order passed in an appeal being MAT 458 of 2016. A copy of the said memo, as produced, be kept on record. Indisputably, the appellant does not have the requisite qualification and as such application of the principles of natural justice would be futile. In support of such contention reliance has been placed upon the judgment delivered in the case of *Ashok Kumar Sonkar Vs. Union of India & Ors.*, reported in (2007) 4 SCC 54.

Mr. Bose further submits that on the date the first order was passed in the writ petition, the appellant herself submitted an application for voluntary retirement/resignation which had been annexed at page 40 of the stay application. In the backdrop of such sequence of facts, the appellant cannot feign ignorance about the impugned orders passed in the writ petition.

Mr. Bandyopadhyay, learned advocate appearing for the State respondents submits that possession of requisite educational qualification is mandatory. Admittedly the appellant did not have the requisite

qualification and as such, her service was rightly interfered with.

He further informs this Court that the issue of voluntary retirement/resignation of the appellant is pending consideration in a writ petition filed by the appellant being WPA 18715 of 2023.

Mr. Chatterjee, Ms. Ghosal and Ms. Singha Mahapatra, learned advocates enter appearance on behalf of the Calcutta University, the University Grants Commission, and the West Bengal College Service Commission respectively.

Drawing our attention to the averments made in paragraph 2 of the stay application, Mr. Majumder submits that the issue pertaining to the qualification of the appellant is pending consideration in an appeal being FMA 658 of 2022 in which she is enjoying an interim order passed on 31st March, 2023. The earlier appeal being MAT 2038 of 2023 was withdrawn since on the said date the writ petition itself was not pending. The same was subsequently revived and the interim orders were reimposed upon review and in such circumstances the appellant filed the present appeal.

Heard the learned advocate appearing for the respective parties and considered the materials on record.

The issue as regards voluntary retirement sought for by the appellant, is pending consideration in a writ

petition. The issue pertaining to her qualification is also pending consideration in another appeal in which a coordinate Bench of this Court has passed an interim order, as annexed at page 20 of the stay application.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case.

In the conspectus of facts involved, we find that there were justifiable reasons towards preference of the present appeal after dismissal of the earlier one. The judgments delivered in the cases of *Sarguja Transport Service (supra)*, *M. J. Exporters Private Limited (supra)* and *Ashok Kumar Sonkar (supra)* are thus distinguishable on facts.

Indisputably, the writ petition was not served upon the appellant before the orders impugned were passed. After impleading the appellant, the copy of the writ petition ought to have been served upon her and the learned single Judge ought not to have terminated her service without granting her an opportunity of hearing.

It is a cardinal rule both of substantive and procedural law that no person can be condemned unheard. The rules of natural justice are required to be observed to ensure not only that justice is done but is

manifestly seen to be done. The object is to see that a person is not treated unfairly.

Applying such proposition of law to the facts of the case, we are of the opinion that the direction towards termination of service of the appellant and the direction restraining her from entering into the college premises issued without granting any reasonable opportunity of hearing, are not sustainable in law. On such limited ground, the said directions are set aside and the appellant is reinstated to the post of Reader in the said college.

The learned single Judge shall decide the writ petition granting liberty to the parties to file their respective affidavits.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Supratim Bhattacharya, J.) (Tapabrata Chakraborty, J.)