

A lot of malpractice was reported in this recruitment process. There were allegations of nepotism, favouritism and corruption. The government wanted to take control of the situation by regulating the appointments through a statutory procedure. It enacted the West Bengal Service Commission Act, 1997. Under it, all appointments to aided schools were regulated by the West Bengal Regional School Services Commission through a competitive examination process. The material sections of the said Act relating to recruitment are as follows:-

“(2n) “school” means a recognised non-Government aided—

(i) secondary school, or educational institution, or part or department of such school or institution, imparting instruction in a secondary education, or

(ii) higher secondary school, or educational institution (other than a college), or part or department of such school or institution, imparting instruction in higher secondary education, or Definitions West Bengal Act V of 1963 West Ben. Act XXXIX of 1994 West Ben. Act VIII of 1975. 409

(iii) (.....) and includes a sponsored school.

Explanation I—“Recognised” with its grammatical variations, used with reference to a school, shall mean—

(a) recognised or deemed to have been recognised under the West Bengal Board of Secondary Education Act, 1963, (West Bengal Act V of 1963) or

(b) recognised under the West Bengal Council of Higher Secondary Education Act, 1975 (West Bengal Act VIII of 1975).

(c) (.....)

Explanation II.—“Aided” with its grammatical variations, used with reference to a school, shall mean aided by the State Government in the shape of financial assistance towards the basic pay of the teachers of that school.

Explanation III.—“Basic pay” shall mean the monthly pay of a teacher of a school which corresponds to a stage in the time-scale of pay of the post held by the teacher in that school.

Explanation IV.—“Secondary Education” shall have the same meaning as in clause (1) of section 2 of the West Bengal Board of Secondary Education Act, 1963. (West Bengal Act V of 1963)

Explanation V.—“Higher secondary education” shall have the same meaning as in clause (d) of section 2 of the West Bengal Council of Higher Secondary Education Act, 1975. (West Bengal Act VIII of 1975).

Explanation VI. —“Sponsored School” shall mean a School declared as a sponsored school by the State Government by notification.”

7. Functions of Regional Commission.- *Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Regional Commission (to recommend persons) for appointment to the posts of Teachers or non-teaching staff in school within its territorial jurisdiction under the supervision and control of the*

Central Commission (on the basis of the result of the State Level Selection Test) conducted by the Central Commission.

8. Manner and scope of selection of persons and procedure for conduct of business of Commission.

(1) The manner and scope of selection of persons for appointment to the (posts of Teachers and non-teaching staff) shall be such as may be prescribed.

(2) The procedure for the conduct of business of the Commission shall be such as may be provided for by regulations.

(3) The Commission shall preserve the documents relating to examine including answer scripts for such period and in such manner, as may be prescribed.

9. Effect of recommendation of Commission.

-(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, (appointments to the posts of the Teachers and non-teaching staff in school shall be made by the Board or the Ad-hoc Committee, or the administrator of the Board) on the recommendation of the Regional Commission having jurisdiction.

(2) Any appointment of a Teacher or a non-teaching staff made on or after the commencement of this Act in contravention of the provisions of this Act shall be invalid and shall have no effect and the Teacher or the non-teaching staff so appointed shall not be a Teacher or a non-teaching staff within the meaning of clause (p) or clause (ia) of section 2, as the case may be.”

15. Act not to apply in relation to certain schools. - The provisions of this Act shall not apply to—

(a) a school established and administered by a minority, whether based on religion or language, or

(b) a school under any trust, established and administered by a minority, whether based on religion or language, or

(c) a school not in receipt of any financial assistance from the State Government, or

(d) a school in receipt of a financial assistance from the state Government towards dearness allowance only of Teachers of such school, or

(e) a Government school.

Explanation. —“Government school” shall mean a school maintained and managed by the State Government or the government of India or

the Railway Board under the Ministry of Railway, Government of India.

Now, I turn to the facts of this case.

Mamadpur Gobinda Smriti Siksha Niketan is located in the Tamluk Police Station area in Purba Medinipur. It was established about 50 years ago in a densely populated area with a sizable number of backward class people. For quite a few years it functioned as an unrecognized school. Gradually, its popularity and importance grew in the area.

Further to a resolution dated 15th December, 1978 of the Managing Committee of the school, on 21st December, 1978, the school issued to the appellant No. 1, a letter of appointment appointing him as an assistant teacher of the school. He started teaching from 2nd January, 1979. Another resolution of this Committee led to the appointment of the appellant No. 2 in the same post with effect from 16th April, 1989. The appellants say that they have continuously taught in the school from the date of their joining. In support of it they have appended some attendance sheets. Gradually the school was upgraded and on 9th November, 1981 with effect from 1st January, 1980 the school was recognized as a junior high school. Classes IX and X were started as the unrecognized section. The Committee applied for recognition of the unrecognised Classes IX and X of the school. For this purpose, the District Inspector of Schools, Midnapore had caused inspection of the school and its activities on 18th October, 1985, 16th May, 1992 and 3rd May, 2000 by the District level inspection team. The appellants assert that during these inspection drives, they were found to be serving the unrecognized IX and X section of the school as organizer teachers.

According to the report of the District Level Inspection team dated 16th May, 1992, there were 28 students in Class IX and 27 in Class X, comprising of 11 boys and 7 girls in Class IX and 15 boys and 12 girls in Class X.

Both the appellants were found to be teaching in the unrecognized part of the school. The remark of the inspecting authority was that they had been “continuously serving upto the date of inspection”. In the inspection report, it was stated that the appellant No. 1 had qualification of MA. BEd. and had been appointed on 2nd January, 1979. The appellant No.2 with qualification BA had been appointed on 11th April, 1989.

Exercising powers under Section 28(2) of the West Bengal Board of Secondary Education Act, 1963, the West Bengal Board of Secondary Education recognized the school as a High school with permission to open Classes IX and X from 1st May, 2000 which was communicated to the school by the Secretary of the Board by his communication dated 2nd November, 2000.

On 15th November, 2000 the appellants made a petition to the Headmaster of the school for taking necessary steps for their regular appointment, absorption and approval as assistant teachers of the school.

A writ application was preferred in this court [WP 10769(W) of 2001] to obtain this relief. It was disposed of on 28th March, 2008 directing the Director of School Education, West Bengal to consider the issue. On 6th November, 2008 he rejected the case of the appellants. In this decision the Director noted as follows:-

“25. It is true that the State had recognized a number of people who were appointed by the Managing Committee for unrecognized classes, although such appointments were illegal and in clear violation of the Rules, but such recognition/ regularization being contrary to law cannot be treated as precedent.

26. We are also of the view that inclusion of names of such organizer teachers in the report of the DLIT (District Level Inspection Team) can never be taken into consideration until and unless it is shown that such appointment is given by a validity constituted managing committee of a recognized aided institution within the

sanctioned strength and that such appointment is given according to the provisions of the relevant Rules.”

Aggrieved by that decision, the instant writ was preferred by two of the writ petitioners of the earlier writ being the appellants herein [WP 716(W) of 2009]. In the said writ petition inter alia the following prayer was made:-

“c) A writ in the nature of Mandamus by commanding the respondents their men, agents, associates each one of them particularly the Director of School Education Government of West Bengal and the District Inspector of Schools (Secondary Education) Purba Medinipur to approve the appointment of the petitioners as organizing Assistant Teacher of the said school with effect from May’ 2000 and pay the salaries and allowances as admissible for the said post according to “Grant-in-Aid” Rules forthwith.”

The learned single judge relying on the Management of Recognised Non-government Institutions (Aided and Unaided) Rules, 1969 opined that at the material point of time only a validly constituted Managing Committee enjoyed the power of appointment of teaching and non-teaching staff for vacant posts within the sanctioned strength. Since the appellants/petitioners were not so appointed, their appointments could not be approved. The writ application was dismissed following the judgments of this court in **Manindra Nath Sinha & Ors. Vs. The State of West Bengal & Ors.** reported in (2006) 2 Cal LJ 489, **State of West Bengal & Ors. Vs. Smritikana Maity & Ors.** reported in (2008) 1 Cal LJ 316, **Jogendra Nath Mishra vs. The State of West Bengal & Ors.** in A.P.O. 471 of 2005 decided on 28th September, 2007 and **State of West Bengal & Ors. Vs. Gautam Bandyopadhyay** in M.A.T. 1413 of 2004.

The appellant No. 1 superannuated in 2017.

The appellant No. 2, Swadesh Bishai, is not teaching after the impugned order.

Hence this appeal.

Before I proceed further with this case, a look is necessary at the West Bengal School Service Commission Act, 1997.

Section 2(n) defines 'school' as a non-government institution and one recognized under the said Act or West Bengal Council of Higher Secondary Education Act, 1975 and receiving aid from the government.

Sections 7 and 9 are of great importance. Section 7 lays down that the Regional Commission under the Control of the Central Commission on the basis of a selection test would recommend appointment of teachers and non-teaching staff in school. Section 9 says that teachers and non-teaching staff in school could only be appointed on the "the recommendation of the Regional Commission having jurisdiction." The appointment is to be made by the West Bengal Board of Secondary Education established under the West Bengal Board of Secondary Education Act, 1963.

Section 9(2) contains a warning - any appointment of a teacher or non-teaching staff made on or after commencement of this Act otherwise than under this Act would be invalid and the appointee would not be recognized as a teacher.

Section 8 provides that appointment to the post of teachers and non-teaching staff would be according to the procedure as may be prescribed. Section 15 stipulates that the Act could not apply to inter alia a school not in receipt of financial assistance from the State government or a school receiving dearness allowance only from the government or a government school.

Now let me come to the case of **Manindra Nath Sinha & Ors. Vs. State of West Bengal & Ors.** decided by a division bench of our court and reported in **(2006) 4 CHN 513**. Its facts are most important. The petitioners claimed to be organizer teachers of the school from 16th

January, 1986. The Board recognized the school as a IV class junior High School on 1st May, 1994 for 3 years. It was further extended for 3 years. The petitioners prayed for approval of their appointment from 1st May, 1994. Earlier writ applications were preferred where a direction was made upon the District Inspector of Schools to come to a decision whether the writ petitioners could be recognized as organizing staff. His decision was that the school was “a newly setup one where there was no scope of involvement of the organizing staff”. That the writ petitioners were organizing staff, was disbelieved. Considering the school to be a newly setup school, staff were to be recruited following the said Act of 1997. The division bench held:

- (a) The school was newly set up.
- (b) There was no scope of any organizing staff.
- (c) The petitioners could not prove themselves to be so.
- (d) Under the Management Rules, 1969 on recognition of a school a Managing Committee had to be legally constituted. Only that Managing Committee could validly recommend teachers and non-teaching staff against existing vacancies.
- (e) The appointment of the petitioners by an illegally constituted Managing Committee was invalid and could not be regularized.

Now, let me come to the facts of **State of West Bengal & Ors. Vs. Smritikana Maity & Ors.** reported in **(2008) 1 CHN 582** and decided by another division bench of this court. In this case, the writ petitioners were organizing staff of classes IX and X which were unrecognized. Recognition was received after their appointment. The school had a Managing Committee for the recognized part of the school, a class IV junior High School (Class V to VIII). It was held by the court that the Managing Committee did not have the power or authority to appoint the organizing staff for the unrecognized classes IX and X. Under Rule 28 of the Management Rules, 1969 only a duly constituted managing

committee could make the appointment against vacant posts within the sanctioned strength subject to approval by the District Inspector of Schools. The appointments were considered as illegal. The writ application was dismissed.

The core finding is in paragraph 23 of the judgment:

“23. After hearing the learned Advocates of the respective parties and considering the judgments of the Hon'ble Apex Court as also of our High Court, we find sufficient merit in the submissions made by the learned Advocate of the appellant. It is an admitted position that all the writ petitioners/respondents were given appointments as organizing staff in Classes IX and X, when those two classes were not even recognized by the West Bengal Board of Secondary Education. Such recognition was given on 29.11.2000 and it appears from the letter dated 29.1.2000 issued by the Secretary, Board of Secondary Education that the Secretary of the school was directed to reconstitute the managing committee of the upgraded school by 30.4.2001. So, it is apparent that there was no validity constituted managing committee for X-class High School (Classes IX and X) when the writ petitioners/respondents were given appointments. Rule 28 of the Management Rules empowers the Managing Committee of a recognized aided institution to give appointments. When the school was first recognized as Class IV Junior High School (Classes V to VIII), it had its managing committee, which was bound by Rule 28. But such managing committee had no power to give any appointments of teaching and non-teaching staff of an unrecognized part of the school i.e. Classes IX and X, which is known as X-class High School. In other words, a recognized managing committee when gave appointments of teaching and non-teaching staff of the unrecognized portion of the school (Classes IX and X), it must be held that they acted in a manner which is not permissible under the law. Such appointments must be held to be illegal appointments.”

Nowhere does one find from the facts how long the organizing staff for Classes IX and X were engaged to set up the section, whether they were engaged just before upgradation of the school to the Classes IX and X

level. The finding was that the organizing staff had been illegally appointed.

In this case, it is nobody's argument that the unrecognized classes IX and X were only set up at the time of recognition. In fact, the engagement of organizing staff, their involvement and presence during inspection is admitted.

Any law has to be given a reasonable and just interpretation and applied accordingly. The West Bengal School Service Commission Act, 1997 conceptualizes appointment in government aided schools against vacancies within the sanctioned strength. It prescribes the mode and manner in which these vacancies are to be filled up.

Take for example, a school where classes up to VIII are recognized. Classes IX and X are being run without recognition. There is no doubt a Managing Committee to run the recognized part of the school upto Class VIII. But, that Managing Committee which is recognized by the Board has nothing to do with Classes IX and X. If that Managing Committee has been setting up and running Classes IX and X as an unrecognized section of the school, it is to be taken as if the Managing Committee was running that part of the unrecognised school privately. For the purposes of the said Act, you have to take classes IX and X as a separate private school being run without recognition and aid by a private committee.

Since Classes IX and X of Mamadpur Gobinda Smriti Siksha Niketan were being run privately, there was no requirement of the staff being appointed by the Managing committee of the recognized part of the school, with the approval of the District Inspector of Schools. This part of the school was exempted from the operation of the said Act under Section 15.

At the time of recognition of the school, the government had a duty to take note of this situation. Having taken such note, it recognized that

part of the school comprising of classes IX and X upgraded the school and provided it with aid so that it became a school within the meaning of Section 2(n) of the said 1997 Act. Therefore, on recognition of the school with aid, the government had recognized a staffed school and not a newly created one.

The said Act of 1997 could only apply to appointments of teaching and non-teaching staff in a recognised upgraded government aided school after commencement of the Act, to fill up the entire vacancies if the school was “newly created”. In fact, the circular of the government No.97-SE (S) dated 21st January, 2003 clarifies the situation:-

“In the circumstances, the undersigned is directed by the order of the Governor to say that henceforth all appointments in teaching and non-teaching posts available as vacant either due to retirement/death/resignation of an existing employee or due to creation of post in the aforesaid institution on first recognition or upgradation or otherwise should be filled up only as follows:

- a) In case of whole-time teaching post, through the School Service Commission of the concerned region; and*
- b) in case of a non-teaching post, on the basis of the guidelines for recruitment as contained in Memo No. 1736 (21)-GA dt. 1.11.99 issued by the Director of School Education, West Bengal.”*

After a newly created school without teaching and non-teaching staff is recognised under the said Act of 1997, its Managing Committee has to be constituted under the Management Rules, 1969. This would be a validly constituted committee which could make selection of teachers and non-teaching staff based on sanctioned strength and vacancy, on the recommendation of the Regional Commission.

Now to insist that upon recognition of the school the existing staff of the school would be thrown out of employment and the school to be manned by staff to be appointed under the School Service Commission Act, 1997

would be giving a very unjust and unreasonable interpretation to the said Act. When the government after commencement of the Act recognizes a staffed school, it is deemed to have recognized and approved its bonafide organizing staff also provisionally, subject to subsequent formal approval. The government while recognizing and aiding the subject school had the obligation to regularize the employment of those teaching and non-teaching staff who were bonafide engaged in the founding of the school and thereafter, managing or running it till the date of its recognition.

The decisions of this court in **Manindra Nath Sinha & Ors. Vs. State of West Bengal & Ors.** reported in (2006) 4 CHN 513 and **State of West Bengal & Ors. Vs. Smritikana Maity & Ors.** reported in (2008) 1 CHN 582 have no application to appointment of teaching and non-teaching staff upon recognition of bonafide staffed schools.

In a similar type of situation, the Supreme Court in an unreported decision in **Prabir Kumar Ghosh & Ors. Vs. State of West Bengal and Ors.** decided on 6th May, 2022 setting aside a division bench judgment of this court observed and held as follows:-

“Considering the entirety of the matter, the single judge found that in view of the report submitted by District Magistrate, Cooch Behar, order dated 12.04.2002 of Director of Education, was not sustainable. The Single Judge, therefore, directed District Inspector of School (Secondary Education) to approve the appointments of writ petitioners except writ petitioner No.6 with effect from 05.06.2014.

The aforesaid decision of the Single Judge was, however, set aside by the Division Bench in an appeal arising therefrom.

It was observed by the Division Bench that if the initial appointment itself was illegal, the appointments could not be regularized and that the decision rendered by the Single Judge was otherwise unsustainable.

As the record indicates that the school was set up by the villagers. The facility of the school in the neighbourhood was not made available by the official agencies. In a situation such as that the

engagement of the writ petitioners cannot strictly be called to be illegal. They were definitely imparting education in keeping with the letter and spirit of the legislation enacted by the Parliament being Right to Education Act.

In the circumstances, the Division Bench was not justified in setting the order passed by the Single Judge. Consequently, we allow the appeal, set aside the order passed by the Division Bench and restore the order passed by the Single Judge of the High Court.

The appeal is accordingly, allowed.”

The division bench judgment in that case had followed the Manindra Nath Sinha case.

A school staffed with teaching and non-teaching staff recognized by the government after the commencement of the said Act of 1997 cannot be said to have any vacancy to be filled up following the selection procedure under Section 8 of the said Act. Nonetheless, Section 9 makes it plain that after commencement of the Act no teacher or non-teaching staff could be appointed in contravention of the Act.

The appellants/petitioners found to be bonafide working in the Mamadpur Gobinda Smriti Siksha Niketan School at the time of its said inspection by the District Level Inspection team shall be presumed to be the organizing staff and should be recommended by the Commission to the Board for appointment under Section 7 of the Act. The Board would have the obligation to regularize such appointments from the date of recognition of the school.

In those circumstances, I set aside the impugned judgment and order.

I direct the respondent Board to regularize the appointment of the appellants by appointing them as assistant teachers of the said school from the date of recognition of the school. Since the financial burden on the State would be very high, they shall not be paid actual salary from that date. Their salary from that date shall be calculated notionally, taking into account normal increments. The appellant no. 1 who has

retired shall be entitled to arrear and current pension based on his notional salary on the date of his retirement. The appellant no. 2 shall be entitled to join service immediately as an assistant teacher and shall be paid actual salary from the date of his joining based on such notional calculation. After retirement, he shall be entitled to pension.

Both the appellants while receiving pension shall be treated in service without break from the date of recognition of the school. This order is to be complied with within three months of communication thereof.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree.

(SUBHENDU SAMANTA, J.)

(I. P. MUKERJI, J.)