

IN THE HIGH COURT AT CALCUTTA

**Constitutional Writ Jurisdiction
APPELLATE SIDE**

BEFORE:-

THE HON'BLE JUSTICE RAJASEKHAR MANTHA

W.P.A. 532 of 2013

**Badal Chandra Bhunia
Vs.
The State of West Bengal &ors.**

For the Petitioner : Mr. Piyush Chaturvedi,
Mr. Tarun Kumar Das

For the State Respondents: Mr. Tapan Kumar Mukherjee,
Mr. Ranjan Saha

With

W.P.A. 1810 of 2013

**Baidya Nath Ghosh & anr.
Vs.
The State of West Bengal & ors.**

With

**WPA 1811 of 2013
IA NO: CAN/1/2013 (Old No. CAN/4474/2013)
Md Abul Fazal**

Vs.

The State of W. B. & ors.

With

**WPA 1818/2013
IA NO: CAN/1/2013 (Old No: CAN/4477/2013)
Alokipati Trivedi & anr.**

Vs.

The State of W.B. & ors.

With

**WPA 1820 of 2013
IA NO: CAN/1/2013 (Old No: CAN 4484/2013)
Sib Chandra Mondal & ors.**

Vs.

State of W.B. & ors.

With

**WPA 1822 of 2013
IA NO: CAN/1/2013 (Old NO: CAN/4486/2013)
Panchakari Biswas**

Vs.

State & ors.

With

WPA 1824 of 2013

IA NO: CAN/1/2013 (Old No.CAN/4470/2013)
Ajit Kr Pal & ors.

Vs.

State & ors.

WPA 1830 of 2013

IA NO:CAN/1/2013 (Old No: CAN/4487/2013)
Khandekar Abu Taher & anr.

Vs.

State & ors.

With

WPA 4055 of 2013

Md Majed Ali

Vs.

State & ors.

With

WPA 4131 of 2013

Md. Abdul Bari & ors.

Vs.

State of West Bengal & ors.

With

WPA 5111 of 2013

Md. Fazlul Haque

Vs.

State & ors.

With

WPA 5112 of 2013

Md. Aminuddin

Vs.

State & ors.

With

WPA 5175 of 2013

Md Abdul Bari & anr.

Vs.

State & ors.

With

WPA 5177 of 2013

Md Abdus Salam

Vs.

State & ors.

With

WPA 5179 of 2013

Reazuddin Biswas & anr.

Vs.

State & ors.

with

WPA 5331 of 2013

Sarfarajuddin Chowdhury

Vs

State of West Bengal & ors.

With

WPA 5344 of 2013

Pinhaki Ranjan Mandal

Vs.

State of West Bengal & ors.

With

WPA 5346 of 2013

Rajat Kanti Jana & ors.

Vs.

State of West Bengal & ors.

With
 WPA 5348 of 2013
 Soumyendu Acharjya
 Vs.
 State of West Bengal & ors.
 With
 WPA 5352 of 2013
 Binod Gopal Bhunia
 Vs.
 State of West Bengal & ors.
 With
 WPA 5353 of 2013
 Prafulla Kumar Jana
 Vs.
 State of West Bengal & ors.
 With
 WPA 5354 of 2013
 Abanti Kumar Giri
 Vs.
 State of West Bengal & ors.
 With
 WPA 5356 of 2013
 Bijay Kumar Sasmal & ors.
 Vs.
 State of West Bengal & ors.
 With
 WPA 5357 of 2013
 Balaram Jana
 Vs.
 State & ors.
 With
 WPA 5358 of 2013
 Atul Krishna Roy & ors.
 Vs.
 State of West Bengal & ors.
 With
 WPA 5359 of 2013
 Sachhadananda Dinda
 Vs.
 State & ors.
 With
 WPA 5360 of 2013
 Himadri Sekhar Das
 Vs.
 State & ors.
 With
 WPA 5394 of 2013
 Kanailal Bhattacharyya
 Vs.
 State & ors.
 With
 WPA 5395 of 2013
 Nirmalendu Bera
 Vs.
 State of WB & ors.
 With
 WPA 5396 of 2013
 Birendra Nath Sahoo
 Vs.

State & ors.
 With
 WPA 5397 of 2013
 Gayapada Bar
 Vs.
 State of WB & ors.
 With
 WPA 5398 of 2013
 Sasanka Sekhar Jana
 Vs.
 State of W.B. & ors.
 With
 WPA 5399 of 2013
 Nirmalya Prasad Biswas
 Vs.
 State & ors.
 With
 WPA 5400 of 2013
 Sikha Sanyal
 Vs.
 State & ors.
 With
 WPA 5931 of 2013
 Mihir Kumar Parua
 Vs
 State of West Bengal & ors.
 With
 WPA 1815 of 2013
 IA NO: CAN/1/2013 (Old No: CAN/4479/2013)
 Santi Kr Roy & ors.
 Vs.
 State & ors.
 With
 WPA 4058 of 2013
 Md. Atiar Rahaman
 Vs.
 State & ors.
 With
 WPA 4569 of 2013
 Md. Matiar Rahman & anr.
 Vs.
 State of West Bengal & ors.
 With
 WPA 4925 of 2013
 Bisnupada Giri
 Vs.
 State & ors.
 With
 WPA5109 of 2013
 Md Jillar Rahman & anr.
 Vs
 State & ors.
 With
 WPA 5259 of 2013
 Sudip Kumar Chakraborty & ors.
 Vs.
 State of West Bengal
 With
 WPA 6563 of 2013

**Soumen Chandra Ghosh
Vs.**

State of WB & ors.

With

WPA 6570 of 2013

Sasanka Sekhar Mandal

Vs.

State of WB & ors.

With

WPA 6600 of 2013

Kamruzzaman & anr.

Vs.

State of WB & ors.

With

WPA 6601 of 2013

Sk Md Mohiuddin & ors.

Vs.

State & ors.

With

WPA 6602 of 2013

Md. Golam Rabbani & ors.

Vs.

State of W B & ors.

With

WPA 6603 of 2013

Sabkat Ali Mondal & anr.

Vs.

State & ors.

With

WPA 6604 of 2013

Biswanath Mondal & anr.

Vs.

State of W B & ors.

With

WPA 6605 of 2013

Madadan Gopal Sen & ors.

Vs.

State of W B & ors.

With

WPA 6606 of 2013

Praphulla Kr. Ghosh & anr.

Vs.

State & ors.

WPA 6607 of 2013

Md. Jahrul Joque & anr.

Vs.

State of W B & ors.

With

WPA 6608 of 2013

Kazi Abdur Rashid & anr.

Vs.

State & ors.

With

WPA 6609 of 2013

Md. Enamul Hoque & anr.

Vs.

State of W B & ors.

With

WPA 6611 of 2013

Ajit Kr. Ray & ors.
Vs.
State & ors.
With
WPA 6645 of 2013
Md Anarul Isloam & anr.
Vs.
State & ors.
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WPA 6646 of 2013
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Vs.
State of WB & ors.
With
WPA 6647 of 2013
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Vs.
State & ors.
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WPA 6648 of 2013
Md. Abdur Rahaman
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WPA 6649 of 2013
Md. Abdul Kasem Sarkar & ors.
Vs.
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Liakat Hossain
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WPA 6651 of 2013
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WPA 8292 of 2013
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State of West Bengal & ors.
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WPA 8295 of 2013
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Vs
State of West Bengal & ors.
With
WPA 8298 of 2013
Md. Ataullah
Vs.
State of West Bengal & ors.
With
WPA 8320 of 2013
Kartik Chandra Mandal
Vs.
State & ors.
With

WPA 8327 of 2013
Nitendranath Majhi
Vs
State of W.B. & ors.
With
WPA 8328 of 2013
Prativa Das Adhikari
Vs.
State & ors.
With
WPA 8320 of 2013
Kartik Chandra Mandal
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With
WPA 8403 of 2013
Jakir Hossein
Vs.
State of W B & ors.
With
WPA 8404 of 2013
Jayee Hazra
Vs.
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With
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Arabinda Pal
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With
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Biswajit Paul
Vs.
State of WB & ors.
With
WPA 8408 of 2013
Harun Al Rashid
Vs.
State of WB & ors.
With
WPA 8442 of 2013
Dhananjoy Sinha Roy
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State of West Bengal & ors.
With
WPA 9620 of 2013
Shiromoni Sarkar
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State of West Bengal & ors.
With
WPA 9622 of 2013
Mansur Ali @ Munsur Ali
Vs.
State of West Bengal & ors.
With
WPA 9623 of 2013
Abdul Mannan
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State of West Bengal & ors.

With
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Mohammad Ali
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With
WPA 9627 of 2013
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Vs.
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With
WPA 9629 of 2013
Basudev Mondal
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With
WPA 9630 of 2013
Pradip Kumar Mukherjee
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State of West Bengal & ors.

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Vs
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With

WPA 9638 of 2013
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WPA 9640 of 2013
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WPA 9794 of 2013
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WPA 9797 of 2013
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With

WPA 9799 of 2013
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**WPA 6189 of 2013
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WPA 6222 of 2013
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WPA 6223 of 2013
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**WPA 6230 of 2013
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**WPA 7820 of 2013
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**WPA 7821 of 2013
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**WPA 7822 of 2013
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**WPA 8861 of 2013
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**WPA 8887 of 2013
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**WPA 8889 of 2013
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**WPA 8891 of 2013
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State of West Bengal & Ors
With**

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Kanchan Kumar Sarkar
Vs
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With

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With

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Chandidas Mosan
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State of West Bengal & Ors
With

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**WPA 10729 of 2013
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**WPA 10756 of 2013
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**WPA 11864 of 2020
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**WPA 11869 of 2020
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WPA 14188 of 2013
Md. Jomiruddin Shaikh
Vs.
State of West Bengal & Ors.

With
 WPA 14332 of 2013
 Partha Sarathi Basu
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14334 of 2013
 Azizur Rahaman
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14335 of 2013
 Bankim Chandra Sinha Mahapatra
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14337 of 2013
 Aditya Ranjan Das
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14341 of 2013
 Mihir Kumar Pain
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14841 of 2013
 Syam Sundar Mandal
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14842 of 2013
 Radha Krishna Das
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14860 of 2013
 Ataur Rahaman
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14861 of 2013
 Harendra Nath Das
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14862 of 2013
 Kudrat Ali
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14863 of 2013
 Mihirdev Goswami
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14865 of 2013
 Md. Fazlul Hoque
 Vs.

State of West Bengal & Ors.
 With
 WPA 14867 of 2013
 Abdul Maleque
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14869 of 2013
 Haren Chandra Das
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14871 of 2013
 Ajijur Rahaman
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14873 of 2013
 Pranesh Sarkar
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14875 of 2013
 Alauddin Ahmed
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14880 of 2013
 Jamiruddin Ahammed
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14881 of 2013
 Banamali Naskar
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14882 of 2013
 Matiur Rahaman
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14883 of 2013
 Nakimuddin Ahmed
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14884 of 2013
 Bidhu Bhusan Mandal
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14885 of 2013
 Benoy Bhusan Das
 Vs.
 State of West Bengal & Ors.
 With
 WPA 14917 of 2013
 Kalyani Prasad Sinha

Vs.
State of West Bengal & Ors.
With
WPA 14938 of 2013
Md. Nurul Islam

Vs.
State of West Bengal & Ors.
With
WPA 15056 of 2013
Md. Abul Hasem

Vs.
State of West Bengal & Ors.
With
WPA 15059 of 2013
Md. Abdul Halim

Vs.
State of West Bengal & Ors.
With
WPA 15136 of 2013
Satyendranath Banerjee

Vs.
State of West Bengal & Ors.
With
WPA 15138 of 2013
Asit Kumar Pal

Vs.
State of West Bengal & Ors.
With
WPA 15139 of 2013
Md. Rafiqul Hassan

Vs.
State of West Bengal & Ors.
With
WPA 15140 of 2013
Sukhendu Mondal

Vs.
State of West Bengal & Ors.

Mr. Piush Chaturvedi,
 Mr. Tarun Kumar Das

...for the petitioners in WPA/4055/2013,
 WPA/5331/2013, WPA/4058/2013, WPA/4925/2013,
 WPA/6570/2013, WPA/9620/2013, WPA/9622/2013,
 WPA/9623/2013, WPA/9625/2013, WPA/6927/2013,
 WPA/9629/2013, WPA/9630/2013, WPA/9632/2013,
 WPA/9636/2013, WPA/9638/2013, WPA/9640/2013,
 WPA/9899/2013, WPA/9901/2013, WPA/9902/2013,
 WPA/7009/2013, WPA/7125/2013, WPA/7415/2013,
 WPA/7574/2013, WPA/7575/2013, WPA/7576/2013,
 WPA/6932/2013, WPA/6935/2013, WPA/6937/2013,
 WPA/6939/2013, WPA/6941/2013, WPA/6942/2013,
 WPA/6944/2013, WPA/8884/2013, WPA/8886/2013,
 WPA/8887/2013, WPA/8888/2013, WPA/8889/2013,
 WPA/8891/2013, WPA/10010/2013, WPA/10013/2013,
 WPA/10015/2013, WPA/10017/2013, WPA/11340/2013,
 WPA/6419/2013, WPA/6420/2013, WPA/6422/2013,
 WPA/6572/2013, WPA/6576/2013, WPA/13972/2013,
 WPA/13974/2013

Mr. Ekramul Bari,
Mr. S. M. Ali,
Sk. Imtij Uddin

... for the petitioners in WPA/4131/2013, WPA/5111/2013, WPA/5112/2013, WPA/5175/2013, WPA/5177/2013, WPA/5179/2013, WPA/5344/2013, WPA/5346/2013, WPA/5348/2013, WPA/5352/2013, WPA/5353/2013, WPA/5354/2013, WPA/5356/2013, WPA/5357/2013, WPA/5358/2013, WPA/5359/2013, WPA/5360/2013, WPA/4569/2013, WPA/5109/2013, WPA/5259/2013, WPA/6600/2013, WPA/6601/2013, WPA/6602/2013, WPA/6603/2013, WPA/6604/2013, WPA/6605/2013, WPA/6606/2013, WPA/6607/2013, WPA/6608/2013, WPA/6609/2013, WPA/6611/2013, WPA/6645/2013, WPA/6647/2013, WPA/6649/2013, WPA/8292/2013, WPA/8295/2013, WPA/8298/2013, WPA/8320/2013, WPA/8327/2013, WPA/8328/2013, WPA/8405/2013, WPA/8407/2013, WPA/8408/2013, WPA/9657/2013, WPA/9794/2013, WPA/9797/2013, WPA/9799/2013, WPA/9800/2013, WPA/9802/2013, WPA/9805/2013, WPA/9807/2013, WPA/9808/2013, WPA/9810/2013, WPA/9811/2013, WPA/9813/2013, WPA/9828/2013, WPA/9831/2013, WPA/6025/2013, WPA/6026/2013, WPA/6218/2013, WPA/6219/2013, WPA/6222/2013, WPA/6223/2013, WPA/6225/2013, WPA/6227/2013, WPA/6228/2013, WPA/6230/2013, WPA/6232/2013, WPA/6643/2013, WPA/7187/2013, WPA/7188/2013, WPA/7189/2013, WPA/7190/2013, WPA/7192/2013, WPA/7193/2013, WPA/7247/2013, WPA/7249/2013, WPA/7252/2013, WPA/7255/2013, WPA/7565/2013, WPA/7566/2013, WPA/7567/2013, WPA/7568/2013, WPA/7569/2013, WPA/7570/2013, WPA/7572/2013, WPA/10756/2013, WPA/10758/2013, WPA/10216/2013, WPA/10221/2013, WPA/10224/2013, WPA/10226/2013, WPA/10272/2013, WPA/10868/2013, WPA/10870/2013, WPA/10879/2013, WPA/10892/2013, WPA/11335/2013, WPA/11336/2013, WPA/11338/2013, WPA/11348/2013, WPA/11349/2013, WPA/11351/2013, WPA/11354/2013, WPA/11355/2013, WPA/11357/2013, WPA/11358/2013, WPA/11359/2013, WPA/11362/2013, WPA/11363/2013, WPA/11365/2013, WPA/11366/2013, WPA/11475/2013, WPA/11603/2013, WPA/11336/2013, WPA/11337/2013, WPA/11342/2013, WPA/12345/2013, WPA/12347/2013, WPA/12349/2013, WPA/12352/2013, WPA/12361/2013, WPA/15056/2013, WPA/15059/2013.

Mr. Lutful Haque

... for the petitioners in WPA/1810/2013, WPA/1811/2013, WPA/1818/2013, WPA/1820/2013, WPA/1822/2013, WPA/1824/2013, WPA/1830/2013, WPA/1815/2013

Sk. Rejaul Alam

... for the petitioners in WPA/7820/2013, WPA/7822/2013, WPA/7824/2013, WPA/7826/2013, WPA/7827/2013, WPA/7829/2013.

Mr. Sakti Pada Jana
Mr. S. Das.

... for the petitioners in WPA/7124/2013, WPA/7146/2013

Mr. Dwarikanath Mukherjee.

... for the petitioner in WPA/7011/2013, WPA/7013/2013,
WPA/7015/2013, WPA/7016/2013, WPA/14645/2013

Mr. K. K. Paul

... for the petitioner in WPA/13490/2013

Mr Pradip Paul

....for the petitioners in WPA/5394/2013, WPA/5395/2013,
WPA/5396/2013, WPA/5397/2013, WPA/5398/2013,
WPA/5399/2013, WPA/5400/2013, WPA/6646/2013,
WPA/6648/2013, WPA/6650/2013, WPA/6651/2013,
WPA/9895/2013, WPA/6338/2013, WPA/6340/2013,
WPA/6341/2013, WPA/6343/2013, WPA/6638/2013
WPA/6640/2013, WPA/6642/2013, WPA/6646/2013,
WPA/6653/2013, WPA/6654/2013, WPA/6656/2013,
WPA/6661/2013, WPA/7813/2013, WPA/7814/2013,
WPA/7816/2013, WPA/7818/2013, WPA/7821/2013,
WPA/7825/2013, WPA/7828/2013, WPA/7831/2013,
WPA/7833/2013, WPA/7835/2013, WPA/10184/2013,
WPA/10186/2013, WPA/10187/2013, WPA/10189/2013,
WPA/10190/2013, WPA/7837/2013, WPA/7853/2013

Mr. Dilip Kumar Shyamal

... for the petitioners in WPA/ 5931/2013, WPA/10316/2013,
WPA/10319 /2013, WPA/12361/2013, WPA/ 13404/2013, WPA/13405
/2013, WPA/13407 /2013, WPA/13408 /2013.

Mr. Tapan Kumar Mukherjee,

Mr. Ranjan Saha

...for the State respondents.

Ms. Chaitali Bhattacharya,

Mr. Kartik Ch. Kapas

Mr. Mrinal Kanti Ghosh.

...For the State in WPA/ 11150/2020, WPA/ 11152/2020, WPA/
11864/2020, WPA/11869 /2020, WPA/11873 /2020, WPA/11899 /
2020, WPA/11904 /2020, WPA/11910 /2020, WPA/11925 /2020.

Mr. Bhaskar Prasad Vaisya ,

Mr. Suman Dey ... for the State in WPA/11386/2013.

Mr. Rajendra Chaturvedi.

... for the State in WPA/9807/2013, WPA/ 7569/2013,
WPA/11511/2013, WPA/14840/2013.

Ms. Sudipa Roy.

....for the State Respondents in WPA/4131/2013, WPA/7827/2013,
WPA/11603/2013, WPA/13121/2013.

Mr. Jayanta Kumar Mukhopadhyay

.....for the petitioners in WPA/6563/2013, WPA/10404/2013,
WPA/10405/2013, WPA/10407/2013, WPA/10725/2013,
WPA/10727/2013, WPA/10729/2013,

Mr. Tapas Ballav Mandal.

.....for the State in WPA/13490/2013, WPA/14334/2013.

Mr. Ashok Kumar Jha

Ms. Moumita Mondal

.....for the Petitioners in WPA/10860/2013, WPA/10862/2013,
WPA/11523/2013, WPA/11524/2013, WPA/11525/2013,
WPA/11527/2013, WPA/12271/2013, WPA/12829/2013,
WPA/12830/2013, WPA/12832/2013, WPA/12834/2013,
WPA/12835/2013, WPA/12836/2013, WPA/12838/2013,
WPA/12839/2013, WPA/12840/2013, WPA/12841/2013,
WPA/12842/2013, WPA/12843/2013, WPA/12844/2013,
WPA/12846/2013, WPA/12847/2013, WPA/12848/2013,
WPA/12849/2013, WPA/12851/2013, WPA/12852/2013,
WPA/12854/2013, WPA/12856/2013, WPA/12858/2013,
WPA/12975/2013, WPA/13299/2013, WPA/13304/2013,
WPA/13469/2013, WPA/13472/2013, WPA/13534/2013,
WPA/13535/2013.

Mr. Sudip Sarkar

...for the petitioners in WPA/11150/2020, WPA/11152/2020,
WPA/11864/2020, WPA/11869/2020, WPA/11873/2020,
WPA/11899/2020, WPA/11904/2020, WPA/11910/2020,
WPA/11925/2020,

Mr. Raghunath Das

....for the petitioners in WPA/6164/2013, WPA/6166/2013,
WPA/6168/2013, WPA/6169/2013, WPA/6171/2013,
WPA/6172/2013, WPA/6174/2013, WPA/6175/2013,
WPA/6176/2013, WPA/6178/2013, WPA/6181/2013,
WPA/6183/2013, WPA/6185/2013, WPA/6186/2013,
WPA/6188/2013, WPA/6189/2013.

Mr. S. Mondal

Mr. S. C. Dhara

.....for the petitioners in WPA/12319/2013, WPA/12320/2013,
WPA/12322/2013, WPA/12324/2013, WPA/12325/2013,
WPA/12326/2013, WPA/12328/2013, WPA/12330/2013,
WPA/12331/2013, WPA/12335/2013, WPA/12336/2013,
WPA/12337/2013, WPA/14917/2013.

Mr. Arunava Pati

Mr. S. C. Dhara

....For the petitioners in WPA/14335/2013, WPA/14337/2013,
WPA/14341/2013, WPA/14736/2013, WPA/14738/2013,
WPA/14740/2013, WPA/14741/2013, WPA/14743/2013.

Ms. Debjani Roy

...for the petitioners in WPA/13437/2013, WPA/13439/2013,
WPA/13440/2013, WPA/13441/2013, WPA/13442/2013,
WPA/13443/2013, WPA/13444/2013, WPA/13445/2013,
WPA/13446/2013, WPA/13447/2013, WPA/13448/2013,
WPA/13449/2013, WPA/13450/2013, WPA/13452/2013.

Hearing Concluded On : 30.08.2022

Judgment On : 07.09.2022

Rajasekhar Mantha, J.

1. These batch of writ petitions involve common questions of law. The facts may differ from case to case. The facts in the W.P.No.532 of 2013 are discussed only as a sample case. The decision would apply to both W.P.532 of 2013 and all other writ petitions where persons engaged as “guest teachers”, have filed claims.
2. The writ petitioners are aggrieved by Memoranda No. 957-SE dated 22nd May, 2012 and No. 3269-SE dated 16 October, 2012. By the said two memoranda, the remuneration payable to the guest teachers in the State came to be reduced to a fixed amount, much lesser than what was originally stipulated in the first Memorandum No. 674-SE dated 30th May, 2008.

Facts of the Case

3. Sometime in the year 2008-09, the State faced with an acute crisis of teachers in schools under its direct and indirect control. There was immediate need for teachers to operationalize newly set up upper primary schools in the districts. The School Service Commission was yet to recruit sufficient number of teachers for various reasons.

Accordingly, the School Education Department with the concurrence with the Finance Department issued Memorandum No. 674-SE dated 30th May, 2008. By the said memorandum a scheme for engagement

of guest teachers in newly set up upper primary schools in the district was framed. Portions of the circular relevant for this decision are set out hereinbelow:

“Government of West Bengal
School Education Department
(Secondary Branch)
Bikash Bhawan, Salt Lake, Kolkata-700 091

No. 674-SE(S)/3S-38/07

dated the 30th May, 2008

MEMORANDUM

Whereas there is the need to operationalise the ‘New set up Upper Primary Schools in the directs’ with required teaching staff till such selection is completed through West Bengal School Service Commission from the academic year 2008-09.

Accordingly the Governor is pleased to approve the introduction of the scheme for ‘Engagement of Guest Teachers’ to over come the difficulties mentioned above in these newly set up schools.

1. Objectives:- This scheme will enable newly set up upper primary/Junior High School to be operationalized from the start of the academic year by engaging required number of guest teachers, until formal engagement of teachers for these schools are made upon the recommendation of West Bengal School Service Commission.
2. Eligibility for engagement (i) For New set up Upper Primary/Jr. High Schools:- Only those teachers who have retired at the age of 60 years in ROPA’98 scale as full time approved Secondary Teachers and are below 64 Years of age as on 01.01.2008 in any apply seeking engagement as ‘Guest Teachers’ in the Newly Set up Upper Primary/Junior High School in his/her locality.
(ii) The Retired Teacher/Lady Teacher should be physically fit and mentally alert to discharge the duties of Guest Teacher in the school in which he/she would be engaged full time for 6(six) days in a week during school hours and to perform the related duties like invigilation, scrutiny of answer scripts of tutorial, unit based periodical tests and summative tests etc.
(iii) Teachers who have been made to retire compulsorily as punishment or voluntarily due to illness or for other type of incapacitance or have been charged/convicted of moral turpitude or for any criminal offence would not be considered for such engagement even if he/she was exonerated from the charges.
(iv) Retired Teachers of Language Group (preferably English) or Physical/Life Science and Mathematics will be given preference

over others. Physical Education/Crafts teachers are not engaged at this stage.

(v) Preference will be given to teachers who have retired from neighboring school.

3. Period of Engagement:- The period of engagement should be upto six months or until teachers join the schools. No guest teacher will be allowed to continue beyond 65 years of age.

Engagement may be renewable beyond six months if the regular teachers do not fill in the post.

4. Remuneration:- The remuneration of the 'guest teacher' may be fixed as follows:-

For those teacher retired with Contributory Provident Fund with Gratuity

(1) Scale Pay of Graduate/Hons. Graduate Teacher as per ROPA'98 (initial of the scale)(No D.A./D.P. be paid)-HRA+M.A.

For those teachers retired with Pension including Family Pension and Gratuity

(i) Last Basic pay of Retired Teacher+DA+DP and HRA thereon Less Basic Pension (before Commutation) including Dearness Pension on the date of engagement. He/she will draw pension, dearness pension, and dearness relief as usual.

5. Selection Committee Selection of retired Teachers to be engaged as 'Guest Teacher' in New set up Upper Primary Schools will be done by a Selection Committee of the Block Consisting of

<u>Sl. No.</u>	<u>Selection Committee</u>	<u>Designation</u>
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1.	Nominee of Sabhapati of Panchayet Samity in case of Rural Areas/Nominees of Chairman Municipality/NAA in case of Urban areas.	Chairman
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2.	Assistant Inspector of School in charge of the area.	Governor.
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3.	All other members of Ad-hoc Committee As per Notification No.1084-SE(S)/3S-38/07 Dated 12.09.2007 except Sl. No. (a)	Members.
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6. Procedure of Selection/engagement:-(i) For new set up of Upper Primary Schools, the concerned D.I. will act as Nodal Agency for the District.

(ii) similarly D.I./ADI of School (Secondary) will arrange for publishing such a detailed report of vacancy in Newly set up Upper Primary Schools showing the eligibility criteria, Number of vacancies, Terms and Conditions, remuneration, last date of receipt of application as well the name and location of the newly set up upper primary school in the Notice Board. The applications for engagement are to be addressed to D.I./ADI concerned directly along with testimonials if any.

(iii) The applications received will be scrutinized and all eligible applicants may be called for an interview by Selection Committee the prime object being the selection of school by the retired teacher through mutual discussion, so that afterwards, he/she does not feel any difficulty to perform as 'Guest Teacher' in the school. This interview should be held Circle Office/Block Office and no T.A./D.A. may be paid for the purpose.

(iv) The approved list should be sent back to respective S.I. of Schools/Ad-hoc Committee of Primary Schools for issuance of Offer of engagement to the concerned Guest Teachers.

(v) Each Guest Teacher will have to sign and return back the 'Acknowledgement of Offer of Engagement' stating that he/she has gone through the Offer of Engagement, will abide by the terms and conditions, perform the duties as per routine and other duties assigned to him/her, etc. etc. He/she is agreeable to the condition further that no Compensation can be claimed for his/her part in the event of termination of his/her part in the event of termination of his/her engagement at any time.

(vi) The applications are to be invited from those retired teachers who have not crossed 64 years of age on 01.01.2008.

7. Leave:- Casual Leave and Medical Leave as admissible to regular Primary Teachers/Upper Primary Teachers, will also be admissible to these 'Guest Teachers'.

8. The fund for this purpose will be met out of the budgetary allocation made under the following head of account for the year 2008-2009.

i) 2202-General Education-08-Secondary Education-110-Assistance to Non-Government Secondary Schools-SP-State Plan-018-Non Government Teacher cost at elementary level [Reimbursement from SSA[ES] 31-Grants-in-Aid-02-other Grants
Rs.14.70 crores

ii) 2202-02-789-SCP-SP-024-Non-Govt. Teacher cost etc.-31-Grants-in-Aid-02-other Grants.

Rs.1.14 crores

Total Rs.20.00 crores

9. Governor is pleased further to declare that District Inspector of Schools (Secondary) of the district concerned will act as D.D.O. for the Head of Account mentioned above.

The following procedure for disbursement of salary to the guest teachers of the new set Upper Primary schools may be followed until further order:

i) The pay bills of new set up schools will be prepared by S.I. of Schools & Member Secretary of the school concerned and placed before D.I. of Schools (Secondary) for signature and authorization to S.I. of Schools concerned to receive the

cheque from Treasury and to act as Disbursing Officer for the new set up school.

- ii) The Ad-hoc committee will open a Bank A/c. in the name of the school and S.I. of Schools will deposit the cheque received from Teasury to the said account.
- iii) The disbursement of salary to the Guest Teacher may be done in Cash or through A/c. Payee cheque as may be decided by the Ad-hoc Managing committee.

10. This order issues with the concurrence of Finance (Audit) Deptt. Government of West Bengal vide their U.O. No. 1753 Gr-P (Service) dated 19.05.2008.

11. Accountant General, West Bengal is being informed accordingly.

O.S.D. & Ex-Officio Deputy Secretary
School Education Department.”

4. From the text of the circular and the affidavit filed by the Principal Secretary, School Education Department of the State, it is clear that, the scheme is an ad-hoc, stopgap, interim, and or temporary measure to overcome the serious shortage of, and immediate need for teachers in the districts
5. The persons eligible to be appointed as guest teachers were those teachers who have retired from the service of the schools under the State at the age of 60 years under ROPA 1998 pay scales. They were required to have served as full time approved secondary teachers.

Candidates were required to be below 64 years of age as on first of January, 2008. The duties were full time, six days a week, during school hours, and involved invigilation, scrutiny of answer script, tutorials and conducting unit based periodical tests. Those teachers who have been retired compulsory or punished or retired voluntarily due to ailments or have been charged over moral turpitude in any criminal offence, even if they were exonerated, were ineligible to apply.

Only retired teachers in the language/physical/life-science/mathematics groups were given preference. Physical education and craft teachers were not to be engaged. Persons retiring from neighboring schools were to be given preference.

6. The period of engagement was limited to six months or until appointment of regular teachers and could not be allowed beyond 65 years of age. The engagement was renewable for a further period beyond six months or until regular teachers are appointed by the School Service Commission.
7. The subject matter of the instant proceedings is the remuneration payable to the guest teachers under the scheme. For the purpose of the writ petitions, only the category of teachers under clause 4 i.e. those who have retired with pension and family pension and gratuity is relevant. The monthly payment to such teachers i.e. the last basic pay including DA, DP and HRA minus basic pension (before commutation) including dearness pension on the date of engagement, is relevant and under consideration. Upon engagement the guest teachers were to continue to draw pension, dearness pension and dearness relief accruing different from their past professional benefits under the State.
8. It is clear and evident from the above facts that the process of selection of guest teachers is completely different from any normal recruitment process. The funds for the same were allocated separately and kept at a fixed amount.

Accordingly, guest teachers started to function in the State engaged by the Special Committees.

9. By two several Memoranda being No.987 SE dated 22nd May 2012 and 16th October, 2012, the remuneration/honorarium payable to the Guest Teachers came to be limited and reduced. The said two Memos are set out hereunder.

“Government of West Bengal
School Education Department
(Secondary Branch)

Bikash Bhawan, Salt Lake, Kolkata- 700 091.

No.957-SE(S)10M-25/2009

Date:22.05.2012.

MEMORANDUM

In Partial modification of Department Momo No.674-SE(S)/3S-38/07 dated 30th May, 2018 the remuneration of the “Guest Teacher” to operationalise the Newly Set up Upper Primary Schools unit formal engagement of teachers are made upon the recommendation of West Bengal School Service Commission, may be fixed upto 31st march, 2012 as follows:-

- (i) For those teachers retired with contributory Provident fund with Gratuity.

Initial of Last Scale of Pay of Graduate/Hons. Graduate/Post Graduate Teacher as per ROPA 2009 (No. D.A./D.P. be paid) +H.R.A.+M.A.

- (ii) For those teachers retired with Pension including Family Pension with Gratuity.

Last Basic Pay of the Retired Teacher+DA+HRA there on less Basic Pension (before Communication) including Dearness Relief in Pension on the date of engagement. He/She will draw Pension, Dearness Relief in Pension as usual. The above calculation may be made as per ROPA Rules-2009.

The remuneration of the Guest Teacher on and from 1st April, 2012 will be fixed later.

The other modalities as stated in the notification bearing no. 674-SE(S)/3S-38/07 dated 30th May, 2018 shall remain unchanged.

This issues with the approval of the Finance Department vide their endorsement dated 21.04.2012 in this Department file no.ES/S/10M-25/09.

All concerned are being informed accordingly.

Sd/-

T. K. Adhikary

Joint Secretary”

“Government of West Bengal
School Education Department
(Secondary Branch)

Bikash Bhawan, Salt Lake, Kolkata- 700091

No. 3269-SE(S)/3S-25/2009

Dated: 16.10.2012

Memorandum

In Continuation of this Department No. 957-SE(S)/10M-25? 2009 dated 22.05.2012 the following rate of remuneration of the “Guest Teacher” to operationalise the newly set up upper primary schools shall be fixed w.e.f 01.04.2012 irrespective of the option on retirement benefits of the retired teacher engaged as Guest Teacher.

(i) Graduate Teacher in re-employment- Rs. 5000.00 per month (Fixed).

(ii) Hons. Graduate/Post Graduate Teacher in re-employment- Rs. 7000.00 per month (Fixed).

This issues as per Finance (Audit) Department’s U.O.No. 2310 Gr.P (Service) dated 14.08.2012.

Sd/- S.C. Ghosh
Joint Secretary”

10. The petitioners claim that the reduction of the remuneration of guest teachers by the aforesaid 2 memoranda dated 22nd May 2012 and 16th October, 2012 are illegal and arbitrary.

The Arguments of the Teachers :-

11. Mr. Piyush Chaturvedi, Counsel appearing for the petitioners would argue before this Court as follows:

- (a) The Memorandum No. 674-SE dated 30th May, 2008 must be understood to have been issued under Article 166 of the Constitution of India and hence vested rights accrued to guest teachers, inter alia, to receive remuneration only as stipulated in the said memorandum dated 30th May 2008.
- (b) The guest teachers are a homogeneous, new class and are entitled to claim distinct and specific rights against the State.
- (c) The Memorandum No. 957-SE dated 22nd May, 2012 and Memorandum No. 3296-SE dated 16th October, 2012, seeking to modify and/or limit the remuneration payable to guest teachers, are illegal and arbitrary.
- (d) The said memoranda dated 22nd May 2012 and 16th October 2012 has not been issued in the name of the Governor and, therefore, cannot alter the terms and conditions of an executive order under the Memorandum No. 674-SE dated 30th May, 2008.
- (e) Vested rights which accrued on the guest teachers to receive remuneration in terms of the original Memorandum No. 674-SE dated 30th May, 2008, issued under Article 166 of the Constitution of India cannot be taken away by the State much less under an order of the Joint Secretary of the School Education Department.

- (f) The guest teachers perform all duties akin to regular Assistant Teachers under the State. Guest teachers, therefore, cannot be deprived of assured remuneration which has become a vested right accrued under the said circular No. 674-SE dated 30th May, 2008.
- (g) The memoranda dated 22nd May, 2012 and 16th October, 2012 have the effect of supplanting the original scheme under Memorandum No. 674-SE dated 30th May, 2008. The State can at best supplement an existing order passed under Article 166 of the Constitution of India but cannot sub-plant it. The said two memoranda are thus illegal.
- (h) The Petitioners, therefore, claim remuneration as specified in the Memorandum No. 674-SE dated 30th May, 2008 for the period they worked as guest teachers from September, 2011.
12. In support of his arguments, Mr. Chaturvedi placed reliance on the decision of a Co-ordinate Bench of this Court in the case of **Indu Prava Ghosh Vs. State of West Bengal dated 29th July, 2009** passed in **WP 953 (W) of 2006**, a decision of the Single Bench of the Madras High Court in the case of **P. Thamilarasi Vs. The Director of School Education** being **WP (MD) No. 2914 of 2012 dated 6th September, 2018**, the decision of the Supreme Court in the case of **Bachhittar Singh vs. State of Punjab** reported in **AIR (1963) SC 395**, the case of **Dr. Y. Ibehaibi Devi (D) by LRS. and others vs. State of Manipur** reported in **2022 SCC Online SC 392**.

Reference is also made to the decision of a coordinate bench dated 9th January 2020 in **W.P.No. 22290 (W) of 2012, Chira Kumar Maity Vs. State of West Bengal and Ors** wherein it was ordered that the Guest Teacher would be paid the same remuneration as in the Memorandum dated 30th May 2008. Similar benefit is sought by the petitioner.

Arguments of the State

13. Mr. Tapan Kumar Mukherjee, Ld. Senior Advocate and Ms. Chaitali Bhattacharjee, Advocate, for the State would argue that the appointment the petitioner is itself illegal as, upon retirement as a regular teacher, he was receiving pension as per ROPA 2009 pay scales. He was ineligible for appointment as a Guest Teacher as the Memo dated 30th May 2008 permitted appointed only of retired teachers of the State enjoying ROPA 98' Scale of Pension. No relief can therefore be granted to the petitioner and all those applicants in the other writ petitions, illegally appointed like him.
14. Without prejudice to the above it is argued that the petitioners are at best "scheme based engagees", terms of which engagement can be altered by the State even without the concurrence of the petitioners. This is so as the Circular dated 30th May 2008 is an executive order, which can be altered by the State at anytime subject to its business.

15. The State has also argued that it was entitled to change the remuneration payable to ad-hoc appointees and no vested rights accrue to the petitioner to enforce the terms of the Memo dated 30th May 2008. The Engagement of the petitioners was not under any Statutory Rules.
16. The petitioners cannot claim any negative equality based on the decision of the Co-ordinate bench in the **Chira Kr Maity Case (Supra)**.
17. Reliance is placed on the cases of **State of U.P. Vs. Jogendra Singh** reported in **(1998) 1 SCC, Pg 449**, **Shanti Sports Club Vs UOI** reported in **(2009) 15 SCC 705 Pr 71** and the case of **Haryana State Electricity Board Vs Gulshanlal** reported in **(2009) 12 SCC 231 Pr 34**.

The Court's analysis and decision.

18. For the purpose of ascertaining the nature of rights claimed by the petitioners, the purport, scope and status of the Memorandum dated 30th May 2008 is required to be understood.

Article 166 read with Article 162 of the Constitution of India confer upon the executive, powers to issue orders and other instruments in the name of the Governor. Such orders are issued for the effective conduct of the business of the State. Such business may involve all measures to aid and assist in discharge of State function and discharge of State responsibilities. Reference in this regard may be

made to the decision of the Supreme Court in the case of **Assn. of Medical Superspeciality Aspirants & Residents Vs Union of India and Ors** reported in **(2019) 8 SCC 607**. At Paragraph 17 it was held as follows :-

“1. Jurisdiction of the State Government

17. Schedule VII List I Entry 66 to the Constitution refers to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Schedule VII List III Entry 25 deals with education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I. Legislations can be made by the State Legislature relating to medical education subject to the legislation made by Parliament. The Medical Council of India Act governs the field of medical education in this country. Admittedly, there is no provision in the Medical Council of India Act touching upon the subject-matter of compulsory bonds. Therefore, the States are free to legislate on the subject-matter of medical bonds. Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution on matters over which the State Legislature has the power to legislate. The notifications issued by the State Governments imposing a condition of execution of compulsory bonds at the time of admission to postgraduate courses and superspeciality courses cannot be said to be vitiated due to lack of authority or competence. The field of bonds requiring compulsory employment is not covered by any Central legislation. Therefore, the submissions made on behalf of the appellants that the States lacked competence to issue the notifications as the field is occupied are rejected.”

19. The memorandum dated 30th May, 2008 is clearly an order under Article 166 of the Constitution. The power of the executive under Article 162 can be questioned only when orders made by executive seek to interfere with any rights conferred under statutory provisions. Reference is made to the decision of the Supreme Court in the case of **Bishambhar Dayal Chandra Mohan v. State of U.P.** reported in **(1982) 1 SCC 39**.

“21. In *Ram Jawaya Kapur case* [AIR 1955 SC 549 : (1955) 2 SCR 225 : 1955 SCJ 504] it was contended that the executive power of the State

did not extend to the carrying on of trade of printing, publishing and selling of textbooks for schools unless such trade was authorised by law. In repelling the contention, Mukherjea, C.J. speaking for the Court, observed: (at SCR p. 236)

“Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or supervision of the general administration of the State.”

The learned Chief Justice then went on to observe: (at SCR p. 239)

“The Indian Constitution is a written Constitution and even the legislature cannot override the fundamental rights guaranteed by it to the citizens. Consequently, even if the acts of the executive are deemed to be sanctioned by the legislature, yet they can be declared to be void and inoperative if they infringe any of the fundamental rights of the petitioners guaranteed under Part III of the Constitution. On the other hand, even if the acts of the executive are illegal in the sense that they are not warranted by law, but no fundamental rights of the petitioners have been infringed thereby, the latter would obviously have no right to complain under Article 32 of the Constitution though they may have remedies elsewhere if other heads of rights are infringed.”

In *Naraindas Indurkha v. State of M.P.* [(1974) 4 SCC 788 : 1974 SCC (Cri) 727 : AIR 1974 SC 1232 : (1974) 3 SCR 624] Bhagwati, J., speaking for the Court, reiterated the principles laid down by Mukherjea, C.J. in *Ram Jawaya Kapur case* [AIR 1955 SC 549 : (1955) 2 SCR 225 : 1955 SCJ 504] and held that the State Government could act in exercise of the executive power of the State under Article 162 of the Constitution in relation to any matter with respect to which State legislature has power to make laws even if there was no legislation to support such executive

action. There is no denying the fact that the State legislature is competent to enact a law on the subject covered by Entry 33, List III, which reads:

33. Trade and commerce in, and the production, supply and distribution of,—

* * *

(b) foodstuffs, including edible oilseeds and oils.

* * *

22. The Essential Commodities Act, 1955 was enacted by Parliament in exercise of concurrent jurisdiction under Entry 33, List III of the Seventh Schedule to the Constitution as amended by the Constitution (Third Amendment) Act, 1954. The exercise of such concurrent jurisdiction would not deprive the State legislature of its jurisdiction thereunder. The State legislature, therefore, could still make a law on the subject regulating trade and commerce in, and the production, supply and distribution of “foodstuffs” and the only question that would arise is one of repugnancy dealt with in Article 254 of the Constitution. The executive power of the State being co-extensive with its legislative power under Entry 33, List III, it relates to all matters covered by the subject “foodstuffs”, trade and commerce in, and the production, supply and distribution thereof. This is, of course, subject to the limitation contained in proviso to Article 162 which directs that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.

20. The memorandum dated 30th May, 2008 clearly and unambiguously indicates that the same is a temporary, ad-hoc, interim measure. The State was admittedly facing an acute crisis of teachers. Schools at the upper primary level were required to be set up immediately and urgently. The obligations of the State towards the right to education under Article 21A had to be fulfilled with urgency and expedition. The School Service Commission (Constituted under the SSC Act of 1997) was unable to recruit enough teachers to meet the demand. The State,

therefore, considering the finances available, within its budget constraints, created an ad-hoc and temporary position of “Guest Teachers”, under the aforesaid memorandum dated 30th May, 2008. No Statutory rights were either created or taken away by the State under the Memorandum dated 30th May, 2008.

21. The terms of engagement clearly indicate that only persons who are otherwise secured financially were to be engaged. The engagement was only for a period of six months pending recruitment of a regular teacher by the State. Only persons drawing pension under ROPA 1998 and retirement benefits were entitled to apply. The composition of the selection committee of guest teachers is distinct and different from any regular process of recruitment in the State.
22. The expressions, pay scales or employment, are not used in the said memorandum dated 30th May, 2008. All the terms and conditions of the memorandum dated 30th May, 2008 clearly and unequivocally indicate that no vested rights of any nature whatsoever can flow out of the terms of engagement. The guest teachers were not, therefore, employees under the State. The remuneration being paid was more in the nature of an ad-hoc honorarium than any salary.
23. The engagement of the Guest Teachers was not under Statutory Rules. No vested or permanent rights were or could have been created thereunder. The engagement was an ad-hoc, interim, temporary and stop-gap engagement.

24. The State was clearly entitled to alter, reduce and/or change the remuneration and honorarium payable to any of the guest teachers engaged under the aforesaid memorandum dated 30th May, 2008. The same could be for budget constraints since a specific budget of 20 Crores, was mentioned in the Memo dated 30th may 2008.
25. The memoranda dated 22nd May, 2012 and 16th October, 2012 are, therefore, legal and sustainable since the original memorandum dated 30th May, 2008 did not create any vested rights. At this juncture the decisions cited by Mr. Chaturvedi, Ld. Counsel for the petitioner may be considered.
26. The decision of the Supreme court in the case of **Bachhittar Singh vs. The State of Punjab** reported in **AIR (1963) SC 395** is an authority for the proposition that an order of the Secretary of the State does not take effect unless the same is communicated to the petitioner concerned. The observations in connection with Article 166 must be deemed as general and obiter, in the facts of the Case. The subject matter of the case was disciplinary proceedings against a government servant under Article 311 of the Constitution of India. The said decision therefore, cannot come to the aid of the Petitioner.
27. Both the cases of **Indu Prava Ghosh (supra)** of the Calcutta High Court and in the case of **P. Thamilarasi (supra)** dealt with pension and an order varying the vested and or Statutory rights in the nature of Pension. Pension is a right created under powers conferred under State Legislation and Article 16 of the Constitution of India. The said

cases would therefore have no manner of application herein as the memorandum dated 30th May, 2008 cannot and did not create any vested right nor was it issued under any statutory provisions.

28. Similarly, the case of **Dr. Y. Ibehaibi Devi (supra)** was concerned with vested rights in the nature of pay scales implemented by the Government of Manipur under the Manipur Service Pay Scale Rules 2010. These are Statutory rules framed by the Executive under powers conferred under Statute. It is in this context that the legality of modification made by office memorandum dated 5th May, 2010 was being considered by the Hon'ble Supreme Court. Given these facts the **Dr. Y. Ibehabi decision (supra)** would have no manner of application in the instant case.
29. What would be relevant and important, however, is to consider the decision of the Supreme Court in the case of **State of Bihar & Anr. vs. Sunny Prakash & Ors.** reported in **(2013) 3 SCC 559** At Para 20 of the said judgment the Hon'ble Supreme Court referred to the case of **R. Chitralekha and another vs. State of Mysore and others** and quoted paragraph 4 and 5 of the said judgment. The said paragraph is set out herein below:

"20. It is also useful to refer a Constitution Bench decision of this Court in *R. Chitralekha v. State of Mysore* [AIR 1964 SC 1823] . In order to understand the principles laid down by the Constitution Bench, it is useful to quote paras 4 and 5 which read thus: (AIR pp. 1828-29)

"4. The next contention advanced is that Annexure IV was invalid as it did not conform to the requirements of Article 166 of the Constitution. As the argument turns upon the form of the said annexure it will be convenient to read the material part thereof:

'Sir,

Subject: Award of marks for the "interview" of the candidates seeking admission to Engineering Colleges and Technical Institution.

With reference to your Letter No. AAS.4.ADW/63/2491, dated 25-6-1963, on the subject mentioned above, I am directed to state that Government have decided that 25% of the maximum marks....

Yours faithfully,

sd/-

S. Narasappa,
Under-Secretary to Government,
Education Department'

Ex facie this Letter shows that it was a communication of the order issued by the Government under the signature of the Under-Secretary to the Government, Education Department. Under Article 166 of the Constitution all executive action of the Government of a State shall be expressed to be taken in the name of the Governor, and that orders made in the name of the Governor shall be authenticated in such a manner as may be specified in rules to be made by the Governor and the validity of an order which is so authenticated shall not be called in question on the ground that it is not an order made by the Governor.

If the conditions laid down in this article are complied with, the order cannot be called in question on the ground that it is not an order made by the Governor. It is contended that as the order in question was not issued in the name of the Governor the order was void and no interviews could be held pursuant to that order. The law on the subject is well settled. In *Dattatraya Moreshwar v. State of Bombay* [AIR 1952 SC 181 : 1952 Cri LJ 955 : 1952 SCR 612] , SCR at p. 625 Das J., as he then was, observed: (AIR pp. 185-86, para 7)

7. ... Strict compliance with the requirements of Article 166 gives an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself. ... Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. Therefore, all that the procedure established by law requires is that the appropriate Government must take a decision as to whether the detention order should be confirmed or not under Section 11(1).'

The same view was reiterated by this Court in *State of Bombay v. Purushottam Jog Naik* [AIR 1952 SC 317 : 1952 Cri LJ 1269 : 1952 SCR 674] , where it was pointed out that though the order in question there was defective in form it was open to the State Government to prove by other means that such an order had been validly made. This view has been reaffirmed by this Court in subsequent decisions: see *Ghaio Mal and Sons v. State of Delhi* [AIR 1959 SC 65 : 1959 SCR 1424] , and it is, therefore, settled law that provisions of Article 166 of the Constitution are only directory and not mandatory in character and, if they are not complied with, it can be established as a question of fact that the impugned order [CWJC No. 10870 of 2008, decided on 7-8-2008 (Pat)] was issued in fact by the State Government or the Governor. The judgment of this Court in *Bachhittar Singh v. State of Punjab* [AIR 1963 SC 395 : 1962 Supp (3) SCR 713] does not help the appellants, for in that case the order signed by the Revenue Minister was not communicated to the party and, therefore, it was held that there was no effective order.

5. In the light of the aforesaid decisions, let us look at the facts of this case. Though Annexure IV does not conform to the provisions of Article 166 of the Constitution, it ex facie says that an order to the effect mentioned therein

was issued by the Government and it is not denied that it was communicated to the Selection Committee. In neither of the affidavits filed by the appellants there was any specific averment that no such order was issued by the Government. In the counter-affidavit filed by B.R. Verma, Deputy Secretary to the Government of Mysore, Education Department, there is a clear averment that the Government gave the direction contained in Annexure IV and a similar letter was issued to the Selection Committee for admissions to Medical Colleges and this averment was not denied by the appellants by filing any affidavit. In the circumstances when there are no allegations at all in the affidavit that the order was not made by the Government, we have no reason to reject the averment made by the Deputy Secretary to the Government that the order was issued by the Government. There are no merits in this contention.”

From this decision, it is clear that the provisions of Article 166 of the Constitution are only directory and not mandatory in character and if they are not complied with, it can be established as a question of fact that the impugned order was issued in fact by the State Government.”

30. It is abundantly clear from the aforesaid decision that an order of the State that is clearly not stated to have been issued in the name of the Governor does not automatically become invalid. The decision of the State in the circular dated 22nd May, 2012 and 16th October, 2012 cannot, therefore, be called to question on that ground.
31. As already discussed hereinabove the memorandum dated 30th May, 2008 was not issued under any statutory rules or power. It was issued as a stop-gap, interim, ad-hoc measure for the conduct of the State business. The object and purpose was to address an emergent paucity of teachers. The said measure is at best an ad-hoc temporary interim arrangement and cannot confer any vested rights. Alteration of such interim measure by the subsequent notification dated 22nd May, 2012 and 16th October, 2012 cannot, therefore, and otherwise be questioned for being violative of the provisions of Article 166 and 162 of the Constitution of India.

32. Even otherwise applying the dicta in the **Sunny Prakash case (supra)**, the said notifications cannot be faulted for want of authority and power. The argument that the State has benefitted greatly from the services rendered by guest teachers cannot in any way confer any additional status on the Petitioner or any guest teachers.
33. Coming to the specific facts of the instant case, the Petitioner was not drawing pension under ROPA 1998. He could not have been otherwise appointed in terms of memorandum dated 30th May, 2008. The Petitioner was admittedly drawing pension in terms of the ROPA 2008 which was given notional effect from January, 2006. The Petitioner retired from service on 30th September, 2010. The engagement of the petitioner was thus illegal and contrary to the Memorandum dated 30th May 2008. The question of any relief or remedy, therefore, cannot and does not arise.
34. In respect of the order dated 9th January, 2020 passed by the Coordinate Bench of this Court in **W.P. No. 22290 (W) of 2019** in the case of **Chira Kumar Maiti vs. The State of West Bengal and others**, it appears that the aforesaid issues had not been considered by the Coordinate Bench. The said decision or order of the Secretary, School Education Department dated 2nd November, 2020 cannot come to the aid of the Petitioner.
35. Reference may also be made to para 71 of the decision of the Supreme Court in the case of of the decision of the Supreme Court in the case of

36. In **Shanti Sports Club v. Union of India** reported in (2009) 15 SCC

705 at para 71 it was held as follows:-

“ **71.** Article 14 of the Constitution declares that:

“14. *Equality before law.*—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The concept of equality enshrined in that article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities. In *Chandigarh Admn. v. Jagjit Singh* [(1995) 1 SCC 745] this Court made a lucid exposition of law on this subject. The facts of that case were that the respondents, who had given the highest bid for 338 sq yd plot in Sector 31-A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the estate officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and the Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on 18-3-1991. Thereafter, the respondent again approached the estate officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the estate officer. He then filed another writ petition before the High Court, which was allowed only on the ground that in another case pertaining to Smt Prakash Rani, the Administrator had restored the plot despite dismissal of the writ petition filed by her. While reversing the order of the High Court, this Court observed as under: (*Jagjit Singh case* [(1995) 1 SCC 745] , SCC pp. 750-51, para 8)

“8. ... We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. *Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order.* (emphasis in original) *The extraordinary and discretionary power of the High Court cannot*

be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. (emphasis supplied) By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case (*sic* court) nor is his case. In our considered opinion, such a course—barring exceptional situations—would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world.”

37. In **Haryana State Electricity Board v. GulshanLal** reported in **(2009) 12 SCC 231** it was held as follows in Paragraph 34.

“34. In Anil Kapoor's case, a writ petition was also filed for the purpose of grant of designation. The same has rightly or wrongly been allowed. That would not mean that equality can be claimed on the basis thereof which would lead to a wholly anomalous situation. Decree granted by a competent court of law is no doubt binding on the employer. But, when in a subsequent litigation the absurd result emanating from the cascading effect thereof becomes apparent before another court and it is found that the said judgment is illegal, it is well settled, that by application of Article 14 of the Constitution of India alone, similar relief should not be granted.”

38. Applying the aforesaid dicta the claim of the petitioner on the basis of the **Chira Kumar Maity decision (Supra)** cannot be entertained.

39. The petitioner has already been paid remuneration in terms of the modified circular 22nd May, 2012 and 16th October, 2012. The question of any further claims towards engagement as guest teachers, therefore, does not and cannot arise. This Court therefore issues the following directions in respect of all guest teachers who have filed writ petitions.

- a) The engagement of guest teachers or persons other than those getting pension in terms of ROPA 1998 upto 1st April, 2012, being contrary to memorandum dated 30th May, 2008, are not entitled to claim any other benefits than what has already been paid to them. No sums paid in excess, if any, shall however be recovered by the State from such persons.
- b) All those engaged as guest teachers prior to 1st April, 2012 under ROPA 1998 shall be entitled to get remuneration as stipulated under circular dated 22nd May, 2012 upto 1st April, 2012. They shall be entitled to lodge any formal claim towards any arrears payable to them as indicated hereinabove with the DI of Schools.
- c) All those guest teachers engaged after 1st April, 2012 shall be entitled to get remuneration as stipulated in the memorandum dated 16th October, 2012. The State shall not recover any sums of money from any person who may have received any excess of the above stipulation.

40. The writ petitions are disposed of.

41. In view of the above, all pending CAN applications in any of the writ petitions shall automatically stand disposed of.
42. There shall be no order as to costs.
43. All parties are directed to act on a server copy of this judgment duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

Later

07.09.2022

Item Nos. 506-514

Learned Counsel appearing for the petitioners in item nos. 506-514 submits that his clients pray for the benefit of ROPA, 2009 to be given to his clients who were engaged as “Guest Teachers”.

In view of the discussions already made hereinabove on the specific object and purpose of issuance of the circular dated 30.05.2008, in the aforesaid judgment and the finding that only those persons who were getting pension in terms of ROPA 1998 could be engaged as Guest Teachers, the claims of the said petitioners shall stand rejected.

(Rajasekhar Mantha, J.)