

27 19.12.2022  
Sc Ct. no.22

**WPA 26941 OF 2022**

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Md. Raisuddin

Vs.

The State of West Bengal & Ors.

Mr. Manuwar Ali  
Ms. Moumita Karmakar.

....For the petitioner

Mr. Arindam Chattopadhyay  
Ms. Lipika Chatterjee.

....For the Respondents/  
State.

The writ petitioner claimed to be a ***Part-time Clerk at Arjunpur High School (H.S.), District-Murshidabad.***

The petitioner also claimed that he has been working at the post of Part-time Clerk for the last about eighteen years and claimed to become permanent. The ***Appointment Letter*** was at ***page 19*** to the writ petition. The petitioner made a ***representation on November 4, 2022*** before the respondent no.3 at ***page 28*** to the writ petition. The petitioner claimed that such representation was not considered.

Mr. Arindam Chattopadhyay, learned State counsel appearing for the respondent nos. 1 to 3 placed reliance upon ***Section 7 of The West Bengal School (Control and Expenditure) Act, 2005*** (for short ***Act of 2005***).

The ***Section 7*** is quoted below :

*“Notwithstanding anything contained in any other law for the time being in force or any rules or orders issued thereunder or any*

*contract, customs or usages to the contrary, no person, who has been appointed as teacher or non-teaching staff on any casual or part-time vacancy or on contract basis in a school, shall have any right to be appointed on permanent basis in any sanctioned post or by creating any new post only for rendering such service.”*

The learned State counsel then submitted that in view of the operation of the said provision of law, no such regularisation of appointment is possible for a temporary employee. The learned State counsel further submitted that the writ petition even does not disclose that any approval was made by the State authority for the appointment of the petitioner and it was merely a local arrangement on an ad hoc basis.

Mr. Manuwar Ali, learned advocate for the writ petitioner submitted that the appointment of the petitioner was made prior to the said **Act of 2005** was promulgated. He submitted that since the petitioner had been working and is still working for more than 18 years, a right has accrued in his favour for his permanent appointment. In support, the learned advocate for the petitioner placed reliance upon a judgment of the Hon’ble Supreme Court ***In the matter of: Piyu Datta vs. State of West Bengal & Ors.***, reported in ***(2012) 3 WBLR (SC) 715.***

Considering the rival contentions of the parties and considering the materials on record it appears to this Court that the appointment of the petitioner was not

approved by any State authority at the time of his appointment in 2004 and was at best a contractual one and is of no permanent character whatsoever. The appointment is devoid of any statutory authority.

**Section 7** of the said **Act of 2005** starts with a *non obstante* clause that - anything contained in any other law for the time being in force or any rules or orders issued thereunder or in contrary or customs or usages to the contrary, no person, who had been appointed, *inter alia*, as a non-teaching staff on any casual or part-time vacancy or on contract basis in a school, as in the instant case for the petitioner, shall have any right to be appointed on permanent basis in any sanctioned post or by creating any new post only for rendering such service. Such provision clearly bars the case of the petitioner for seeking any permanent appointment.

In the matter of **Piyu Datta (Supra)**, no ratio was laid down by the Hon'ble Supreme Court. As such, the same has no binding force in the field of precedential law.

Inasmuch as, it is trite in view of the judicial pronouncement and the law laid down therein by the Hon'ble Supreme Court **In the matter of : State of Karnataka vs. Uma Devi, reported in (2006)1 SCC 1** that an unequal cannot be treated as equal. It is equally trite that certain exceptions though were also carved out by the Hon'ble Supreme Court in the matter of **Uma Devi (Supra)**, the factual circumstances of the instant case

whereunder the petitioner sought for a permanent employment did not fall within the scope, purview and ambit of such exceptions as pronounced in ***Uma Devi (Supra)***.

For the above reasons and discussions, this writ petition is totally devoid of any merit.

The writ petition ***WPA 26941 of 2022*** stands dismissed, without any order as to costs.

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

**(Aniruddha Roy, J.)**