

Court No. 22  
**05.12.2023**  
(Item No. ML-58)  
(AB)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**W.P.A. 5681 of 2006**

Prantosh Nandi  
VS  
The State of West Bengal & Ors.

Mr. Dilip Kuma Samanta  
Mr. Biswapriyo Samanta  
Ms. Tithi Paul  
.... For the petitioner

Mr. Rajarshi Basu  
Mr. K. M. Hossain  
.... For the respondent Nos. 1-3

The petitioner claimed to have been working as **Class-IV staff** at one **Burdwan C.M.S. High School**. The petitioner has been rendering service as such with effect from **September 1, 1983**. The petitioner is still continuing with such job. Pursuant to the letter of appointment dated September 1, 1983 the petitioner has been working as Class-IV staff. The petitioner claimed that by a letter dated August 27, 1998 the respondent No. 6 had requested the respondent No. 3 to grant prior permission for appointment of a class – IV staff in the vacancy created due to the retirement of one Debkanta Misra with effect from **August 1, 1998**, **Annexure P-6** at **page 34** to the writ petition.

Claiming regularization the petitioner had moved the previous writ petition being **W.P. No. 19024(W) of 1998** which was dismissed by a co-ordinate bench on **July 5, 2000** on merit.

Inspite of dismissal of the said writ petition the petitioner was allowed to continue to work as class-IV staff for the post he was appointed and is still continuing with such job. Since 1998 the post of class-IV staff for general candidate has been kept vacant without any appointment, as such, the petitioner claimed his approval for the said post. On the self-same relief thereafter the petitioner has filed the instant writ petition.

Mr. Dilip Kumar Samanta, learned counsel appearing for the petitioner submits that, a legitimate expectation has been created in favour of the petitioner for getting his service approved as he has been working since 1983 and even after dismissal of the previous writ petition he has been still working as such. He submits that, the service of the petitioner ought to have been and should be regularized.

In support of his contentions learned counsel for the petitioner has relied upon the following two decisions of the Hon'ble Supreme Court:

- (i) In the matter of: Amarkant Rai Vs. State of Bihar & Ors. reported at (2016)1 WBLR (SC) 98;**
- (ii) In the matter of: Piyu Datta Vs. State of West Bengal & Ors. reported at (2012) 3 WBLR (SC) 715;**

Mr. Rajarshi Basu, learned State counsel appearing for respondent Nos. 1 to 3 submits that, the

appointment of the petitioner was not following any recruitment rules. After dismissal of the previous writ petition, even if, the petitioner has been working, it is a private arrangement between the relevant school and the petitioner and the State authority has no obligation for approval of such service.

Learned State counsel further submits that, on the selfsame issue and on the same factual matrix the previous writ petition was dismissed on merit, hence, the issue after being finally decided cannot be re-opened and the claim is barred under the principal of *res judicata* and/or analogous thereto. He submits that, the reliefs claimed in this writ petition are same and identical with that of the previous writ petition which has already been decided on merit against the writ petition. There is no scope for passing any further order in this writ petition in favour of the petitioner. Hence, he prays for dismissal of this writ petition ***in limini***.

After considering the rival contentions and upon perusal of the materials on record it appears to this Court that, some material averments made by the petitioner in this writ petition are required to be looked into at the threshold. Such relevant averments are quoted below:

***“Para 11. Your petitioner states that in spite of successive prayers and representations nothing was done and as a result your petitioner had not been approved on permanent basis.***

*Challenging the aforesaid inaction on the part of the respondents your petitioner moved a writ petition in this Hon'ble Court being W.P. No. 19024 (W) of 1998. The said writ petition was finally heard in this Hon'ble Court on June 30, 2000 by His Lordship the Hon'ble Justice M.H.S. Ansari (as His Lordship then was). By a judgment dated July 5, 2000 the said writ petition was dismissed on merit.*

*Your petitioner craves leave to refer to the said judgment at the time of hearing of this application.*

*12. Your petitioner states that inspite of dismissal of the said writ petition your petitioner has been allowed to continue his service as a class-IV staff in the school in question and your petitioner is still in service as a class-IV staff. Your petitioner states that the service of your petitioner is still being required for the benefit of the school in question though the management of the school could have denied the employment of your petitioner in the said school after the dismissal of the said writ petition in the Hon'ble Court. In view of continuation of the employment of your petitioner as a class-IV staff of the said school after the dismissal of the writ petition in the manner as aforesaid your petitioner reasonably expected the approval of his appointment as a class-IV staff in the said school in question.*

*13. Your petitioner states that since 1998 the post of class-IV staff for general candidate has been kept vacant without any appointment and, therefore, your petitioner has been rendering service against the said sanctioned vacancy which is still existing in the said school in question. Your petitioner states that in view of the continuous service as being rendered by your*

*petitioner as a class-IV staff in the school in question with effect from August 1, 1983 your petitioner did not search for any other employment and by this time your petitioner had already crossed the age bar. In view of the existence of the sanctioned vacancy in the post of class-IV staff and in view of the continuous service being rendered by your petitioner till date even after the dismissal of the writ petition on July 5, 2000 the appointment of your petitioner ought to have been approved by condoning the age bar against the existing sanctioned vacancy of the class-IV staff in the school in question.*

*14. Your petitioner states that in view of the dismissal of the writ petition in this Hon'ble Court on July 5, 2000 your petitioner prefers the instant writ petition on the ground that your petitioner has been retained as a class-IV staff in the school in question against the sanctioned vacancy of class-IV staff and your petitioner is still in service in such post. Your petitioner prefers the instant writ petition for approval of his appointment with effect from the next date of the dismissal of the writ petition by this Hon'ble Court. Your petitioner states that your petitioner is deirous to get the monthly salary as per grant-in-aid scheme meant for class-IV staff of the school with effect from current date and your petitioner does not claim any monthly salary upto January 2006 but your petitioner is interested to get the notional fixation of his service benefit with effect from August 1, 1998 for the reasons state hereinabove. Your petitioner states that the instant writ petition is legal and valid for the sole reason that your petitioner has been retained in service till date inspite of dismissal of the writ petition by this Hon'ble Court being W.P. No. 19024 (W) of 1998 on July 5, 2000."*

The relevant portions from the judgment and order dated July 5, 2000 by which the previous writ petition was dismissed are also quoted below:

***“The case of the petitioner is that he has been rendering service as class-IV staff of Burdwan C.M.S. High School on the basis of a temporary appointment with the effect from 1<sup>st</sup> September, 1983. The petitioner seeks a direction in the nature of mandamus commanding the respondents to regularise his service in the said school on permanent basis by way of absorption.***

***In so far as the question of regularization of the services is concerned, a Division Bench of this High Court in Managing Committee, Dinhata High School –Vs. – Shri Ram Chandra Shah & Ors., reported in 1997(1) C.H.N. 105 has considered the matter with respect to the question whether the continuous service would give rise to a claim for regularization, when the initial appointment is not in accordance with the recruitment rules. The Court in that case held that the recruitment rules have statutory force and are mandatory in nature. Reference was made to the case of Ram Sharan Sastri Vs. State of West Bengal & Ors., reported in 1995(1) C.H.N. 419, wherein it was held that any teacher appointed de-hors the rules does not derive any legal right to continue in the said post. Reference was also made to the judgment of the Supreme Court in Dr. Arundhuti Ajit Pargaonkar Vs. State of Maharashtra & Ors., reported in AIR 1995 SC 962 wherein it was held that a continuous service by itself does not give rise to the claim of regularization. The Division Bench up-held the order of the learned trial Judge in that case***

***holding that the petitioner therein was not entitled to be absorbed in service.***

\*\*\*\*\*                      \*\*\*\*\*                      \*\*\*\*\*  
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***Further, it is clear that the petitioner has approached the Court on coming to know that a vacancy has arisen in Class-IV staff-cum-Night Guard of the School in question who retired on superannuation from 1.8.98 and the school authorities approached the DIS(SE) for according prior permission. The said post is required to be filled up in accordance with the recruitment rules and the petitioner who was neither appointed in accordance with the rules nor in any named vacancy, can have any right to the post in question.***

***The writ application is without merits and is accordingly dismissed, however, without any order as to costs.”***

Upon reading the averments made in the instant writ petition harmoniously with the observations of the co-ordinate bench while dismissing the previous writ petition, this Court is of the considered view that, the issue raised in this writ petition was the same in the previous writ petition which was dismissed by the co-ordinate bench by the said elaborate judgment dated July 5, 2000. Therefore, there is no further scope for this Court to entertain this writ petition on the self-same issue as the ***res*** has already been ***adjudicated upon*** between the parties by the co-ordinate bench. No appeal was carried out from the said judgment and order dated

July 5, 2000. The petitioner had accepted the said judgment.

The directions made by the Hon'ble Supreme Court ***In the matter of: Amarkant Rai (supra)*** and ***In the matter of: Piyu Datta (Supra)*** were in exercise of its power under **Article 142** of the Constitution of India, which is the exclusive authority of the Hon'ble Supreme Court. The declaration of law is always made under **Article 141** of the Constitution of India which becomes a binding precedence as law of the land.

In as much as, the appointment of the petitioner in 1983 and continuance of his employment even after dismissal of the previous writ petition was a private arrangement between the school and the employee, which cannot give rise to any right in favour of the petitioner seeking regularization of his service. The petitioner, therefore, cannot claim regularization of his service.

In view of the foregoing discussions and reasons, this Court is of the considered view that, the writ petition is devoid of any merit and should be dismissed.

Accordingly, this writ petition being **W.P.A. 5681 of 2006** stands **dismissed**, without any order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Aniruddha Roy, J.)**