

W.P.A. 7627 of 2012

**Sushil Chandra Kumar & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Ekramul Bari
Mr. S.M. Ali

...for the petitioners

Ms. Koyeli Bhattacharyya

...for the WBBSE

The writ petition is presented, *inter alia*, praying for approval of appointment of the petitioners claiming to be organizing teaching and non-teaching staff of Bhabani Bala Adivasi Vidyapith, District-Purulia (hereinafter referred to as the “said school”) upon setting aside memo dated 29th February, 2012 issued by the Principal Secretary, School Education Department, Government of West Bengal whereby prayer of the said school for grant of financial assistance to the school as well as to the organizing teaching and non-teaching staff upon granting approval has been spurned.

It has been submitted on behalf of the petitioners that in the report of the Sub Inspector of Schools (SE), Purulia which is at page 111 of the writ petition names of the petitioners have been incorporated as existing teaching and non-teaching staff of the said school which confers right upon the petitioners to get financial benefits from the State exchequer on grant of approval.

State-respondents are not represented today.

However, West Bengal Board of Secondary Education is represented by Ms. Koyeli Bhattacharyya, learned advocate who has opposed the prayer of the petitioners on the score that recognition was granted to the said school as 4 class junior high with effect from 1st May, 2007 without financial assistance. According to Board, since the said school has been granted recognition as newly set up teaching and non-teaching staff working in the school are required to be appointed on the recommendation of the School Service Commission or by following the extant Recruitment Rules.

Having heard the learned advocates representing the petitioners and the Board and on perusal of materials available on record it appears that the contents of the impugned memo dated 29th February, 2012 issued by the Principal Secretary, School Education Department, Government of West Bengal is reiterated by the Board and accordingly submission has been made by the learned advocate representing the Board today.

On hearing the learned advocates and having seen the impugned memo dated 29th February, 2012 it appears that there are two aspects one is recognition needs to be granted with financial assistance another is approval of appointment in favour of the organizing

teaching and non-teaching staff of the said school and extension of financial benefits thereof.

On perusal of the writ petition and the prayers couched therein it appears that the issue relating to extension of financial assistance in favour of the school by the State government has not been pleaded in the writ petition and no prayer has been made to that extant. Therefore, it will not be proper to appraise the question of extension of financial assistance in favour of the said school by the State government.

However, petitioners are claiming approval of appointment being organizing teaching and non-teaching staff. Since the school in question has been recognized as newly set up with effect from 1st May, 2007 by the Board on the recommendation of the Education Department, Government of West Bengal, payer of the petitioners for approval of appointment to get financial benefits cannot be considered since in terms of relevant provisions relating to newly set up school the prevalent procedure is to appoint teaching and non-teaching staff on the recommendation of the School Service Commission or in accordance with the extant Recruitment Rules.

In addition thereto the issue relating to grant of approval to the organizing teaching and non-teaching staff is no more *res integra* in view of the judgment of the Hon'ble Division Bench dated 6th July, 2018 passed

on an intra Court appeal being MAT 1626 of 2017 (**The District Inspector of Schools (SE) Burdwan & Ors. Vs. Abdul Barik Shaikh & Ors.**); paragraph 19 of the said judgment is quoted below:-

“Applying the law laid down here, we hold that Manindra Nath Sinha (Supra) having been affirmed by the Supreme Court, all Benches of this Court in cases involving similar fact situation are bound to follow the same as a binding precedent and any decision of a learned Judge or Judges, which runs counter to the dicta in Manindra Nath Sinha (supra), Smritikana Maity (supra), Gita Banik and Gopal Singh (supra), is not good law.”

In view of aforesaid facts involved in this writ petition and the judgment of the Hon’ble Division Bench dated 6th July, 2018 the relief as sought for by the petitioners is refused and accordingly the writ petition stands dismissed.

Affidavit-in-opposition filed on behalf of the Board is taken on record.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)