

20.09.2023
SL No. 2
Court No. 8
(gc)

**MAT 1764 of 2022
CAN 1 of 2022**

**Mangal Mandi & Ors.
Versus
State of West Bengal & Ors.**

Mr. Subrata Ghosh, Adv.
Mr. Sayantan Hazra, Adv.
...for the Appellants.
Ms. Koyeli Bhattacharyya, Adv.
...for the W.B.B.S.E.
Mr. Tapan Kr. Mukherjee, A.G.P.
Mr. Pinaki Bhattacharyya, Adv.
...for the State Respondents.

1. The appellants are aggrieved by the order dated 16th September, 2022. Although the writ petition was not disposed of, the refusal to accord approval of the appointment/regularization of the service of the organizing teaching and non-teaching staff of the said school, however, stand decided based on the decision in **MAT 1626 of 2017 [District Inspector of Schools (SE), Burdwan & Ors. vs. Abdul Barik Shaikh. & Ors.]**.
2. The Secretary has proceeded on the basis that the school cannot be recognized as minority institution and the recognition of the school is given as an un-aided educational institution.
3. The grievance of the writ petitioners are that they are working as teachers in the Junior High School prior to the school being recognized by

the Education Department and their involvement would appear from the report filed by the District Level Inspection Team (DLIT).

4. The learned Single Judge has relied upon the decision of the Hon'ble Division Bench presided over by Justice Dipankar Datta, as His Lordship then was, in which the Division Bench has categorically said in Paragraph 19 that having regard to the fact that **Manindra Nath Sinha & Ors. Vs. State of West Bengal & Ors.** reported at **(2006) 4 CHN 513** 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. **Abdul Barik Shaikh** (supra) considered all the earlier decisions on this point.
4. Mr. Subrata Ghosh, learned Counsel appearing on behalf of the writ petitioners/appellants has submitted that relying upon **Manindra Nath Sinha** (supra), a Coordinate Bench presided over by Justice Dr. Sambuddha Chakrabarti, as His Lordship then was, dismissed the similar prayer but it was overturned by the Hon'ble Supreme Court in **SLP (C) No.27804/2019** in **Prabir Kumar Ghosh & Ors. Vs. State of West Bengal & Ors.** dated 6th May, 2022. It appears from the order that pursuant to an order passed by the learned Single Judge on 24th August,

2012, the District Magistrate, Cooch Behar has submitted a report which accepted the appointment and continuation of the services of the writ petitioners. Although, it was stated that they were working as unapproved staff in the school in question. Considering the entirety of the matter and relying upon the report of the District Magistrate, Cooch Behar, the order passed by the Director of Education dated 12th April, 2002 was set aside and the District Inspector of Schools (S.E.) was directed to approve the appointments of the writ petitioners except writ petitioner No.6 with effect from 5th June, 2014.

5. The Division Bench proceeded on the basis that since the initial appointment was illegal, the appointments could not be regularized and the decision rendered by the Single Judge was otherwise unsustainable. On consideration of the aforesaid facts, the Hon'ble Supreme Court passed the following order:-

“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 learned 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.”

6. This order, however, was not placed before the learned Single Judge. In any event, the said order may not have made much difference as the facts are not identical or similar.
7. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge whereby the learned Single Judge refused to interfere with the decision of the respondent No.1 with regard to the grant of approval of appointment/regularization of service of the organizing teaching and non-teaching staff of the said school.
8. The appeal fails.
9. Accordingly, the appeal and the application stand dismissed.
10. However, there shall be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Prasenjit Biswas, J.)

(Soumen Sen, J.)