

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

FMA 992 of 2021
CAN 1 of 2020 (Old No. CAN 773 of 2020)

Asit Ranjan Gayen and Ors.
Vs.
State of West Bengal and Ors.

For the appellants	:-	Mr. Arabinda Chatterjee, Sr. Adv., Mr. Kamal Krishna Chakrabarti, Ms. Kakali Datta, Ms. Anamika Biswas, Ms. S. Das, Advs.
For the respondents	:-	Ms. Kakali Samajpati, Mr. Pinaki Dhole, Advs.
Judgment on	:-	01.09.2023.

I. P. MUKERJI, J.:-

This is an appeal from a judgment and order dated 25th November, 2019 passed by a learned single judge of this court in exercise of its writ jurisdiction, dismissing the writ application. It is preferred by the writ petitioners.

Five petitioners preferred the writ application. They described themselves as organizing assistant teachers of Alope Kendra High School, present and past responsible for setting up classes IX and X. The school is located in Paschim Medinipur. Out of the writ petitioners, Asit Ranjan Gayen, Mrityunjay Pal and Madhusudan Pakhira were working in the school at the time of filing of the application whereas Gourhari Ghorai and Ajit Kumar Mishra had retired on that date. All the writ petitioners joined the school as assistant teachers between 1974 and 1992. Asit Ranjan Gayen joined the school on 2nd May, 1992, Gourhari Ghorai on 1st March, 1974, Ajit Kumar Mishra on 1st February, 1975, Mrityunjay Pal on 2nd May, 1992 and Madhusudan Pakhira on 1st September, 1992.

Apart from its teaching staff, the school also had non-teaching staff.

With effect from 1st January, 1999 the school was upgraded to a high school. The District Inspector of School refused to approve the services of their staff.

A writ application was filed in this court [WP No. 21556(W) of 2000] to compel the respondent authorities to approve the staff of the school. It was disposed of on 7th December, 2001 with a direction on the Director of School Education to consider this question of approval. The Director gave approval to the non-teaching staff but refused approval to the teaching staff.

Another writ application [WP No. 4706(W) of 2003] was filed in this court challenging the order of the Director of School Education which on 11th December, 2003 was allowed by setting aside the said order and by directing the authorities to approve the services of the writ petitioners within three weeks of communication of the order.

The state government preferred an appeal from this order. The appeal was allowed by a division bench of this court. The writ petitioners moved the Supreme Court by a Special Leave Petition. The Supreme Court on 19th February, 2015 disposed of the matter by directing the Secretary of the School Education Department to consider the case of the writ petitioners.

The highest court had noted that the school had been given recognition but the service of the writ petitioners had not been regularized. Most of the teachers had worked for a long time and some of them had retired after having served the school since 1970. The Supreme Court directed the state authorities to consider the case of the writ petitioners. The court noted the enactment of the West Bengal School Services Commission Act, 1997. It nevertheless also noted that the school was originally a junior high school with effect from 01.01.1969 upgraded to Class IX high school with effect from 01.05.1999 and thereafter, to Class X high school with effect from 01.05.2000. The writ petitioners had

joined the school before upgradation and recognition. They had been appointed by the Managing Committee of the junior high school. The case had to be considered on its facts without being influenced by the Uma Devi case reported in **(2006) 4 SCC 1** by a reasoned order after giving a personal hearing to the writ petitioners.

By his order dated 16th July, 2015 the Secretary of School Education held that no power had been given to the Managing Committee of the school to appoint any teacher or non-teaching staff beyond the sanctioned strength of teaching and non-teaching staff. There was no power in the Director under Section 10 of the School Service Commission Act, 1997 and the rules thereunder or Rule 28 of the management of Non-Government Institution (Aided and Unaided) Rules, 1969 framed under the West Bengal Board of Secondary Education Act, 1963 to regularize such appointments. The reference by the Supreme Court was disposed of accordingly.

In our view, in his decision dated 16th July, 2015 the Secretary, School Education Department dealt with only the legal and technical issues. He analysed the definition of “school” in Section 2(n) of the West Bengal School Service Commission Act, 1997. This sub-section defined “school” as a recognized non-government aided secondary school or educational institution recognized under the West Bengal Board of Secondary Education Act, 1963 or West Bengal Council of Higher Secondary Education Act, 1975 or the West Bengal Board of Madrasah Education Act, 1994. Under Section 2(p) of the West Bengal School Service Commission Act, 1997 “teacher” means an Assistant Teacher or any other person, holding a teaching post of a school and recognized as such by the Board or the Council or the Board of Madrasah, as the case may be and includes the Headmaster or the Headmistresses. He was of the opinion that Section 10 of the West Bengal School Service Commission Act, 1997 did not vary the terms and conditions of employment of only

those teachers of recognized schools and did not apply to organizing teachers. Again following the reasoning in **Manindra Nath Sinha** case reported in **(2006) 4 CHN 513**, the Secretary remarked that the appellants had been engaged by the Managing Committee beyond its authority and hence, most irregularly appointed.

The matter did not rest there. The present writ application [WP 24181(W) of 2015] was filed challenging the said decision of the Secretary dated 16th July, 2015. It was heard before a learned single judge and decided on 25th November, 2019. His lordship was of the view that the view taken by the Secretary that the appointments of the appellants were dehors the said Act and Rule 28 of the 1969 Rules, could not be called perverse or beyond the jurisdiction of the Secretary. In those circumstances, according to the learned judge, he did not call for any interference under Article 226 of the Constitution of India. Accordingly, the writ application was dismissed.

Hence, this appeal.

Learned counsel for the appellants has placed reliance on a report dated 6th April, 1998 of the District Inspector of Schools, Midnapur. The report stated that the appellants were working as assistant teachers in the unrecognized section of Classes IX and X as unapproved organizer teacher. Their names were also found in the DLIT inspection report of his visit to the institution on 21st April, 1993 at 10.30 A.M. According to learned counsel, the appellants were entitled to get the benefit of notification no.895-EDN(S)/4A-53/87 dated 30.07.1992 as well as the Memorandum no.117-SE(S)/4A-50/93 dated 24.02.1995.

Learned counsel for the appellants also placed reliance on a division bench judgment of this court in **FMA 2089 of 2015 with CAN 1 of 2015 (Old CAN 6625 of 2015) (Niranjan Sahoo @ Niranjan Sahoo and Anr. vs. State of West Bengal and Ors.)**. In that case the division bench allowing the appeal had recognised the appellants to be the organizing

staff of the school. The appellants, as so found by the District Level Inspection Team were directed to be regularized as teachers from the date of recognition of the school. The said judgment of the division bench was appealed against by the state by filing of a Special Leave Petition (Civil) (S) 4340 of 2023. It was dismissed on 27th February, 2023.

The two key cases are **Manindra Nath Sinha & Ors. vs. State of West Bengal & Ors.** reported in **(2006) 4 CHN 513** and **State of West Bengal and Ors. vs. Smritikana Maity and Ors.** with **State of West Bengal & Ors. vs. Harendranath Mondal & Ors.** reported in **(2008) 1 CHN 582**.

In the first case (**Manindra Nath Sinha vs. State of West Bengal**) in paragraph 16 the division bench opined that in its view under the West Bengal Board of Secondary Education Act, 1963 and the rules framed thereunder, there was no scope of appointing any organizer teacher before the recognition of the school and approval of the sanctioned strength thereof.

In paragraph 20 it said that the Managing Committee of the school had no power to appoint any teaching or non-teaching staff beyond the sanctioned strength and hence, had no power to appoint any organizing staff. After the school was recognized, a Managing Committee was to be constituted and such duly constituted Managing Committee could appoint teaching and non-teaching staff according to Rule 28 of the Management Rules, 1969 within the sanctioned strength. Even such Managing Committee did not have the right to regularize non-teaching staff.

The court remarked:

“21. The learned Advocate of the writ petitioners/respondents relies upon two unreported judgments in MAT No. 30 of 2005 and MAT No. 1904 of 2005 allowing the regularization of service. We have gone through the said judgments. In none of the judgments the points of law, as raised in the present appeal, was raised before the two Division Benches and the Division Benches did not have any

occasion to deal with such points. Apart from this at that point of time the judgment delivered by the Hon'ble Apex Court was not in existence.

23. *After hearing the learned Advocates of the respective parties and considering the judgments of the Hon'ble Apex Court as also of our High Court, we find sufficient merit in the submissions made by the learned Advocate of the appellant. It is an admitted position that all the writ petitioners/respondents were given appointments as organizing staff in Classes IX and X, when those two classes were not even recognized by the West Bengal Board of Secondary Education. Such recognition was given on 29.11.2000 and it appears from the letter dated 29.1.2000 issued by the Secretary, Board of Secondary Education that the Secretary of the school was directed to reconstitute the managing committee of the upgraded school by 30.4.2001. So, it is apparent that there was no validity constituted managing committee for X-class High School (Classes IX and X) when the writ petitioners/respondents were given appointments. Rule 28 of the Management Rules empowers the Managing Committee of a recognized aided institution to give appointments. When the school was first recognized as Class IV Junior High School (Classes V to VIII), it had its managing committee, which was bound by Rule 28. But such managing committee had no power to give any appointments of teaching and non-teaching staff of an unrecognized part of the school i.e. Classes IX and X, which is known as X-class High School. In other words, a recognized managing committee when gave appointments of teaching and non-teaching staff of the unrecognized portion of the school (Classes IX and X), it must be held that they acted in a manner which is not permissible under the law. Such appointments must be held to be illegal appointments.”*

In paragraph 29 the court had not believed the claim of the Special Officer appointed by this court that the writ petitioner in that case had been working as an organizer staff from an earlier point of time. It affirmed the decision of a learned single judge in the case of **Aloke Jyoti Maitra vs. State of West Bengal and Ors.** reported in **(2003) 2 Cal LJ 553.**

State of West Bengal and Ors. vs. Smritikana Maity and Ors. reported in **(2008) 1 CHN 582** proceeded on the same basis that the Managing

Committee of Classes V to VIII had no power to appoint organizing staff for Classes IX and X and hence, such appointments were illegal under Rule 28 of the Management Rules, 1969.

Reference may also be made to the case of **Jogendra Nath Mishra vs. The State of West Bengal & Ors.** in **APO 471 of 2005** decided on 28th September, 2007 and **State of West Bengal & Ors. vs. Gautam Bandyopadhyay** in **M.A.T. 1413 of 2004**.

A change in legal perception is clearly discernible with the case of **State of West Bengal & Ors. vs. Dinesh Chandra Karjee & Ors.** decided on 6th March, 2019 by a division bench of this court. Following the ratio in the case of **Manindra Nath Sinha** and other decisions covering the field it had allowed the appeal of the State of West Bengal and set aside the judgment and order of the trial court directing appointments to be given to organizing staff. The matter went to the Supreme Court. The decision in **Prabir Kumar Ghosh and Ors. vs. The State of West Bengal & Ors.** of that court rendered on 6th May, 2022 recognized the role of genuine organizing staff to make education available in the locality “keeping with the letter and spirit of the legislation enacted by the Parliament being Right to Education Act”. It allowed the appeal accepting the report of the District Magistrate, Cooch Behar which had found those organizing staff to be genuinely involved in the setting up of the school in question.

A similar decision of the division bench of this court in **Niranjan Sahoo @ Niranjan Sahoo and Anr. vs. State of West Bengal and Ors. (FMA 2089 of 2015 with CAN 1 of 2015) (Old CAN 6625 of 2015)** directing regularization of organizing staff was not interfered with by the Supreme Court on appeal by dismissal of the Special Leave Petition on 27th February, 2023.

A situation which was missed in **Manindra Nath Sinha** and the decisions following it is this. The junior high school may be recognized (Class IV to Class VIII). It has a Managing Committee. A proposal for

extension of its recognition or upgradation upto Classes IX and X is awaiting consideration of the government. If such proposal was pending before the enactment of the West Bengal School Service Commission Act, 1997, after extension of the school's recognition or its upgradation, the sanctioned strength for the extended part had to be determined by the government and the strength filled up in accordance with the West Bengal Board of Secondary Education Act, 1963 and the Rules framed thereunder including the Management Rules, 1969, if such recognition was made after enactment of the West Bengal School Service Commission Act, 1997, then, under the recruitment or selection procedure under the said Act. If the Managing Committee of the junior high school anticipating upgradation of the school, with an ulterior motive appoints organizing staff for the extended part of the school and proposes to seek their regularization after its upgradation such appointments would certainly be illegal. Regularization thereof cannot be obtained. The posts have to be filled up in accordance with the above Act and Rules.

But suppose a body of persons much before recognition of the upgraded part of the school, operating independently and working as a Committee genuinely and sincerely sets up, organizes and runs the unrecognized part of the school as a school with teaching and non-teaching staff, infrastructure and students, with so much success that the government is persuaded to recognize it, then could it be said that the appointments of those teaching and non-teaching staff were illegal? With its eyes open the government recognized this extended part of the school having infrastructure, students, teaching and non-teaching staff. In such a type of situation, the authorities would be obliged to recognize those teaching and non-teaching staff, as organizing staff as a special case.

Otherwise, a wholly unacceptable application of the law would have to be made by flushing out the school of this genuine teaching and non-teaching staff and creating vacancies to be filled up by recruitment under the West Bengal School Service Commission Act, 1997.

The Supreme Court in the above cases had clearly recognized the genuine teaching and non-teaching staff who describe themselves as the organizing staff who with honest and bonafide intention had played their part in setting up the unrecognized part of the school much prior to its actual recognition by the government by providing infrastructure, teaching, non-teaching staff and imparting education to a body of students. When that part of the school is ultimately recognized by the government it has an obligation to recognize those organizing staff and regularise their services as an exception to the usual rule followed for recruitment under the School Service laws. Now, after recognition, derecognizing them would amount to throwing out these genuine and bonafide persons out of employment and depriving those people who were responsible for setting up of the school an opportunity of further developing the school.

The courts have very frequently relied on the government's Inspecting Team (DLIT) to ascertain who were the genuine teaching and non-teaching staff involved in the organization of a school.

It would appear from the above discussion that the facts of a particular case would determine whether the organising staff attached to the school were eligible for recognition. There is no scope for fraudulent persons or speculators who have prior knowledge that a school was seeking upgradation to higher classes. Capitalizing on this situation, they try to manufacture records of teaching and non-teaching staff to prove that they were involved as organizing staff in setting up the extended part of the school. As and when the school is upgraded, they try to prevent teachers and non-teaching staff from being regularly appointed by making a false claim to the authorities to be regularized as teachers and non-teaching staff.

This school Alope Kendra High School has been started as a junior high school on 17th January, 1970. It was recognised by the West Bengal

Board of Secondary Education and was imparting education upto Class VIII. In 1975 the school applied for upgradation to Classes IX and X level. On 1st March, 1976 a special permission was granted for sending up students of the school for Madhyamik examination without formal recognition of that part of the school.

After litigation upgradation was granted with effect from 1st January, 1999.

We find that Asit Ranjan Gayen joined the school as Assistant Teacher on 2nd May, 1992, Gourhari Ghorai in the same capacity on 1st March, 1974, Ajit Kumar Mishra similarly on 1st February, 1975, Mrityunjay Pal the same capacity on 2nd May, 1992, Madhusudan Pakhira in the same post from 1st September, 1992. Therefore, all the appellants/writ petitioners were engaged in the school much prior to its recognition from 1st January, 1999.

In earlier writ applications made to seek recognition of the teachers associated with the school, this court had obtained reports from the District Level Inspection Team. Such reports dated 6th April, 1998 clearly suggested that the claims of the appellants/writ petitioners were not fraudulent or speculative but was genuine. The appellants had obtained a substantial loan in organising the extended part of the school and in running it. These reports were directed to be placed before the Director of School Education to consider whether to recognise the teaching and non-teaching staff. Repeatedly, the Secretary/Director rejected the claim of the appellants/writ petitioners. The impugned order of the Secretary/Director merely rubber stamped in earlier decision.

Now, in view of the subsequent decisions of the Supreme Court and our High Court the law covering the field needs a review.

First of all, the recognised part of the school and the unrecognised part have to be viewed separately. The recognised part may have been subject to the West Bengal Secondary Education Act, 1963 and the rules framed

thereunder. It may also have been subject to the Management Rules, 1969 or as a matter of fact the West Bengal School Service Commission Act, 1997. But those rules govern management of the existing school and not any extension that was contemplated. If an extension was contemplated and a Committee appointed to organize the extended part of the school, that Committee had to be taken as different from the one running the existing institution.

In the case of Alope Kendra High School, the Committee has to be taken as comprising of genuine members because it started operating years before actual recognition of the extended part of the school and not a Committee that had been formed anticipating upgradation. The Committee had to be taken as a private Committee of a private school. Now, when this private Committee has organized a private school and it comes up before the Board for recognition, the Board cannot say that we will recognize the school, but the very staff who are asking for recognition being appointed de hors the West Bengal School Service Commission Act, is liable to be thrown out of the school and the vacancies created filled up by the procedure prescribed by that Act. That would be a most unreasonable and ridiculous interpretation of it.

So when a school which has been running as a private institution is recognized, the teaching and non-teaching staff legitimately in the employment of the school has to be recognized as an exception to the procedure prescribed for filling up vacancies under the said Act.

Moreover, the above decisions of the Supreme Court tend to show that in a school subsequently recognized, the role of genuine organizing teachers and non-teaching staff has to be given importance and recognized.

As far as this school is concerned, the appellants on the facts and circumstances mentioned above were genuinely appointed. Organizing staff as the appellants who genuinely made sincere efforts to set up the

extended part of the school which was subsequently upgraded and recognized deserved to be recognized as teachers.

Therefore, the learned judge was wrong in his lordship's impugned judgment and order in not taking note of the above facts and affirming the decision of the Secretary.

The impugned judgment and order is set aside. The respondents are directed to appoint the appellants as assistant teachers from the date the non-teaching staff of the school were so appointed. Considering the financial burden involved, the appointments shall be notional and the appellants not entitled to any pay or other benefits from the dates of appointments. They shall be entitled to pay and other benefits including retiral benefits from the date of this order, taking their service from the date of notional appointment till today as continuous. In case of appellants who have retired, they would be paid actual pension on the notional salary drawn before retirement. This order is to be complied with within three months of communication thereof.

The appeal is accordingly allowed and CAN 1 of 2020 (Old CAN 773 of 2020) disposed of to the above extent.

(I. P. MUKERJI, J.)

BISWAROOP CHOWDHURY, J.

I have perused the Judgment delivered by my learned brother and agree with the reasons stated therein. However I add the following:-

First of all upon perusing the case record it will appear that two of the appellant teachers were appointed in the year 1974 and 1975 rendered their services and retired but still under compelling circumstances had to go from pillar to post and knock the door of Government Authority and Court of Law. Although the other three teachers have joined in the year

1992 and have rendered services for the past 31 years but not retired have also faced the same hardship. As the appellants have joined school as organizer teacher in the year 1974, 1975 and 1992 and two of them have already retired after rendering service and the dispute is pending from the year 2000 and have not reached its finality a policy decision could have been taken by State Government and a specific scheme could have been framed to mitigate the hardships of those teachers who after rendering services as organized teacher for a long period have already retired and pursuing litigation before Court or have moved Government Authority to have their services regularized. Similarly schemes could have also been framed with regard to teachers who have rendered service for a long period as organizer teacher and on the verge of retirement. Although a scheme framed by Government Authority should satisfy the test of Article 14 of the Constitution but when a beneficial scheme is made for certain categories of workers or employees in certain exceptional circumstances it does not always violate Article 14 of the Constitution of India.

It appears from record that Alope Kendra High School where the appellants rendered their services as organizer teacher was started as a junior high school on 17th January 1970. It was recognized by the West Bengal Board of Secondary Education and was imparting education upto class VIII. In 1975, the school applied for upgradation to class IX and X level. On 1st March 1976 a special permission was granted for sending students of the school for Madhyamik examination without formal recognition of that part of the school.

When education is the need of the hour and there is dearth of schools in some areas, resulting children to go to far off places causing hardship and health hazards, or compelling some of the children to forego education upto a certain period, the idea of opening schools for imparting education is definitely a noble idea and the task of the organiser teacher

to teach the students without recognition of the school and without salary is indeed a noble service. After being established on 17th January, 1970 Aloke Kendra High School was recognized by the West Bengal Board of Secondary Education upto class VIII. In 1975 the school applied for upgradation to class IX and X level, and on 1st March 1976 a special permission was granted for sending up students of the school for Madhyamik examination without formal recognition of that part of the school. After litigation, upgradation was granted with effect from 1st January 1999. Thus it is clear that after obtaining recognition from the West Bengal Board of Secondary Education upto class VIII Aloke Kendra High School acted bona-fide in making application for upgradation within a reasonable period. The matter was thus sub-judice before the West Bengal Board of Secondary Education and subsequently before this Court till 1999. Although the matter was pending for upgradation before the West Bengal Board of Secondary Education, in the year 1976 but on 1st March 1976 a special permission was granted for sending students of the school for Madhyamik examination without formal recognition of that part of the school. This grant of special permission for the year 1976 within one year of making the application is definitely a ground for the school authority and two of the appellants who were appointed in the year 1974 and 1975 to reasonably expect that the issue of upgradation will be decided by the concerned authority within a short period and in the event of pendency special permission will be given to the students of the school in the following year. Upgradation was not granted by the West Bengal Board of Secondary Education, and the matter had to be moved before this Court for resolving the dispute and after litigation upgradation was granted with effect from 1st January 1999. During pendency of the matter before Court three of the appellants were appointed in the year 1992. It is quite reasonable and proper for the school authority to make arrangement of teaching in class IX and X during pendency of upgradation application before West Bengal Board of

Secondary Education, so that students who have completed class VIII from the said school are not required to go from pillar to post for getting admission in class IX in another school which was not very easy in the seventies when there was dearth of schools, and the school authority by making necessary arrangement and appellant Gourhari Ghorai, and Ajit Kumar Mishra by rendering their services as teachers during pendency of upgradation application made by the school authority resolved this problem. The appellants name figured in the District Level Inspection Team's Report thus there is no dispute regarding Appellants being working as Organizer Teacher. This long and uninterrupted services of the Appellants both prior to and upon grant of approval of upgradation is a ground for regularizing their services.

This appeal thus stands allowed, on the same terms as in the judgment and order of my learned brother. The respondent no-1 is also requested to formulate a scheme so that the dispute of the organizer teachers similarly placed with that of the appellants is resolved permanently.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAROOP CHOWDHURY, J.)