

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

**WPCR 6 of 2008
With
CAN 1 of 2017
(Old CAN 5415 of 2017)**

**Banipada Das
-Vs.-**

The State of West Bengal & Ors.

For the Petitioner : *Mr. Ekramul Bari,*
Sk. Imtiaj Uddin.

For the State : *Mr. Tapan Mukherjee,*
Mr. Somnath Naskar.

Heard on : *09.04.2024*

Judgment on : *24.04.2024*

Partha Sarathi Chatterjee, J.:-

1. The present writ petition has been preferred primarily praying for issue of a writ of mandamus commanding the concerned respondents to accord approval to the appointment of the petitioner for the post of Assistant Teacher of Jambani Bani Vidhyapith (in short, the school) on the basis of the report of the District Level Inspection Team (in short, the DLIT).
2. Before addressing the issue, the essential facts which are crucial to the resolution of that issue must be noticed.
3. The school was recognised as II-class Junior High School w.e.f. 1.1.1974 and the appointments of three teachers including of one Subal Ch. Karan having qualification of B.Sc., B.Ed. were approved in science group of the school.
4. In view of the alarming rise of the roll strength, the Managing Committee decided to upgrade the school as IV-class Junior High School. Further to such decision, the school authority following a selection process appointed four teachers including the petitioner, namely, Anit Kumar Panda (B.A., B.Ed.), Manik Ch. Das (B.A.), Banipada Das (B.Sc.), the petitioner herein and one Dilip Kumar Sen (B.Sc. Bio) for proposed upgraded section of the school i.e. for classes VII and VIII. In terms of the letter of appointment, the petitioner joined the school as an Assistant teacher on 3.4.1986.
5. In terms of its resolution adopted on 26.04.1990, the Managing Committee issued a formal letter of appointment *vide.* dated 27.04.1990 in favour of the petitioner for the post of Assistant teacher in the school on substantive basis with a rider that petitioner would be entitled to salary as

admissible under G.A. Rules from the date of approval of his appointment by the jurisdictional District Inspector of Schools.

6. The DLIT inspected the school and its activities on 06.02.1987 and also on 13.03.1993. The petitioner's name featured in both the inspection reports.
7. The school was upgraded to IV-class Junior High School by the West Bengal Board of Secondary Education *vide.* its Memo. no. S/83 dated 15.3.1993 w.e.f. 01.05.1991 subject to fulfilment of certain conditions and the appointments of two teachers, namely, Anil Kr. Panda, B.A., B.Ed. and Manik Ch. Das, B.A. were approved w.e.f. 1.12.1993.
8. Shortly thereafter, the Head of Institution *vide.* his letter dated 15.4.1993 forwarded the names of three teaching and one non-teaching staff including the petitioner's seeking approval of their appointments.
9. On 30.06.1993 by adopting a resolution, the Managing Committee placed the petitioner in science group whereas two other teachers, namely, Lakshman Ch. Dandapat and Manik Ch. Das were placed in social science group.
10. On receipt of a communication dated 4.10.1993 from D.I. of Schools, the school authority produced all the original resolution books and attendance register of the staff of the school, as sought for by the D.I. of Schools for verification so that process of according approval to the petitioner's appointment could be expedited but ultimately, the same did not produce any fruitful result.
11. The petitioner along with other staff of the school approached the competent authority with numerous representations for approval of their

appointments but despite being so approached, such representations were left unattended.

12. Aggrieved thereby, the petitioner was constrained to prefer a writ petition vide. C.O. no. 19922(W) of 1995, which was disposed of on 9.11.2000 with following direction:

“... I direct the District Inspector of Schools (SE), Medinipore to take immediate appropriate steps in accordance with law in the matter of according approval to the appointment of the petitioner in the post of Assistant Teacher of the said school as an organising teacher after taking into account of the aforesaid report of the Administrator dated 15th December, 1999 along with other relevant records and reports as are available for considering the matter of approval of the petitioner as an organising teacher of the school in question. The learned Advocate for the petitioner is directed to supply a copy of the instant writ petition together with a copy of the report of the Administrator dated 16th December, 1999, referred in the Inspection Book within a period of 7 days from the date and the District Inspector of Schools (SE), Midnapore shall treat the said writ petition as a representation of the petitioner and dispose of the same by passing a reasoned order within a period of four weeks from the date of receipt of the said writ petition after giving an opportunity of hearing to the petitioner. A copy of the reasoned order should also be furnished to the petitioner immediately after passing the reasoned order.”

13. In deference to the order dated 9.11.2000, the D. I. of Schools by his order communicated to the petitioner under a memo. dated 16.05.2001 negating the petitioner's claim for approval of his appointment. Referring to clause (c) of a notification vide. no. 1224-Ed(S) dated 5.1.21987, the D.I. of

Schools came to a conclusion that petitioner's initial appointment was not in conformity of the extant rules relating to the staff pattern.

14. In his order dated 9.11.2000, the D.I. of Schools explained that as per rules prevalent at the material point of time, admissible strength of the teaching staff was 6 (six) and the group-wise distribution of the staff pattern was 2 teaching staff for each of three subject-wise groups. In Science & Mathematics group, out of 2 teaching staff, one was for pure science and the other was for biological science. There was already an approved teacher having qualification of B.Sc. (pure), B.Ed. namely, Subal Chandra Karan and as such, there was no requirement for further teacher of having qualification of B.Sc. (pure). It was observed that there was necessity of one teacher for biological science. Therefore, taking recourse to the provisions of the notification vide. no. 895-Edn(SE) dated 30.09.1992, the D.I. of Schools refused to accord approval to the appointment of the petitioner. Hence, the writ petition.
15. During pendency of the writ petition, the petitioner retired from service on attaining the age of superannuation. As such, by taking out an application being CAN 1 of 2017, the petitioner has made a prayer for release of his retirement benefits upon approval of his appointment. Both the writ petition and the application preferred in connection therewith were taken up for hearing together. Both the learned advocates for the petitioner and for the State being armed with the leave of the Court have filed their respective written notes of argument.
16. In his written notes of argument, the petitioner furnished the information that the school was upgraded up to Class IX and then up to Class-X w.e.f.

01.15.2005 and 01.05.2006 respectively. Lately, Mr. Subal Ch. Karan retired from service w.e.f. 30.04.2012 and following superannuation of Mr. Karan, a post of Assistant Teacher of Science Group meant for pure science is lying vacant. The petitioner retired from service on attaining the age of superannuation in February, 2017.

17. Mr. Bari, learned advocate representing the petitioner sought to contend that admittedly, the petitioner was appointed on 3.4.1986 and a formal letter of appointment was issued in favour of the petitioner on 26.04.1990.
18. It was his next contention that the DLIT inspected the school twice i.e. in 1987 and 1991 and submitted its reports. He asserted that in both the inspection reports, the petitioner's name featured as an organising teaching staff of the school. The school has all along admitted such facts. While elaborating the background facts which necessitated the petitioner's appointment, he contended that to tackle the alarming rise of roll strength of students of classes VII and VIII, the Managing Committee felt dire need to upgrade the school as IV-class Junior High School as a private arrangement. In furtherance of their objective to impart education to the students of the locality, the petitioner was appointed. In his view, such appointment cannot be condemned raising a plea that the same was made in derogation of the rules relating to staff pattern. In aid of his such contention, he cited one unreported decision rendered by the Hon'ble Supreme Court in a Civil Appeal arising out of SLP(C) no. 27804 of 2019 (Prabir Kumar Ghosh & Ors. vs. State of West Bengal & Ors.). He also referred two other unreported judgments of this Court, out of which, one was delivered by a Hon'ble Division Bench of this Court in FMA 2089 of

2015 (Niranjan Sahoo @ Niranajan Sahoo & Anr.) and the other one, by a coordinate Bench in WPA 25121 of 2016 (Sk. Obaidulla & Ors. vs. The State of West Bengal & Ors.).

19. Mr. Bari invited the Court to take a pragmatic view. He sought to contend that after exploiting his service for decades, the State has refused to accord its approval to the appointment of the petitioner on the plea of violation of rules relating to the staff pattern. Mr. Bari submitted that a direction be given upon the respondents to release the petitioner's terminal benefits upon approval of his appointment from the date of his initial appointment so that the petitioner can get means of his sustenance at the December of his life.
20. Mr. Naskar refuted the claim of Mr. Bari and contended that in repetitive pronouncements, this Court and also the Hon'ble Supreme Court consistently held that an organizing Managing Committee has no authority to appoint any teacher in unapproved section of the school. It was contended by him that even if such issue is left aside, yet the petitioner's appointment cannot be declared to be valid since the same was given in total derogation of the rules relating to staff pattern applicable to a Junior High School. He argued that there was no perversity or patent error in the order under challenge in the writ petition warranting interference of the same by this court. To embolden his such contention, he cited unreported decision of a Hon'ble Division Bench of this Court rendered in MAT no. 1626 of 2017 (The District Inspector of Schools (Secondary Education), Burdwan & Ors. vs. Abdul Barik Shaikh & Ors.). He argued that the petitioner's appointment cannot be approved for upgraded section of the

school i.e. for classes IX and X also in view of the provisions of West Bengal Schools (Control of Expenditure) Act, 2005. He alleged that the petitioner had manufactured the report of the administrator which is an act of fraud and as such, the petitioner is not entitled to get any equitable relief from this Court. In support of his such contention, he relied upon an unreported judgment delivered by the Hon'ble Supreme Court in Civil Appeal nos. 7550-7553 of 2021(Shri K. Jayaram & Ors. vs. Bangalore Dev. Authority & Ors.. Mr. Naskar cited another decision, reported at (1996) 6 SCC 216(Excise Superintendent, Malkapatnam, Krishna District, A.P. vs. K.B.N. Visweshwara Rao & Ors.).

21. A bird eye's view of the record would reveal that the petitioner claims that he was appointed in the proposed upgraded section of the school i.e. for Class VII and VIII by the Managing Committee and accordingly, he joined the school on 3.8.1986. However, a formal letter of appointment was issued by the same Managing Committee on 26th April, 1990.
22. Therefore, an inescapable conclusion that can be drawn is that the petitioner having qualification of B.Sc. (pure) was appointed in the proposed upgraded section of the school i.e. for Class VII and VIII by a Managing Committee which was constituted for management of the affairs of the school up to Class VI.
23. Mr. Bari laying immense emphasis on the unreported judgment of Niranjana Shaw (*supra*) sought to argue that such Managing Committee being an organising Managing Committee in respect of the proposed upgraded section of the school by making a private arrangement imparted

education to the students of the locality. He submits that such appointment of the petitioner cannot be branded as illegal. Citing an unreported decision rendered in SLP (C) No. 27804 of 2019 (Prabir Kumar Ghosh vs. State of West Bengal & Ors.), he contended that giving anxious consideration to such situation, the Hon'ble Apex Court observed that where the school was set up by the villagers and the facility of the school in the neighbourhood was not made available by the official agencies, in such situation, engagement of one teacher in such school cannot be called to be illegal.

24. Placing reliance heavily on an unreported decision of a co-ordinate bench rendered in WPA 25121 of 2016, he claimed that the petitioner is similarly situated with the petitioner of WPA 25121 of 2016 and the appellant of FMA 2089 of 2015.
25. The decision of Niranjan Sahoo (*supra*) is based on the reasoning that the State granted recognition of a staffed school and upon recognition of such school, if the existing staff are thrown out for the reason that the school is to be manned by the staff under the West Bengal School Service Commission Act, 1997, the same would be giving a very unjust and unreasonable interpretation of the Act of 1997 which applies only to appointments of teaching and non-teaching staff in a recognised upgraded school after the commencement of Act of 1997, to fill up the vacancies if the school was 'newly created'. Relying upon this proposition, the judgment of Sk. Obaidulla & Ors. (*supra*) was delivered. Therefore, in both the aforesaid decisions of this Court and in the decision of Prabir Kumar Ghosh & Ors. (*supra*), the issue whether or not the appointment of one

teacher who was appointed beyond the sanctioned strength can be asked to be approved, has not been dealt with. Therefore, for this reason, on facts, the judgments relied on by Mr. Bari are distinguishable.

26. The proposition laid down in judgment of Manindranath Sinha & Ors. Vs. State of West Bengal & Ors., reported in 2006 (4) CHN 513 was discussed in both the above referred unreported decisions of two different Hon'ble Division Benches of this Court. As observed in MAT 9381 of 2017, the law laid down in case of Manindranath Sinha & Ors.(supra) was affirmed by the Hon'ble Apex Court. Therefore, undoubtedly, the proposition laid down in case of Manindranath Sinha (surpa) has become law of the land to the extent that one organising Managing Committee cannot appoint any staff in proposed upgraded section of the school. Basically, power of such Managing Committee confines to the activities and/or affairs of the recognised part of the school.
27. Notably, in the memo. dated 15.03.1993, whereby the school was upgraded from II-class to IV-class Junior High School, the word 'upgraded' was consciously used instead of the word 'recognized'. The word 'recognized' or 'recognition' admits of existence of something whereas the word 'upgraded' or 'upgradation' does not shoulder the responsibility of making such admission. The school was upgraded subject to fulfilment of certain conditions. The school accepted such conditional upgradation.
28. However, in the case at hand, records indicate that the State has approved the appointments of two assistant teachers namely, Anit Kr. Panda & Manik Chandra Das who were also appointed by the organizing Managing

Committee for proposed upgraded section of the school i.e. for Classes VI and VII thereof. The petitioner who was also appointed by the same Managing Committee was treated differently only for the reason that his appointment was not in conformity with the rules relating to the staff pattern prevalent at the time of petitioner's initial appointment.

29. In a decision rendered by a Hon'ble Division Bench of this Court in MAT 1626 of 2017 [The District Inspector of Schools (Secondary Education), Burdwan & Ors. vs. Abdul Barik shaikh & Ors.][supra]], it was ruled that in terms of the extant rules, only a validly constituted Managing Committee of a school is entitled to appoint teaching and non-teaching staff within the sanctioned strength of teaching and non-teaching staff, either on a permanent basis or on a temporary basis.
30. Therefore, even if the question whether or not an organising Managing Committee can be treated as validly constituted Managing Committee in respect of proposed upgraded section of the school is kept aside and for the sake of argument, it is assumed that the words 'upgradation' and 'recognition' connote the same idea, then the question which next comes is that whether or not it would be apposite to force the State to accept the appointment given by such Managing Committee beyond the sanctioned strength.
31. In the case at hand, there is no quarrel in accepting the fact that the appointments of two teaching staff, who were also appointed along with the petitioner, have been approved as their appointments were within sanctioned strength. To obtain recognition of a staffed school, the staff are

to be appointed with sanctioned strength. The appointment which is regular can be directed to be regularised if situation so permits but an appointment which is illegal from its inception or which is void *ab initio* cannot be adorned with the crown of legality. The Court of law cannot direct the State to release salary and other service-related benefits in favour of the employee who was appointed beyond sanctioned strength from public exchequer.

32. Mr. Bari invited the Court to take pragmatic view contending that the petitioner rendered service in the school for a considerable length of time. In his view, after exploiting his service for decades, the State should not be allowed to deny the petitioner's claim for his service-related benefits and terminal benefits.
33. The act of giving appointment beyond sanctioned strength cannot be attributed to the State. This concluding part of the submission advanced by Mr. Bari reminds the legal maxim '*dura lex, sed lex*' which means the law is hard but it is the law. One has to accept this reality without being carried away by any impertinent consideration.
34. Therefore, taking stock of chronological events and resume, I am inclined to hold that from all points of view, as the petitioner's appointment, which was given beyond the sanctioned strength, cannot be declared to be legal and accordingly, it is held that the District Inspector of School has not misdirected himself in refusing to entertain the petitioner's prayer for approval for his appointment.

35. As a result, the writ petition fails and as such, the writ petition and its connected application are dismissed, however, without any order as to the cost. Rule, if any be discharged.
36. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.
37. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)