

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 21410 (W)of 2012

Nimai Charan Dasadhikari & Ors.

-Vs-

The State of West Bengal & Ors.

For the Petitioners:

Mr. Ekramul Bari, Adv.,
Mr. S.M Ali, Adv.,
Mr. Imtiaz Uddin, Adv.

For the respondent\State:

Mr. Vimal Kumar Shahi, Ld. AGP.,
Mr. Supriya Majumder, Adv.

For the respondent no. 4:

Mr. Uttam Kr. Bhattacharyya, Adv.,
Mr. Kaustav Mishra, Adv.

Hearing concluded on:

21.05.2024.

Judgment on:

24.05.2024.

PARTHA SARATHI SEN, J. : -

1. In this writ petition the writ petitioners have prayed for cancellation of the memo no.IC-1149-LS/03 dated July 31, 2012 as issued by the Commissioner of School Education West Bengal/respondent no.2 herein with a further prayer for passing appropriate direction(s) upon the respondent no.3 i.e. the District Inspector of Schools (SE) Purba Midinipur (hereinafter referred to as the 'D.I' in short) to accord approval of the appointments of the writ petitioners as teaching staff of Panchetgarh High School in District Purba Medinipur.

2. By the aforesaid memo dated July 31, 2012 the respondent no.2 rejected the prayer of the writ petitioners for permanent absorption in the aforesaid school.

3. In course of his submission Mr. Bari, learned counsel appearing on behalf of the writ petitioners at the very outset draws attention of this Court to Annexure P1 collectively (page nos. 25 -30 of the writ petition) being the photocopy of the letter of appointment of the writ petitioners as 'organizing teachers' without remuneration to teach the students of Class IX and Class X of the said school. Drawing attention to page nos.34-37 of the writ petition it is submitted by Mr. Bari that in an earlier round of litigation a Division Bench of this Court while disposing MAT 421 of 2003 by its order dated 05.09.2011 allowed the said appeal as preferred by the present writ petitioners with a direction to the District Magistrate Purba Medinipur to cause an inspection of the aforesaid school without being guided by the previous report as submitted by District Level Inspection Team (hereinafter referred to as 'DLIT' in short) and thereafter the said District Magistrate was directed to take a decision in the event it is found that the present petitioners are working in the said school since inception and in the event the writ petitioners fall within the definition of 'organizing teachers'. Drawing attention to page no.43 of the writ petition it is argued by Mr. Bari that in course of inspection the then District Magistrate by its order dated 05.04.2012 in Misc. Case no.17 of 2011 came to a finding that the then Managing Committee of the aforementioned school misguided the present writ petitioners by engaging them as teachers of

the said school without following the recruitment procedure of the relevant period and at the same time the Managing Committee did not mention the names of the writ petitioners before DLIT as well as the said Managing Committee also did not refer the names of the present writ petitioners to the DI of School for getting the recruitment of the writ petitioners approved by the competent authority and on the other hand the said Managing Committee misled the petitioners years together by allowing them to take classes at the said school.

4. Mr. Bari submits further that at the conclusion part of the said order the then District Magistrate of Purba Medinipur recommended for permanent absorption of the present writ petitioners in the said school by the Director of School Education, if rules permits. It is submitted by Mr. Bari that while passing the order dated July 31, 2012 the respondent no.2/ authority failed to visualize the true implication of the recommendation dated April 05, 2012 by the then District Magistrate, Purba Medinipur and thus wrongly rejected the prayer of the writ petitioners for their permanent absorption as 'organizing teachers' of the said school. It is further submitted by Mr. Bari, learned counsel on behalf of the writ petitioners that the respondent no.2 in its said order dated July 31,2012 had wrongly interpreted the reported decision of **Secretary State of Karnataka vs. Uma Devi and Ors. reported in (2006) 4 SCC 1.**

5. It is further argued that while passing the said order the respondent no.2 has failed to understand the true spirit of the meaning and implication of the 'organizing teachers' and thus wrongly held that

the appointment of the present writ petitioners in the said school is illegal. It is further submitted by Mr. Bari, learned counsel appearing on behalf of the appellants that the respondent no.2 was not justified in holding that the present writ petitioners' appointments in the said school were contrary to the rules and executive instructions issued by the Government.

6. Drawing attention to the affidavit-in-oppositions as filed on behalf of the respondent no.3 as well as respondent no.4 it is argued by Mr. Bari that in those two affidavit-in-oppositions the writ petitioners' appointment in the said school in the year 1991 as 'organizing teachers' have not been specifically denied. It is further submitted by Mr. Bari, learned counsel for the appellants that the subsequent part time /contractual/ Sikkha Bandhu/ para teacher appointments of the present writ petitioners in the self same school cannot take away the right of the petitioners to become regularized in the said school as 'organizing teachers' of the said school. It is thus submitted on behalf of the writ petitioners that it is a fit case for allowing the instant writ petition by cancelling the aforesaid memo dated July 31, 2012 and by directing the respondent no.3 to regularize the appointment of the present writ petitioners.

7. In support of his contention Mr. Bari, learned advocate for the writ petitioners placed his reliance upon the following decisions:-

- i. Order dated 15.06.2024 as passed in **WPA 10966 (W) of 2005 (Sri Dinesh Chandra Karjee and Ors. vs. State of West Bengal and Ors.)** which was set aside by a Division

Bench of this Court by its order dated 06.03.2019 in **FMA 1497 of 2015** however, which has been affirmed by the Hon'ble Supreme Court by its order dated May 6, 2022 while disposing **SLP(Civil) no. 27805 of 2019** thereby setting aside the judgement of the Division Bench dated 06.03.2019 as passed in FMA 1497 of 2015 and restoring the order of the Single Judge.

- ii. The order dated **05.09.2023 as passed in WPA 25121 of 2016 (Sk.Obaidulla and Ors. vs. The State of West Bengal and Ors.)** as passed by this Court.
- iii. The judgment dated 02.09.2022 as passed by a Division Bench of this Court in **FMA 2089 of 2015 (Niranjan Sahoo vs. State of West Bengal and Ors.)** which has been affirmed by the Hon'ble Supreme Court by its order dated 27.02.2023 while dismissing **SLP (Civil) Diary no.4340 of 2023**.
- iv. The order dated 02.05.2024 as passed by a co-ordinate Bench of this Court in **WPA 6713 of 2016**.

8. It is further submitted by Mr. Bari, learned counsel for the appellants that the affidavit-in-opposition as claimed to have been filed by respondent no.4 may not be considered as affidavit-in-opposition of respondent no.4 since from the said affidavit-in-opposition it would reveal that the present Head Master of the said school in his individual capacity had filed such affidavit-in-opposition without taking any approval from the Managing Committee of the said school.

9. Per contra, Mr. Shahi, learned advocate for the respondent nos. 2, 3 and 5 contends that from the order dated July 31, 2012 it would reveal that the said school was initially recognized as Class IV Junior High School with effect from 01.01.1966 and subsequently with effect from 01.05. 2000 the said school was upgraded to a class X High School by the West Bengal Board of Secondary Education. It is further submitted on behalf of the State /respondents that in the year 1991 the then Managing Committee of the said school had no authority to give appointment of the present petitioners as teachers for imparting education in classes IX and X since at that material time the said school did not get its recognition for its IX and X classes and therefore the very appointment of the present writ petitioners in the unrecognized classes of the said school is illegal and therefore the writ petitioners by no stretch of imagination can be treated as 'organizing teachers' of the said school in respect of the classes IX and X.

10. It is further submitted by Mr. Shahi that from the annexures to the affidavit-in-oppositions as filed by respondent no.3 it would reveal that the present writ petitioner no.2 is appointed in the said school as a vocational teacher, the writ petitioner no. 3 had already retired as vocational teacher, whereas the writ petitioner no.4 is also serving in the said school as vocational teacher, the writ petitioner no.5 is working in the said school as a para teacher and the writ petitioner no.6 has also retired as Sikkha Bandhu. It is thus submitted by Mr.Shahi, learned advocate for respondent nos.1,2,3 and 5 that from the aforesaid materials

it would reveal that the present writ petitioners are/were working in temporary /contractual appointment in the said school and therefore they cannot claim to have their appointments regularized on the basis of the appointment letters issued by an unauthorized Managing Committee of the School who at that material time had no authority to issue such appointment orders. It is further submitted by Mr. Shahi that since the alleged appointments of the writ petitioners in the said school are void *ab initio* the instant writ petition deserves to be dismissed.

11. On behalf of the respondent no. 1, respondent no. 2, respondent no. 3 and respondent no. 5 reliance has been placed on the following two reported decisions namely:-

- i. ***Manindra Nath Sinha and Ors. vs. State of West Bengal and Ors. reported in 2006 SCC Online Cal 499;***
- ii. ***Baul Sarkar vs. Mina Chakraborty reported in 2002 SCC OnLine Cal 495.***

12. Mr. Bhattacharyya, appearing on behalf of the respondent no.4 drawing attention to the affidavit-in-opposition as filed by his client submits before this Court that from the alleged appointment letters of the writ petitioners it would reveal that the appointment of the writ petitioners in the said school were optional and the writ petitioners were requested to function as teachers till the upgradation of the school with no assurance that the writ petitioners' appointments would be regularized after obtaining recognition for classes IX and X of the said school. It is further submitted by Mr. Bhattacharyya that the writ petitioner no.1 is a

very influential person of the locality and thus the then Managing Committee was persuaded with such influence and gave them the letter of appointments.

13. Coming to the factual aspects to this case it appears to this Court from the materials placed before it that it is undisputed that initially the said school got its recognition as Class IV Junior High School with effect from 01.01.1966 from the West Bengal Board of Secondary Education. Materials have been placed before this Court that the said school was thereafter upgraded to class X High School with effect from 01.05.2000 on the basis of District Level Inspection Team Report dated 23.05.2000. It further appears to this Court that pursuant to the order dated 05.09.2011 as passed in MAT 421 of 2003 by a Division Bench of this Court the then District Magistrate of Purba Medinipur had conducted an enquiry proceeding vide Misc. Case no.17 of 2011 wherein the said district Magistrate found the following:-

- i. On the basis of a resolution passed in December 1991 the writ petitioners were engaged as 'organizing teachers' for classes IX and X by the then Secretary of the Managing Committee of the said school.
- ii. The writ petitioners were engaged as 'organizing teachers' without remuneration to teach the students of Classes IX and X till the school is upgraded by the Board by granting its recognition.

- iii. The then Managing Committee misguided the petitioners by engaging them in the said school as teachers for Classes IX and X without following recruitment procedure of the relevant period.
- iv. The then Managing Committee used the writ petitioners for taking classes of IX and X which were not recognized at that time but for some reason or other the Managing Committee did not mention the names of the writ petitioners before DLIT at the time of inspection.

14. On the basis of the aforesaid finding the then District Magistrate thus recommended the names of the writ petitioners for considering their prayers for permanent absorption by the appropriate authority if the rules permits.

15. While dealing with the aforesaid recommendations of the District Magistrate, Purba Medinipur the respondent no.2 by its impugned memo dated July 31, 2012 however, negatived the contention of the writ petitioners basically on the ground that the at the time of alleged appointment of the writ petitioners in the said school, Classes IX and X of the said school were not recognized by the West Bengal Board of Secondary Education. Respondent no.2 further came to a conclusion that since the said two classes were not recognized by the said Board the then Managing committee of the said school was not authorized to make any appointment of teachers for unrecognized classes i.e.; class IX and X of the said school and therefore the appointments of the writ petitioners are

void *ab initio* and thus the same cannot be regularized bypassing the prevailing rules for appointment of teachers.

16. In considered view of this Court sufficient materials have been placed before this Court on behalf of the writ petitioners that they have been appointed as 'organizing teachers' without remuneration in the month of December, 1991 for imparting education to the students of classes IX and X of the said school which classes at the material time were admittedly not recognized by the Board of West Bengal Secondary Education. As rightly pointed by Mr. Bari that none of the respondents in their respective affidavit-in-oppositions had disputed the appointments of the writ petitioners as 'organizing teachers' in respect of unrecognized classes of IX and X to the said school. From the materials as placed before this Court it reveals that the writ petitioners as 'organizing teachers' continued to impart education for Classes IX and X students of the said school from the date of their respective appointments. It is because of their endeavour the said school got sufficient numbers of students in the said two unrecognized classes i.e. Classes IX and X and thereafter pursuant to the inspection conducted by DLIT, West Bengal Board of Secondary Education granted recognition to Classes IX and X of the said school with effect from 01.05.2000.

17. It has been placed before this Court that for some reason or the other the then Managing Committee ignored the role of the petitioners in getting recognition of the Classes IX and X of the said school and thus did not furnish their names before the DLIT and when the matter was

brought up before the High Court by filing writ petition and writ appeal, by an order of a Division Bench of this Court District Magistrate Purba Medinipur found that the present writ petitioners were working as organizing teachers of the said school.

18. At this juncture the most crucial question arises as to whether because of their endeavour and role in getting recognition of Class IX and X of the said school the present writ petitioners who had been appointed in the month of December, 1991 without remuneration are entitled to get their service approved and/or regularized as teaching staff of the said school.

19. At this juncture I propose to look to the judgment dated 02.09.2022 passed by a Division Bench of this Court in FMA 2089 of 2015 wherein while dealing with an identical matter the Hon'ble Division Bench expressed the following :-

“The learned single judge relying on the Management of Recognised Nongovernment Institutions (Aided and Unaided) Rules, 1969 opined that at the material point of time only a validly constituted Managing Committee enjoyed the power of appointment of teaching and non-teaching staff for vacant posts within the sanctioned strength. Since the appellants/petitioners were not so appointed, their appointments could not be approved. The writ application was dismissed following the judgments of this court in Manindra Nath Sinha & Ors. Vs. The State of West Bengal & Ors. reported in (2006) 2 Cal LJ 489, State of West Bengal & Ors. Vs. Smritikana Maity & Ors. reported in (2008) 1 Cal LJ 316, Jogendra Nath Mishra vs. The State of West Bengal & Ors. in A.P.O. 471 of 2005 decided on 28th September, 2007 and

State of West Bengal & Ors. Vs. Gautam Bandyopadhyay in M.A.T. 1413 of 2004.

Now let me come to the case of Manindra Nath Sinha & Ors. Vs. State of West Bengal & Ors. decided by a division bench of our court and reported in (2006) 4 CHN 513. Its facts are most important. The petitioners claimed to be organizer teachers of the school from 16th January, 1986. The Board recognized the school as a IV class junior High School on 1st May, 1994 for 3 years. It was further extended for 3 years. The petitioners prayed for approval of their appointment from 1st May, 1994. Earlier writ applications were preferred where a direction was made upon the District Inspector of Schools to come to a decision whether the writ petitioners could be recognized as organizing staff. His decision was that the school was “a newly setup one where there was no scope of involvement of the organizing staff”. That the writ petitioners were organizing staff, was disbelieved. Considering the school to be a newly setup school, staff were to be recruited following the said Act of 1997. The division bench held:

- (a) The school was newly set up.*
- (b) There was no scope of any organizing staff.*
- (c) The petitioners could not prove themselves to be so.*
- (d) Under the Management Rules, 1969 on recognition of a school a Managing Committee had to be legally constituted. Only that Managing Committee could validly recommend teachers and non-teaching staff against existing vacancies.*
- (e) The appointment of the petitioners by an illegally constituted Managing Committee was invalid and could not be regularized.*

Nowhere does one find from the facts how long the organizing staff for Classes IX and X were engaged to set up the section, whether they were engaged just before upgradation of the school to the

Classes IX and X 10 level. The finding was that the organizing staff had been illegally appointed. In this case, it is nobody's argument that the unrecognized classes IX and X were only set up at the time of recognition. In fact, the engagement of organizing staff, their involvement and presence during inspection is admitted. Any law has to be given a reasonable and just interpretation and applied accordingly. The West Bengal School Service Commission Act, 1997 conceptualizes appointment in government aided schools against vacancies within the sanctioned strength. It prescribes the mode and manner in which these vacancies are to be filled up. Take for example, a school where classes up to VIII are recognized. Classes IX and X are being run without recognition. There is no doubt a Managing Committee to run the recognized part of the school upto Class VIII. But, that Managing Committee which is recognized by the Board has nothing to do with Classes IX and X. If that Managing Committee has been setting up and running Classes IX and X as an unrecognized section of the school, it is to be taken as if the Managing Committee was running that part of the unrecognised school privately. For the purposes of the said Act, you have to take classes IX and X as a separate private school being run without recognition and aid by a private committee. Since Classes IX and X of Mamadpur Gobinda Smriti Siksha Niketan were being run privately, there was no requirement of the staff being appointed by the Managing committee of the recognized part of the school, with the approval of the District Inspector of Schools. This part of the school was exempted from the operation of the said Act under Section 15. At the time of recognition of the school, the government had a duty to take note of this situation. Having taken such note, it recognized that part of the school comprising of classes IX and X upgraded the school and provided it with aid so that it became a school within the meaning of Section 2(n) of the said 1997 Act. Therefore, on

recognition of the school with aid, the government had recognized a staffed school and not a newly created one.

After a newly created school without teaching and non-teaching staff is recognised under the said Act of 1997, its Managing Committee has to be constituted under the Management Rules, 1969. This would be a validly constituted committee which could make selection of teachers and nonteaching staff based on sanctioned strength and vacancy, on the recommendation of the Regional Commission. Now to insist that upon recognition of the school the existing staff of the school would be thrown out of employment and the school to be manned by staff to be appointed under the School Service Commission Act, 1997 would be giving a very unjust and unreasonable interpretation to the said Act. When the government after commencement of the Act recognizes a staffed school, it is deemed to have recognized and approved its bonafide organizing staff also provisionally, subject to subsequent formal approval. The government while recognizing and aiding the subject school had the obligation to regularize the employment of those teaching and non-teaching staff who were bonafide engaged in the founding of the school and thereafter, managing or running it till the date of its recognition. The decisions of this court in Manindra Nath Sinha & Ors. Vs. State of West Bengal & Ors. reported in (2006) 4 CHN 513 and State of West Bengal & Ors. Vs. Smritikana Maity & Ors. reported in (2008) 1 CHN 582 have no application to appointment of teaching and non-teaching staff upon recognition of bonafide staffed schools. In a similar type of situation, the Supreme Court in an unreported decision in Prabir Kumar Ghosh & Ors. Vs. State of West Bengal and Ors. decided on 6th May, 2022 setting aside a division bench judgment of this court observed and held as follows:-

“Considering the entirety of the matter, the single judge found that in

view of the report submitted by District Magistrate, Cooch Behar, order dated 12.04.2002 of Director of Education, was not sustainable. The Single Judge, therefore, directed District Inspector of School (Secondary Education) to approve the appointments of writ petitioners except writ petitioner No.6 with effect from 05.06.2014. The aforesaid decision of the Single Judge was, however, set aside by the Division Bench in an appeal arising therefrom. It was observed by the Division Bench that if the initial appointment itself was illegal, the appointments could not be regularized and that the decision rendered by the Single Judge was otherwise unsustainable. 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 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. The appeal is accordingly, allowed.” The division bench judgment in that case had followed the Manindra Nath Sinha case. A school staffed with teaching and non-teaching staff recognized by the government after the commencement of the said Act of 1997 cannot be said to have any vacancy to be filled up following the selection procedure under Section 8 of the said Act. Nonetheless, Section 9 makes it plain that after commencement of the Act no teacher or non-teaching staff could be appointed in contravention of the Act. The appellants/petitioners found to be bonafide working in the Mamadpur Gobinda Smriti Siksha Niketan School at the time of its said inspection by the District Level Inspection team shall be

presumed to be the organizing staff and should be recommended by the Commission to the Board for appointment under Section 7 of the Act. The Board would have the obligation to regularize such appointments from the date of recognition of the school.”

20. As discussed supra the aforesaid judgement dated 02.09.2022 as passed in FMA 2089 of 2015 was challenged on behalf of the State by filing SLP (civil) Diary no.4340 Of 2023 which was however not entertained by the Hon’ble Supreme Court by its order dated 27.02.2023 as reveals from the server copy of the order as submitted by Mr. Bari, learned counsel for the appellant.

21. While disposing WPA 25121 of 2016 this Court by its order dated 05.09.2023 had come across a case of similar nature wherein this Court expressed the following view:-

“20. In view of the discussion made hereinabove, this Court is convinced that the present writ petitioners before this Court is successful in establishing that they are unapproved organizing teaching and non-teaching staff of the aforesaid Madrasah and in absence of any denial on the part of the State/respondents and on account of affirmation on the part of the respondent Nos. 9 and 10, this Court has got no hesitation to hold that the present writ petitioners are the organizing teaching and nonteaching staffs of Mustafapur Junior High Madrasah, Dist- Hooghly”.

22. In considered view of this Court the reported decision of Manindranath Sinha has been dealt with and distinguished by the Division Bench of this Court in **FMA 2089 of 2015** and in considered view of this Court for the self same reason the decision of **Manindranth Sinha (supra)** has got no manner of application inasmuch as it is not the

case of the respondents like the case of **Manindranth Sinha** (supra) the aforementioned school was newly set up and there was thus no scope of appointment of any organizing staff. The reported decision of **Baul Sarkar** (supra) as cited from the respondent no.4 has also got no manner of application in the instant lis since the facts and circumstances as involved in the said case are also distinguishable from the facts and circumstances as involved in the present lis.

23. In view of the discussion made hereinabove the instant writ petition succeeds and the impugned memo no. dated July 31, 2013 is hereby set aside.

24. It is reported at the Bar that the petitioner no. 1 Nimal Charan Dasadhikari, petitioner no.3 Sumathanath Das, petitioner no.5 Arup Kumar Goswami and petitioner no.6 Jogabrata Maiti have retired on their superannuation while petitioner no.2 Arunansu Sekhar Roy and petitioner no.4 Atanu Das are still in service.

25. In view of such respondent no.2 and respondent no.3 are hereby directed to approve the appointment of the writ petitioners as 'organizing teachers' of Panchetgarh High School, P.O Panchetgarh, Dist. Purba Medinipur with effect from 01.05.2000 i.e. from the date of up gradation of the Class IV Junior High School to Class X High School within a month from the date of communication of this order.

26. It is further directed that the respondent no.2 and 3 shall pay the current admissible salary of the petitioner no.2 and petitioner no.4 from the month of May, 2024 and thereafter onwards regularly and their

salaries are to be calculated on notional calculation from the date of their joining and after retirement the petitioner nos. 2 and 4 shall be entitled to pension.

27. Since it has been reported that writ petitioner nos. 1, 3, 5 and 6 had retired from their service they are entitled to arrear and current pension based on their respective salaries on the respective dates of their retirements.

28. The writ petitioner nos. 1, 3, 5 and 6 while receiving pension shall have to be treated in service without break from the date of recognition of the said school.

29. Considering the financial burden on the State would be very high, no order has been passed for payment of arrears salary to the writ petitioners.

30. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(PARTHA SARATHI SEN, J.)