

WPA 28623 of 2015

**Munna Mishra
Vs.
District Inspector of Schools (S.E), Dakshin
Dinajpur & Ors.**

**Mr. Biswarup Biswas,
Mr. Pratap Sanfui,
Mr. Subhadeep Maitra.
... for the Petitioner.**

**Mr. Pinaki Bhattacharyya,
Mr. Arindam Ghosh.**

... for the State.

The present writ petition has been preferred by the petitioner to challenge an order passed by the District Inspector of Schools (Secondary Education)/respondent No. 1 dated 11/09/2015.

The petitioner's claim before the respondent No.1/District Inspector of Schools (Secondary Education), as well as the school namely Hili Girls' High School, being respondent nos. 3 and 4 in the writ petition, has been for the regularization of his service as a Group-D staff of the school.

The writ petitioner has claimed that regularization as prayed for by him has accrued as a valid lawful right to him in view of the facts as stated below:-

The writ petitioner was appointed with the school above named, in the post of a 'peon', with effect from 04/07/2000. He immediately joined on the same date, i.e, 04/07/2000. From the

date of appointment, till the present day, the petitioner has been engaged in the same post with the same school, though as a temporary/contractual Group-D staff. During the interregnum, 10 years and more has already been elapsed when the writ petitioner has rendered service in the said school continuously and uninterruptedly.

This is the third occasion when the writ petitioner has come up before this Court. On two previous occasions by dint of this Court's orders dated 08/02/2006 and 29/06/2015 respectively, the Co-ordinate Benches of this Court had directed the said respondent No.1/District Inspector of Schools (Secondary Education) to consider petitioner's similar prayer and to dispose of the same by a reasoned order.

On both the occasions, however, petitioner's prayer as above has been declined by the said respondent, the latest order being that dated 11/09/2015, which is impugned in this case. The petitioner has sought for adequate relief of regularization of his service in the said school.

Mr. Biswas, learned Advocate for the petitioner has submitted that his client having been initially appointed as the Group-D staff of the said school, though on a temporary basis but against a sanction vacant post and also having discharged unblemished service for a continuous period of 10 years and more, is now eligible to be regularized as a Group-D staff of

the said school. Mr. Biswas has specifically pointed out to the law settled in this regard that a person appointed against a sanctioned vacancy though temporarily, who is allowed to work continuously for a long period of time would be eligible for regularization in the said post. He has stated that the petitioner's appointment as against the sanctioned vacant post has been certified and acknowledged by the school authorities. On this he has relied on to the annexed document, i.e, certificate issued by the Assistant Head Mistress of the school/respondent No.3, dated 19/05/2005. He says further that according to the settled law continuation of the petitioner's tenure in the said post as a temporary staff for over a considerable period (more than 10 years in this case) would render him entitled to be absorbed in the said post as a permanent staff. Discontent has been expressed with regard to the impugned order on the ground that the said respondent authority/respondent No.1, while passing the said impugned order has not considered the settled provision of law as above. Thus, according to Mr. Biswas, the said respondent authority has defied writ petitioner's legitimate and legal right for regularization which calls for intervention of this Court as to the said order.

During his argument, Mr. Biswas has relied on the following judgments:-

- (i) ***The State of Gujrat & Ors. vs. R.J. Pathan & Ors.***, reported in **(2022) 5 SCC 394;**

- (ii) ***Vibhuti Shankar Pandey vs. The State of Madhya Pradesh & Ors.***, reported in ***(2023) 3 SCC 639***;
- (iii) An unreported judgment of ***Niranjan Sahoo @ Niranjan Sahoo & Anr. in FMA 2089 of 2015***;
- (iv) An unreported judgment of ***Prabir Kumar Ghosh & Ors. vs. State of West Bengal & Ors.*** in Civil Appeal NO. 3686/2022;
- (v) An unreported judgment of ***The State of West Bengal & Ors. vs. Niranjan Sahoo @ Niranjan SAhoo & Anr. in Special Leave Petition (Civil) Diary No(s). 4340/2023.***

Mr. Biswas has argued that on previous various occasions the Hon'ble Apex Court as well as the Hon'ble Division Bench of this Court has been please to direct, in similar circumstances, for regularization of the incumbents. As such, according to him, the said judgments are binding in the instance case.

Mr. Dhole, learned Advocate appearing for the respondents. According to Mr. Dhole the very appointment of the present writ petitioner is de hors the law and hence illegal. He says that such an illegal appointment of the writ petitioner cannot be rectified in any manner whatsoever. He says further that the writ petitioner has not been subjected to any selection process before appointment, which according to him is the only acknowledged and accepted process under law,

in due observance of the constitutional mandates, to be the yardstick for assessing eligibility of any incumbent for appointment in a post in public service. He says that the writ petitioner's appointment has occurred pursuant to the decision of the school authority vide a resolution thereof and there has not been any selection process to that effect. It is submitted further that the writ petitioner has not produced any appointment letter and as a matter of fact there is no appointment letter issued to the writ petitioner, at the time of his appointment.

Mr. Dhole, has emphatically further submitted that the claim of the writ petitioner of having been appointed against a sanction post is only farce, in so far as the concerned post was sanctioned only in the year 2005, whereas the petitioner himself claims that he was appointed with effect from 04/07/2000.

Accordingly the respondents have denied any right of the writ petitioner as claimed to have been allegedly violated by the said respondents and say that the writ petitioner is not eligible for any relief as prayed for in this petition.

The principle ground for raising objection to the prayer of the writ petitioner in this case by the respondent is that his appointment has not having been made in the said school against any sanctioned post. This submission is fortified through the following paragraph as enumerated in the impugned order dated 11/09/2015:-

“Headmistress stated that no attendance register is being maintained in favour of the petitioner, only resolution of Managing Committee, dated 15/9/2000 and 18/4/2001, wherein it was depicted that the petitioner seemed to work since 14/7/2000 and higher authority was being requested to consider the matter of Gr-D staff. She also submitted a memo number of DIS(SE), Dakshin Dinajpur, vide number 1844, dated 15/12/2005, wherein it was found that as per Finance Department’s Order Number 4100 – D, dated 13/2/2000 and Government Order 463 SE, dated 8/7/2004 and Government Order Number 735/SE (Appt), dated 26/10/2005 and Commissioner of School Education, West Bengal’s Memo No 2703-GA, dated 16/11/2005, two Gr-D posts were permitted to fill up. Before that, School authority could not Show any sanctioning memo of sanctioned posts allotted in favour of the school. In 2005, Hili Girls’ High was class X School and department had issued this memo having two Group D posts for the School.”

Mr. Biswas says that in 2005 the school was upgraded to Class X from Class VIII and before that there must be a sanction Group-D post in the said school. Likewise, according to Mr. Dhole in 2005 the school was downgraded Class XII to Class X. However, in this regard both the writ petitioner and the respondent have made submissions based on no records.

Be that as it may there is no dispute or denial as regards the fact that the writ petitioner did not enter into employment through a duly instituted selection process. His appointment has not been against any advertisement or examination so that he would have competed for the said post in public service with other deserving and eligible candidates.

It is also an undisputed fact in this case, that 2 Group-D posts were sanctioned for the respondent school only in the year 2005. There has been no record as regards this before the year 2005.

The judgments as mentioned above, and refer to by the writ petitioner would not bare any relevance in the present case. This is for the reason that the same basically deals with candidate of organizing schools, which does not bear any resemblance with the factual background of this case. Hence, those are factually distinguishable.

Mr. Biswas has profoundly relied on the judgment of ***Secretary, State of Karnataka & ors. vs. Umadevi & Ors.***, reported in ***(2006) 4 SCC 1***, in respect of his submission that any irregularity in the appointment of the present writ petitioner may be considered and waived in due consideration of his unblemished prolonged period of service with the said school, as he has been initially appointed therein, against a sanctioned vacancy.

In this respect, however no record is available, to support and strengthen such an argument of the writ petitioner.

This Court is constrained to find that ratio of the judgment of ***Umadevi (supra)*** may also not be applicable in petitioner's case in so far as in the same the Hon'ble Court has held that irregularity in appointment but not the illegality

can be rectified by way of a court's order at any subsequent point of time.

In the present case, as discussed earlier, the appointment of the writ petitioner with the respondent school suffers from gross illegality. That is for the reason firstly that the writ petitioner has not been appointed in observance of the due process of selection and appointment and secondly that he has not been able to show that his appointment has been against a sanctioned post. Therefore even after his elongated period of service with the said school, his plea for being regularized as against the said post is not tenable in the eye of law.

For the reasons as above the present writ petition deserves to be dismissed.

Writ petition no. WPA 28623 of 2015 is dismissed. The impugned order dated 11/09/2015, passed by the District Inspector of Schools (S.E), Dakshin Dinajpur/respondent No.1 is upheld.

(Rai Chattopadhyay, J.)