

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FMA 1092 of 2012

Goutam Kumar Sasmal
Vs.
State of West Bengal and others

For the appellant : Mr. Amit Baran Dash
For the State : Mr. Tapan Kumar Mukherjee, Sr. Adv., AGP,
Mr. Somnath Naskar
Heard on : 02.12.2025
Judgment on : 02.12.2025

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-in-opposition filed today be kept on record.
2. The writ petitioner challenges an order passed by the learned Single Judge dated December 15, 2011, whereby the appellant's writ petition was dismissed. The short backdrop of the case is that the appellant was functioning as the Principal of one Vivekananda Loksiksha Niketan in the district of Purba Medinipur.
3. The educational qualification of the appellant was initially a Master's Degree in History.

4. The said institution was subsequently considered for sponsorship by the State of West Bengal and by a Government Order vide Memo No. 134MEE/Sectt./3'S'-57/04 dated February 08, 2006, the said sponsorship sanction was granted.
5. The appellant argues that the appellant, since already functioning as a Principal of the said school and a sanctioned post of Principal was contemplated within the sanction order itself, ought to have been appointed as a Principal. However, he was demoted to the post of Assistant Teacher after the State took over, as per the appointment list published after the sponsorship was taken over by the State Government.
6. Learned counsel for the appellant places particular reliance on Clause 1 of the Government Order dated February 08, 2006 which reads as follows:

“1) The existing teaching and non-teaching regular staff of the institution will be absorbed against the respective posts, as sanctioned herein and will be placed in the respective scales of pay. The scale of pay will be allowed to the teacher (primary and pre-primary/preparatory grade) as the case may be in terms of notification number 553-Edn. (MEE) dt. 20.4.95. The organizing staff having requisite qualification and training will be absorbed in the teaching posts.”

7. It is argued that in terms of the said clause, the existing teaching and non-teaching regular staff of the institution were to be absorbed against their respective posts as sanctioned therein and were to be placed in their respective scales of pay. Enclosed to the said

Government Order was an annexure where it was reflected that one post of Principal was also sanctioned.

8. However, upon the appellant approaching the State authorities with the grievance that he ought to have been appointed as a Principal in terms of the Government Order, by an order dated March 23, 2011, the Director of Mass Education Extension, Government of West Bengal refused such application on the ground that the appellant was not entitled to get promotion to the post of Principal from Assistant Teacher merely by virtue of having subsequently acquired the educational qualification of a Master's Degree in Psychology.
9. It is contended that irrespective of the MA in Psychology having been acquired subsequently by the appellant, by dint of the Government Order itself, the appellant was entitled to the post of Principal. Hence, it is contended that the learned Single Judge failed to take into consideration the impact of the said Government Order in dismissing the writ petition filed against the refusal of the writ petitioner/appellant's prayer for being appointed as a Principal.
10. Learned Senior Advocate (A.G.P.) appearing on behalf of the State controverts the arguments of the appellant and submits that the learned Single Judge clearly took into consideration the extant Rules which, for the purpose of mental/multiple handicapped schools, stipulates MA or MSc. in Psychology as a pre-requisite essential qualification for appointment as Principal. Since the appellant was only an MA in History at the relevant juncture, when the sponsorship being taken over by the Government, the appellant was not entitled to

be appointed as a Principal, although one post of Principal was sanctioned from the inception.

11. It is submitted that the said post cannot be filled up by way of promotion but a regular advertisement has to be issued in terms of law to fill up the said post. As such, the subsequent acquisition of MA degree in Psychology does not help the case of the appellant in any manner.
12. Learned senior counsel further submits that Clause 1 of the concerned Government Order itself stipulated that the organizing staff having requisite qualification and training would be absorbed in the teaching posts. Thus, since the appellant did not have the requisite qualification for the post of Principal, he was rightly appointed in the post of Assistant Teacher, as per his educational qualification.
13. Upon a careful scrutiny of the provisions of the Government Order dated February 08, 2006, we find substance in the contentions of the State. The first sentence of Clause 1 of the said Government Order cannot be read in isolation but has to be read in conjunction with the last sentence thereof, in its entirety.
14. Whereas the first sentence of Clause 1 stipulates that the existing teaching and non-teaching regular staff of the institution will be absorbed against the respective posts as sanctioned therein, at the end of the said Clause it is clearly provided that the organizing staff “having requisite qualification and training” will be absorbed in the teaching posts.

15. Even in the refusal by the Director of Mass Education Extension of the request of the appellant to be appointed as a Principal, the Director construed the expression “organizing staff” as the staff who were already working in the institution before the sponsorship was taken over by the State. In the said refusal dated March 23, 2011, it was recorded by the Director, *inter alia*, that the petitioner’s name was approved against a post of Assistant Teacher although the school authority appointed the petitioner as Principal during the “organizing period”, that is, before getting academic recognition and sponsorship.
16. The appellant seeks to draw parity with two other people, namely, Ahin Dey, Principal, Sathi, Paschim Medinipur, and Kajal Kumar Reja, Principal, Burdwan Blind Academy, Burdwan, which was dealt with by the Director in his refusal by stating that those two persons had the requisite qualification to become Principals in their respective schools.
17. It is an admitted position that the appellant did not have the requisite qualification for the post of Principal in a mentally handicapped/multiple handicapped school such as the present school, that is, Vivekananda Loksiksha Niketan, in terms of the eligibility criteria fixed by the extant Rules, which were discussed at length by the learned Single Judge while passing the impugned order.
18. We cannot also overlook the fact that the expression used in Clause 1 is that the existing teaching and non-teaching regular staff of the institution will be absorbed against “the” respective posts, as sanctioned therein and will be placed in “the” respective scales of pay.

The conscious use of the article “the”, instead of the possessive pronoun “their”, as part of speech in the Government Order clearly indicates the purport of the said Government Order. If the intention and understanding of the parties was that the existing teaching and non-teaching regular staff would be absorbed in *their* respective posts and scales of pay, the expression “their” would be used instead of “the”. Such couching of language of the said clause clearly indicates that by the expression “the respective posts as sanctioned herein”, it was meant that the posts as sanctioned and reflected in the list annexed to the Government Order were to be considered in the context of the requisite qualifications for such posts, and the absorption after the takeover of sponsorship by the State would be in accordance with the requisite eligibility criteria of State-run institutions and not commensurate with the prior qualifications of the teaching staff before such takeover. The said meaning is amply clarified in the last portion of Clause 1 by categorically mentioning that the organizing staff “having requisite qualification and training” would be absorbed in the teaching posts. Hence, there cannot be any manner of doubt that in order to be absorbed in the post where he was working, that is, as Principal, the appellant would have to qualify for the post of Principal as per the extant Rules of the State.

19. However, as discussed above, since the appellant did not have such qualification at the relevant point of time, we do not find any illegality in the order of the learned Single Judge whereby the rejection of the

petitioner's application for being appointed as Principal in the said school was refused.

20. As rightly submitted by the State, the appointment to such sanctioned post, after the State took over sponsorship of the institution, has to be by advertisement in public domain and not by the promotion route, even if the appellant subsequently acquired the requisite qualification by obtaining an M.A. degree in Psychology.
21. Moreover, we cannot also lose sight of the fact that the educational qualification of a teacher or a Principal of a school is always inextricably tied-up with the specific requirements of the said school. In the present case, we are looking at a situation where special training has to be imparted to children who are either visually impaired or mentally challenged in some manner or the other, thereby characterizing the school as one for "multiple handicapped" students.
22. Hence, keeping in context the special needs of the students of the said school, since the Government consciously chose MA or MSc in Psychology over a Master's degree in other subjects as eligibility criterion for the post of Principal, and there being a direct nexus between the said choice and the nature of service required to be rendered in such schools, we are of the opinion that the appointment of the appellant as a Principal without having the requisite qualification would be detrimental to the interest of the students of the school as well.
23. Thus, from all perspectives, we are of the opinion that the learned Single Judge was justified in dismissing the writ petition. However, in

the interest of the students of the said school, who have certain special needs to integrate seamlessly in mainstream society, we hereby direct the State to immediately initiate the procedure for appointment of a regular Principal in the vacant post in the concerned school, that is, Vivekananda Loksiksha Niketan.

24. It is expected that the entire exercise of advertising and necessary paraphernalia as well as appointment in the vacant post of Principal of the said educational institution shall be concluded as expeditiously as possible, preferably by the end of February, 2026.
25. With the above observations and direction, FMA 1092 of 2012 is dismissed on context without any order as to costs, thereby affirming the impugned order dated December 15, 2011 passed in WP 7727 (W) of 2011.
26. It is further clarified that in the event the appellant is otherwise eligible to so participate, it will be open to the appellant to participate in the appointment process for the post of Principal in the said school, to be initiated as per our above direction.
27. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)