

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

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 5229 of 2024

With

CAN 1 of 2024

Dhrubajyoti Roy & Ors.

Vs.

State of West Bengal & Ors.

For the petitioners : Mr. Kamlesh Bhattacharya,
Mr. Aninda Bhattacharya.

For the State : Mr. Bhaskar Prasad Vaisya, Ld. AGP,
Mr. Ranjan Saha.

Heard on : 14.07.2025

Judgment on : 22.07.2025

Partha Sarathi Chatterjee, J.:-

Preface :

1. By filing the present writ petition, the petitioners pray for the issuance of an appropriate order, direction, or writ, more particularly a writ in the nature of mandamus, commanding the concerned respondents

to approve the appointment of petitioner nos. 1 to 4 as teaching staff and petitioner no. 5 as non-teaching staff, with effect from 01.01.2021, being the date on which financial aid was granted to Lakshman Chandra Jageswar 4-Class Junior High School (hereinafter referred to as "the School"), followed by the grant of recognition to the said School. Additionally, the petitioners pray for a directive to the respondents to release the salary of the petitioners and arrears of salary w.e.f. 01.01.2021.

2. Before addressing the issues raised in the present writ petition, it would be appropriate to advert to the essential facts, as reflected in the writ petition and its annexures, which led to its institution. Those essential facts are as follows:

- i) Petitioner nos. 1 to 4, having the requisite qualifications for appointment as Assistant Teachers, and petitioner no. 5, similarly qualified for a non-teaching staff position, were appointed at the school prior to the inspection conducted by the District Level Inspection Team (hereinafter referred to as "DLIT") on 22.07.2013.
- ii) The report submitted by the District Level Inspection Team (DLIT) acknowledged that the petitioners were working in the school in their respective positions, and accordingly, the report included the names of all the petitioners.
- iii) Based on the DLIT's report and in compliance with the order dated 15.07.2013 passed by a Coordinate Bench in CPAN 579 of 2013 (arising out of W.P. No. 8141 (W) of 2004), recognition was granted to the School as a 4-class Junior High

School (covering Classes VI to VIII), without financial aid, with effect from 01.01.2013, subject to fulfilment of 14 numbers of terms and conditions, as would be evident from the communication issued by the Secretary, West Bengal Board of Secondary Education (hereinafter referred to as "the Board") dated 05.09.2013, addressed to the Secretary of the School.

iv) The issue of granting recognition without financial aid was initially raised by the Managing Committee of the school in Writ Petition No. 32821 (W) of 2013, which was dismissed. The matter eventually reached the Hon'ble Division Bench in an intra-court Appeal FMA 1136 of 2017. The Hon'ble Bench, while disposing of the appeal, expressed the opinion that the school was entitled to financial aid as a consequence of its recognition, subject to compliance with the fourteen conditions mentioned earlier. The Bench ultimately directed the State to grant financial aid to the school; however, the quantum of financial aid and the terms and conditions governing its disbursement were left to be decided the State.

v) The record reveals that an application seeking review of the order dated 17th April, 2019, passed in the said appeal, was filed. While pressing the review application, the school authorities contended that, in the absence of financial aid, it was virtually impossible to fulfil the stipulated conditions, particularly those requiring payment of the prescribed pay scales and allowances to the teaching and non-teaching staff, as

well as the provision of retirement benefits in accordance with the Death-cum-Retirement Benefit Scheme.

- vi) The Hon'ble Bench clarified that these conditions have to be scrupulously complied with upon receipt of financial aid by the school. However, proper utilization of the fund was directed to be furnished by the school authority to the appropriate authority.
- vii) The State challenged both the order dated 17th April, 2019 passed in FMA No. 1136 of 2017 and the order dated 15th July, 2019 passed in Review Petition No. 115 of 2019 by preferring a Special Leave Petition No. (Civil) Diary No. 22293 of 2020. However, the Special Leave Petition was dismissed on the ground of delay, leaving all question of law open.
- viii) Pursuant to the orders passed in the Review Petition and the Special Leave Petition (SLP), the Board, by an order dated 9th August, 2021, granted provisional recognition with financial aid to the school for the current academic session in respect of classes V–VI, and for classes VII–VIII from the academic year commencing on 1st January, 2022. By the said order, three teaching posts were sanctioned for the current academic session for classes V–VI, and an additional three teaching posts were sanctioned for classes VII–VIII effective from 1st January, 2022, subject to fulfilment of the remaining conditions stipulated in the memo dated 5th September, 2013. The order further directed that the school must strictly comply with all

remaining conditions outlined in the said memo, particularly that recruitment of teachers shall be carried out in accordance with the procedure specified under point 7 of the recognition memo dated 5th September, 2013.

- ix) A communication dated 29th September, 2022, issued by the District Inspector of Schools and addressed to the Commissioner of School Education (Law), West Bengal, indicates that the District Inspector of Schools sought instructions from the Commissioner regarding approval of the appointment of the organising staff of the school, including that of the petitioner.
- x) The record further reveals that a contempt petition, being CPAN 149 of 2020, was filed alleging non-compliance with the order passed in the appeal and the review petition. It was specifically contended that Condition No. 10 of the memo dated 5th September, 2013, which stipulates that the services of the teaching and non-teaching staff shall not be terminated without affording them an opportunity of being heard by the competent authority and without following due disciplinary proceedings, cannot be effectively complied with unless the appointments of such staff are regularised.
- xi) However, the Hon'ble Bench held that the issue raised constituted a separate cause of action and, accordingly, declined to interfere in the contempt proceedings. Liberty was, however,

granted to the petitioners therein to seek appropriate remedy before the competent forum.

xii) It is pertinent to note that a total of eight organizing teaching and non-teaching staff members pursued the litigation seeking recognition of the school along with financial aid. Among them, Jitendra Nath Barman and Mrinal Mukherjee have since passed away, while two others, namely, Girindra Nath Roy and Bhupendra Nath Roy, have attained the age of superannuation. At present, petitioners Nos. 1 to 4, who are teaching staff, and petitioner No. 5, who is a non-teaching staff member, continue to render their services to the school.

xiii) In the present writ petition, the petitioners contend that they submitted several representations seeking approval of their appointments. However, as those representations failed to elicit any favourable response from the authorities, the petitioners were constrained to file the present writ petition.

Respondents' case:

3. The crux of the defence presented by the respondents, as set out in the affidavit affirmed by Respondent No. 3, is that the School Education Department, by its memo dated 11.11.2022, sanctioned six teaching posts in favour of the school. However, the school authority neither submitted the requisite documents along with a resolution of the Managing Committee specifying the subject wise vacancies and the register of appointments as per the 100-point roster to the office of the District Inspector of Schools, nor did it initiate any communication with the West

Bengal Central School Service Commission or the West Bengal Board of Secondary Education (WBSE) for filling up the said posts. It is further stated that the District Inspector of Schools, by a communication dated 4th March, 2024, instructed the school authority to submit the necessary documents for initiating the process of filling up the vacant posts.

Contents of Affidavit-in-reply:

4. The petitioners, in their reply, stated that upon receipt of the communication from the District Inspector of Schools, a prayer was made for approval of the appointments of the teaching and non-teaching staff of the school, including the petitioners. The petitioners further submit that the school authority has already taken the stand that the question of filling up those posts through the West Bengal Central School Service Commission or the West Bengal Board of Secondary Education does not arise at all.

Submissions:

5. Mr. Bhattacharya, learned Senior Advocate appearing on behalf of the petitioners, submitted that the petitioners' names were included in the report submitted by the DLIT. He contended that this clearly indicates the petitioners were rendering their services to the school even prior to the DLIT's inspection.
6. He drew my attention to the communication dated 5.9.2013 issued by the Secretary, WBBSE, and addressed to the Secretary of the school (hereinafter referred to as "the communication dated 5.9.2013"), with particular emphasis on Conditions Nos. 10 and 11 incorporated therein. He submitted that, in terms of these conditions, the services of the teaching

and non-teaching staff of the school, including those of the petitioners, cannot be terminated without following due disciplinary proceedings. Furthermore, referring to Condition No. 2, he contended that the school is under an obligation to pay the prescribed pay scales and allowances to all teaching and non-teaching staff, including the petitioners. Accordingly, he argued that the school is neither in a position to terminate the services of the petitioners without due process nor can it avoid its obligation to pay them the prescribed remuneration.

7. Mr. Bhattacharyya contended that in compliance with the order passed the Hon'ble Division Bench in FMA 1136 of 2017 and RVW 115 of 2019, the school has been making payment of prescribed pay scales and allowances to its teaching and non-teaching staffs including the petitioners from the financial aid. At the present moment, the respondents are claiming that keeping the petitioners in service, those 6 posts are be filled up through the Commission. According to him, there is no justification in such claim.

8. He relied on certain unreported decisions--one delivered by a Hon'ble Division Bench of this Court in FMA 1946 of 2018 (*The State of West Bengal & Ors. vs. Mrinal Kanti Kumar & Ors.*), and three decisions rendered by different Co-ordinate Benches of this Court in W.P. No. 19811 (W) of 2011 (*Rakhal Chandra Das & Ors. vs. The State of West Bengal & Ors.*), W.P. No. 12615 (W) of 2014 (*Mrinal Kanti Kumar & Ors. vs. The State of West Bengal & Ors.*), and W.P. No. 10966 (W) of 2005 (*Sri Dinesh Chandra Karjee & Ors. vs. State of West Bengal & Ors.*). He contended that in similar factual circumstances, the Hon'ble Benches in those matters

found merit in the claims for approval of the appointments of the organising teaching and non-teaching staff.

9. Relying on an unreported decision of the Hon'ble Supreme Court in S.L.P. (C) No. 27804 of 2019 (*Prabir Kumar Ghosh & Ors. vs. State of West Bengal & Ors.*), he submitted that the engagement of teaching and non-teaching staff, such as the petitioners, cannot be termed illegal. In conclusion, he prayed for a direction upon the concerned respondents to approve the appointments of the petitioners and to grant them all consequential service benefits.
10. In rebuttal, Mr. Saha, the learned Advocate appearing for the State, submitted that financial aid was granted to the school subject to compliance with 14 specific conditions. He contended that six teaching posts were sanctioned for the school, and in accordance with the conditions set forth in the communication dated 05.09.2023, the school was required to initiate the process of recruitment through the appropriate Commission. However, the school failed to submit the necessary documents, including the resolution of the Managing Committee and the Registrar of Appointment as per the 100-point roster, which is essential for the appointment process. In view of these lapses, he argued that till date, no teacher could be appointed in the school in accordance with law. He asserted that the petitioners' request for approval of their appointments cannot be considered.

Discussion and Conclusion:

11. Admittedly, in the absence of any educational institution within a 9-kilometre radius, it was nearly impossible for children aged 11 to 14 in the

locality to access formal education. Faced with this situation, and inspired by a commitment to impart education to these children, a collective of dedicated residents established the school in 1975 and took concrete steps to organize and run it.

12. The organizing Managing Committee, in the course of managing the institution, appointed the petitioners as teaching staff. Since their appointment, the petitioners have been continuously rendering their services to the school. Furthermore, the order dated 17.04.2019 passed in FMA 1136 of 2017 records that the District Level Inspection Team (DLIT) had conducted an inspection of the school on 22.07.2013.
13. The report of the DLIT dated 22.07.2013 included the names of the petitioners, thereby acknowledging that the petitioners had been rendering their services to the school even prior to the said inspection. Relying on this report, and in compliance with the order dated 15.07.2013 passed in CPAN 579 of 2013 (arising out of W.P. 8141 (W) of 2004), as well as on the recommendation of the State Government communicated to the West Bengal Board of Secondary Education (WBBSE) by the School Education Department, Government of West Bengal, vide memorandum dated 27.08.2013, the Board granted first recognition to the school provisionally for a period of one year. This recognition was as a four-class Junior High School (Classes V to VIII) with Bengali as the first language, with effect from the date specified, and was granted without any financial assistance from the Government of West Bengal. The recognition was subject to the usual conditions along with the additional conditions contained in the aforementioned memorandum dated 27.08.2013, which are quoted below:

- “1. That the school authority shall never claim any financial assistance from the State Government;*
- 2. That the school authority shall implement the prescribed pay scales and allowances for the teaching and non-teaching staff of the school;*
- 3. That the school authority shall provide retirement benefits to the teaching and non-teaching staff of the school as per Death-cum-Retirement Benefit scheme;*
- 4. That the Managing Committee of the School shall be constituted with at least three guardian members, three elected teacher members and one non-teaching staff member;*
- 5. That the School authority shall not enhance tuition fees charges without prior permission of the competent authority;*
- 6. That the school shall not charge any capitation fee or its equivalent by any means;*
- 7. That the recruitment of teachers shall be done in accordance with transparent, merit-based criteria, as laid down in the relevant Govt. Rules/ Govt. Orders and information thereof shall be made available to the State Govt., if necessary;*
- 8. That the funds raised by the school authority, the fees collected and income from any other source, shall not be utilised for any other purpose than the welfare of the school*

and benefit of education of the students and the teaching and non-teaching staff of the school;

- 9. That any type of change in the ownership of the school or handing over of property or management of the school or changing/amending the character of the Parent Body shall not be done without prior notice to the State Govt.*
- 10. That service of teaching and non-teaching staff shall not be terminated without giving opportunity of being heard by the Competent Authority and without observing due disciplinary proceedings;*
- 11. That the service condition of the teaching and non-teaching staff including provisions of security of service, disciplinary proceedings and procedure for appeal shall be guided by the directions laid down in the Government Rules/Orders and submitted to the State Government in the School Education Department;*
- 12. Violation of all or any of the declarations as in para nos. 1 to 11 in this affidavit shall constitute sufficient reason for withdrawal of 'No Objection Certificate, or upgradation/affiliation, as the case may be;*
- 13. The school shall abide by procedure and Rules and legal provisions that may be promulgated in this regard;*
- 14. The school authority should meet up the deficiency within one year either the provisional may be withdrawn after one year.*

The above recognition is granted subject to fulfilment of the conditions mentioned herewith.

A report of fulfilment of conditions as per attached sheet should be forwarded to the Board within one year and a copy of such report should be forwarded to the School Education Deptt., Director of School Education, W.B. and the District Inspector of Schools (SE) concerned.”

14. The Managing Committee of the school subsequently filed a writ petition, being W.P. No. 32821 (W) of 2013, seeking a direction upon the concerned respondents to grant financial aid to the school. However, the said writ petition was dismissed by an order dated 05.12.2016. Aggrieved by that order dated 5.12.2016, the Managing Committee preferred an intra-court appeal, being FMA 1136 of 2017, which was disposed of by the Hon'ble Division Bench by an order dated 17.04.2019. In the said order, the Hon'ble Division Bench held that Condition No. 1 imposed in the earlier memorandum was unjustified. Consequently, the Hon'ble Court directed the State authorities to extend financial aid to the school.
15. As noted earlier, a review petition, RVW No. 115 of 2019, was filed seeking reconsideration of the order dated 17.04.2019 on the ground that, without financial aid, it was not feasible for the school to provide the prescribed pay scales, allowances, and retirement benefits under the DCRB Scheme to its teaching and non-teaching staff. In response, the Hon'ble Division Bench clarified that these conditions were to be strictly complied with only after financial aid was granted. The orders passed in the appeal and review petition were challenged by the State of West Bengal before the

Hon'ble Supreme Court in S.L.P. (C) Diary No. 22293 of 2020, which was dismissed by order dated 16.11.2020. Thereafter, financial aid was sanctioned for the school, including approval of six teaching posts.

16. Therefore, taking note of the fact that the school was being ran by the organising teaching and non-teaching staff, the Hon'ble Division Bench directed that those conditions i.e. payment of prescribed pay scales and retirement benefits under DCRB scheme to the teaching and non-teaching staffs of the school have to be strictly complied with after financial aid was received by the school. Thus, the order of the Hon'ble Bench dated 15.07.2019 passed in RVW no. 115 of 2019 clearly indicated that such payment of prescribed pay scales and allowances and also the retirement benefits under DCRB scheme are to be made to the organising teaching and non-teaching staff of the school.
17. However, State vide memo. dated 9.8.2021 granted financial aid and sanctioned 6 teaching posts only to make out a new case as if payment of prescribed pay scales and other benefits were meant for the six teachers who would be appointed as per condition no. 7 i.e. as per applicable Government Rules.
18. The term 'recognition' denotes a formal acknowledgment or acceptance of a particular fact, status, or condition. In legal terms, recognition of a status or fact implies its formal validation as true, existing, lawful, or legitimate. This acknowledgment may also entail approval or the granting of specific rights or permissions. Thus, recognition inherently presupposes the prior existence of the fact or status being acknowledged. In the context of educational institutions, the recognition of a school

signifies that the competent authority affirms the school's compliance with prescribed norms relating to infrastructure, safety, and other regulatory standards. Upon being granted recognition, the school is permitted to operate, and its students become eligible to appear in examinations conducted by the appropriate Board or Council, as applicable.

19. The West Bengal Board of Secondary Education Act, 1963 does not define the term 'recognition', nor does it provide a definition for the word 'school'. However, the 1963 Act does define the term 'institution' to mean a secondary school or an educational institution, or a part or department thereof, imparting instruction in secondary education. Subsequently, Section 2(k) of the West Bengal Schools (Control of Expenditure) Act, 2005 defines the term 'recognized', along with its grammatical variations, when used with reference to a school, to mean recognized or deemed to have been recognized under the 1963 Act, the West Bengal Primary Education Act, 1973, or any other relevant legislation. In accordance with Section 2(m) of the West Bengal Schools (Control of Expenditure) Act, 2005, the term 'school' refers to a non-Government aided secondary or higher secondary school, or an educational institution, or a part or department thereof, imparting instruction in secondary or higher secondary education, as the case may be.

20. Therefore, a clear distinction must be drawn between the establishment of a new school and the recognition of an existing one. Undoubtedly, prior to granting recognition to any school, Inspection Team (DLIT) conducts an inspection and takes note of the number of students already receiving education at the institution. Rule 5 of the West Bengal

Schools (Upgradation) Rules, 2007, which governs the process for upgradation of schools, explicitly requires the DLIT to verify that the school has a minimum effective enrolment of 40 students in each class. This clearly indicates that a school seeking recognition must already have a certain number of students enrolled in each class. Naturally, this gives rise to an important question: Who were imparting education to these students prior to recognition?

21. Prior to promulgation of the West Bengal School Service Commission Act, 1997 (in short, the 1997 Act), a circular vide. No. 895-Edn(S)/4A-53/87 dated 30th September, 1992 of the Education Department, Government of West Bengal was operative. The Circular is quoted hereinbelow:

“To : The Director of School Education, West Bengal

Sub: Approval of appointment of Organiser Teacher and non-teaching staff in Secondary Schools upgraded by the West Bengal Board of Secondary Education.

1. The question of according approval of the Organiser Teachers/non-teaching staff of the Secondary Schools upgraded by the West Bengal Board of Secondary Education on the recommendation of the State Government has been engaging the attention of Government for sometime past.

2. On careful consideration of all the aspects of the matter it has since been decided by the State Government that the following principles shall apply in the matter of granting approval to the appointments of organising teachers and non-teaching staff of non-Government Secondary Schools (Jr. High Schools) consequent upon such schools being upgraded by the West Bengal Board of Secondary Education on the recommendation of the State Government.

Upon upgradation of recognised 2-Class Jr. High Schools/4 Class Jr. High Schools qualified teaching and non-teaching staff as have been appointed by the schools for running of the unrecognized higher classes if any, may also be considered as organising staff for approval of their appointment subject to the following conditions.

(i) *The name(s) of such teacher(s) and non-teaching staff are recommended in the final inspection report leading to such upgradation;*

(ii) *Such staff possessed the prescribed minimum qualification for their respective posts as the time of initial appointment;*

(iii) *Such staff were within the prescribed as limit on the date of initial appointment as was existing on that date;*

(iv) *Such teaching and non-teaching staff shall be approved in order to seniority (as recorded in the inspection report) strictly conforming to the existing approved staff pattern.*

3. *No exception to the aforesaid norms shall be made in any case without specific prior approval of the State Government.*

4. *The order issues in supersession of the previous Government order issued in this regard i.e upgradation of non-Government Secondary High Schools (Jr. High Schools) as well as orders/instructions issued by the director of School Education.*

5. *The order shall take effect immediately”*

22. Section 9 of the 1997 Act contains a non-obstante clause and begins with the prefatory words: *“Notwithstanding anything contained in any other law for the time being in force or in any contract, custom, or usage to the contrary.”* This section mandates that all appointments to the posts of teachers and non-teaching staff in schools shall be made by the Board, based on the recommendation of the Regional Commission having jurisdiction. Furthermore, the sub-section of Section 9 expressly provides that any appointment of a teacher or non-teaching staff made after the commencement of the Act, if made in contravention of its provisions, shall be deemed invalid.

23. Following the promulgation of the 1997 Act, the State began granting recognition to schools subject to the condition that appointments to the posts of teachers and non-teaching staff must be made on the recommendation of the Board, i.e., through the Commission. This policy position adopted by the State led to a spate of litigation before this Hon’ble

Court as well as before the Hon'ble Supreme Court. In the judgments reported at (2006) 4 CHN 513 (*Manindra Nath Sinha & Ors. vs. State of West Bengal & Ors.*) and (2008) 1 CHN 582 (*State of West Bengal & Ors. vs. Smritikana Maity & Ors.*), two separate Division Benches of this Hon'ble Court consistently held that the organising committee of an unrecognised school is not competent to make appointments to the posts of teachers or non-teaching staff. Furthermore, unless such appointments are made in accordance with the statutory provisions, they cannot be deemed valid.

24. The decision rendered in *Manindra Nath Sinha* (supra) was challenged before the Hon'ble Supreme Court in Civil Appeal No. 7897 of 2010. However, the Hon'ble Supreme Court declined to interfere with the judgment under appeal. Subsequently, in a decision rendered by a Division Bench of this Hon'ble Court in FMA 1946 of 2018 (*The State of West Bengal & Ors. vs. Mrinal Kanti Kumar & Ors.*), it was held that the doctrine of merger would not apply to the case of *Manindra Nath Sinha* (supra), and that the order passed in Civil Appeal No. 7897 of 2010 could not be construed as a declaration of law by the Hon'ble Apex Court under Article 141 of the Constitution of India. The order passed in FMA 1946 of 2018 ultimately affirmed the decision of the Hon'ble Single Bench rendered in W.P. No. 12615 (W) of 2014 (*Mrinal Kanti Kumar & Ors. vs. The State of West Bengal & Ors.*). The Hon'ble Division Bench, in its order passed in FMA 1946 of 2018, observed that a Hon'ble Special Bench, in W.P. No. 11254 (W) of 2010 (*Managing Committee, Kadamtala High Madrasah vs. State of West Bengal & Ors.*), held that the rule in force at

the time of initiation of the recruitment process for filling up a post must be followed, rather than the rule or regulation prevailing at the time the vacancy was created. There can be no dispute with respect to this settled proposition of law. However, the said decision is not applicable to the factual matrix of the present case.

25. In W.P. No. 12615 (W) of 2014 (*Mrinal Kanti Kumar & Ors. vs. The State of West Bengal & Ors.*), a Co-ordinate Bench of this Hon'ble Court observed that Sections 4 and 5 of the West Bengal Schools (Control of Expenditure) Act, 2005 prohibit school authorities from appointing any teacher or non-teaching staff in contravention of the provisions of the 2005 Act or the West Bengal School Service Commission Act, 1997. Furthermore, a notification dated 15.02.2007, issued by the School Education Department, Government of West Bengal, also directed that such appointments must be made strictly in accordance with the provisions of the aforesaid two statutes.
26. Section 2(n) of the West Bengal Schools (Control of Expenditure) Act, 2005 defines 'school authority' in relation to a school as the governing body, managing committee, ad hoc committee, administrator, or any other body, by whatever name it may be called, that is entrusted with the management of the school's affairs. In *Mrinal Kanti Kumar & Ors.* (supra), it was observed that prior to obtaining recognition, a school operates as a private institution, and its organising managing committee is to be deemed the managing committee of that private school.
27. Therefore, it cannot be denied that in order to impart education to students and to satisfy the essential criterion of maintaining a minimum

number of students in each class, the existence of an organising managing committee is imperative. Consequently, such a committee would necessarily be compelled to appoint certain individuals to the posts of teaching and non-teaching staff, to keep the school operational and ensure its functional viability.

28. Denying the existence of such a managing committee and the corresponding teaching and non-teaching staff, whether by invoking the provisions of the 1997 Act, the 2005 Act, any government notification, or even the judgment of the Hon'ble Supreme Court in *State of Karnataka vs. Uma Devi*, reported in (2006) 4 SCC 1 (which has, in some cases, been cited by the State to withhold approval of appointments made by organising committees), amounts to a refusal to acknowledge the ground reality. The consequence of such denial would be to displace the very managing committees and staff members who had been instrumental in establishing and operating the school. This, despite the State's willingness to reap the benefits of the institutions established and sustained by their efforts, without offering them any recognition, approval or any benefit in return.

29. In SLP (C) no. 27804 of 2019 (Prabir Kumar Ghosh & Ors. vs. State of West Bengal & Ors.) the Hon'ble Supreme Court got an occasion to deal with a similar issue when the Hon'ble Court despite taking note of promulgation of 1997 Act, observed as follows:

“As the record indicates that the school was set up by the villagers. The facility of the school in the neighborhood 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.”

30. Therefore, applying the reasoning laid down in the case of *Prabir Kumar Ghosh & Ors.* (supra), the petitioners' appointments to the posts of teacher and non-teaching staff cannot be deemed illegal.
31. A School when receives financial aid from the State, it is considered as 'a recognised non-Government aided school'. The word 'aided' was defined in explanation appended in the definition clause of the 2005 Act which explains that 'aided' with its grammatical variations, used with reference to a school, shall mean aided by the State Government in the shape of financial assistance towards the basic pay of the teachers and non-teaching staff of that school. Therefore, it is the intention of the State that financial aid shall be utilized for making payment of prescribed pay scales and other benefits to the teaching and non-teaching staffs of the school.
32. In the present case, prior to granting financial aid to the school, the School Education Department, Government of West Bengal, imposed certain conditions. These included the requirement that the school authority must pay the prescribed pay scales, allowances, and retirement benefits under the DCRB Scheme to the teaching and non-teaching staff, and that no such staff member shall be terminated or dismissed from service without the observance of due disciplinary proceedings. In *RVW 115 of 2019*, the Hon'ble Division Bench specifically directed that the

conditions relating to the payment of prescribed pay scales, allowances, and retirement benefits under the DCRB Scheme must be scrupulously complied with once the financial aid is disbursed to the school. It is, therefore, abundantly clear that the Hon'ble Division Bench intended the financial aid to be utilised for extending the prescribed pay and benefits to the existing teaching and non-teaching staff of the school, including the petitioners.

33. As noted earlier, following the unsuccessful legal battle up to the Hon'ble Supreme Court, financial aid was granted to the school by the same notification dated 9.8.2021. Along with the aid, six teaching posts were sanctioned, subject to the condition that these posts must be filled through the Commission in accordance with the provisions of the 1997 Act. However, subsequently, citing the school authority's failure to forward the requisite documents necessary to complete the recruitment process, the State has continued to release the financial aid. This aid is presently being utilised to disburse the prescribed pay scales and allowances to the petitioners. Therefore, in light of the foregoing discussion, it would be wholly inappropriate, in the present case, to require the school authority to displace the petitioners and appoint a new set of individuals in their stead.

34. As previously noted, in the case of *Probir Kumar Ghosh & Ors.* (supra), it was held that such appointments cannot be termed illegal. Similarly, in the decision reported at (2013) 4 CLT 330 (HC) (*Rakhal Chandra Das & Ors. vs. State of West Bengal & Ors.*), a Co-ordinate Bench of this Court observed that such appointments could be considered irregular. Therefore, if the approval of the petitioners' appointments to the

teaching and non-teaching posts is construed as a form of regularisation, it may be safely concluded that the principle laid down in *Uma Devi* (supra) would not operate as a bar.

35. In the decision, reported in 2024 SCC OnLine SC 3826 (*Jaggo vs. Union of India & Ors.*), the Hon'ble Supreme Court made the following the observation regarding the decision of *UmaDevi* (supra):

“While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between "illegal" and "irregular" appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.”

36. Article 21A of the Constitution of India casts a duty upon the State to provide free and compulsory education to all children between the ages of 6 and 14 years, in such manner as the State may determine by law. Similarly, Section 6 of the Right of Children to Free and Compulsory Education Act, 2009 imposes an obligation on the State to establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established within a period of three years from the commencement of this Act 4 of 2006.
37. However, in the present case, despite the absence of any school within a 9 k.m.- radius of the locality, the State, though vested with *parens patriae* responsibility towards its citizens, particularly in matters of essential public services such as education, failed to take any initiative to establish a school in the area. Instead, it was the organising Managing Committee that took the initiative to set up the school. The petitioners, serving as teaching and nonteaching staff, have been operating the institution and imparting education to the children of the locality, thereby fulfilling a critical obligation that rests with the State.
38. In the present case, most probably to discharge such duties, the State seeks to utilise the infrastructure and other facilities developed by the organising Managing Committee, along with the running school, complete with the requisite number of students, to cater the educational needs of children aged 11 to 14 in the locality. However, in an apparent attempt to avoid assuming the financial liability of paying the prescribed pay scales and retirement benefits to the organising teaching and nonteaching staff, the State is invoking the provisions of the 1997 Act, the 2005 Act, and

various notifications as a shield. Such a stance is not only inequitable but also unjustified.

39. An inevitable question that arises is whether it would be appropriate to remit the matter to the concerned respondents for resolution. In the decision reported at (2004) 8 SCC 683 (*E.T. Sunup vs. C.A. N.S.S. Employees Association*), the Hon'ble Supreme Court expressed concern over the growing tendency of government officials to circumvent court orders by resorting to various justifications. The Court observed that such conduct reflects a complete lack of grace in accepting judicial directions and cannot be tolerated. In a constitutional democracy, the authority of the courts cannot be rendered subordinate to administrative discretion. The executive and the legislature are bound to act within the framework of the Constitution, and the judiciary has been entrusted with the vital role of ensuring that both remain within their constitutional limits.

40. Therefore, applying the principle established in *E.T. Sunup* (supra), and in light of the respondents' stance in the present case as well as the protracted history of litigation between the school authority and the respondents, I am of the considered opinion that issuing a directive to approve the appointment of the petitioners would best serve the interests of justice.

Order:

41. Therefore, in view of the discussions and reasons set forth in the preceding paragraphs, respondent no. 3 is directed to approve the appointment of petitioner nos. 1 to 4 to the posts of teacher, and petitioner no. 5 to the post of non-teaching staff of the school, with effect from the date on

which financial aid was granted to the school. The respondent no.3 shall also release all consequential benefits, including arrears of salary and retirement benefits, if found admissible. The entire exercise shall be completed within a period of 8(eight) weeks from the date of receipt of a copy of this order. Respondent nos. 1 and 2 shall ensure that respondent no. 3 complies with this order in its letter and spirit, and within the time frame stipulated herein.

42. With these observations and order, the present writ petition and its connected application are, thus, disposed of, without any order as to the costs.

(Partha Sarathi Chatterjee, J.)