

FORM NO. J (2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:
THE HON'BLE JUSTICE PARTHA SARATHI CHATTERJEE

WPA 5557 OF 2022

PAMPA HALDAR
Vs.
THE STATE OF WEST BENGAL & ORS.

FOR THE PETITIONER	:	MR. SHAMIM UL BARI, ADVOCATE MS. JHILIK SINGHA, ADVOCATE MS. ASMITA MITRA, ADVOCATE
FOR THE STATE	:	MR. TAPAN KUMAR MUKHERJEE, LD. AGP MR. SOMNATH NASKAR, ADVOCATE
FOR THE RESPONDENT NO. 2	:	MR. ARJUN ROY MUKHERJEE, ADVOCATE MR. S. MUKHERJEE, ADVOCATE MR. J. MIDHI, ADVOCATE
HEARD ON	:	JULY 23, 2025.
JUDGMENT ON	:	JULY 23, 2025

THE COURT:

1. The present writ petition is an offshoot of a protracted legal battle in which the petitioner and the respondents have been locked since 2016, concerning the petitioner's engagement as a para-teacher in Geography at Muldia Chaitanyapur Desgourab Vidyamandir (hereinafter referred to as 'the said school').

2. To address the shortage of adequate teaching staff in the school and to ensure proper education for its students, the school initiated a selection process in the year 2004 to fill certain posts of para-teachers. Possessing the requisite qualifications, the petitioner submitted her candidature for the said post and, upon successful completion of the selection process, secured the first position in the panel prepared for the post of para-teacher in Geography.
3. However, owing to certain disputes which culminated in litigation, letters of engagement could not be issued to the selected candidate. Eventually, by a letter dated 29.09.2010, the petitioner was invited to join the post upon acceptance of the offer, pursuant to which the petitioner joined the school as a para-teacher in Geography on 04.10.2010.
4. In the meantime, the School Education Department (Primary Branch), Government of West Bengal, issued a circular dated 22.07.2010, directing that para-teachers who were already engaged were to continue until attaining the age of 60 years without renewal of their services.
5. The petitioner was denied such benefits. This denial prompted the petitioner to prefer a writ petition before this Hon'ble Court, being WP 115 (W) of 2016, which was disposed of by a Coordinate Bench of this Court by an order dated 11.01.2016 directing the petitioner to file a comprehensive representation within the time specified therein, with a further direction upon respondent no. 7 therein to decide on the petitioner's claim for the benefit of the Circular dated 22.07.2010 and to determine whether the petitioner could avail herself of the online registration for the D.El.Ed Course. It is to be noted that, in the meantime, the respondents published another Notification requiring para-

teachers to undergo two years of training under the D.El.Ed Course to enable them to teach students in a better manner. However, the benefit of that circular was limited to those para-teachers whose service had been recognized to continue up to the age of 60 years. The petitioner could not take any step for online registration of the D.El.Ed Course since her engagement was not allowed to continue till the age of 60 years.

6. In compliance with the order dated 11.01.2016, the petitioner submitted a comprehensive representation. However, upon receipt of such representation, the District Project Officer passed a reasoned order dated 04.03.2016 informing the petitioner that her letter of engagement issued by the school authority concerned was not considered for continuation as a para-teacher in the said School. Consequently, the petitioner was not eligible for online registration for the D.El.Ed Course.
7. The petitioner once again approached this Court by preferring another writ petition, being WP 21340 (W) of 2016, to challenge the order dated 04.03.2016. Record reveals that the said writ petition was disposed of by a Coordinate Bench of this Court by an order dated 10.11.2016, observing that there was no reason for the authority to hold that the petitioner should be discontinued from her service once she was duly engaged as a para-teacher, particularly when it was mentioned in the relevant circulars that fresh renewal was not necessary. In that view of the matter, the order dated 04.03.2016 passed by the District Project Officer was set aside, and the authority concerned was directed to pass a fresh reasoned order after giving the petitioner an opportunity of hearing within the time specified therein.

8. Pursuant thereto, the District Project Officer passed another reasoned order dated 15.12.2016. The order recorded that the petitioner was engaged in the post subsequent to the issuance of the Notification vide G.O. 376-SE (Pry) dated 09.06.2010 by the School Education Department and, therefore, the petitioner's engagement was not considered by the District Level Committee in their meeting held on 11.02.2016. Accordingly, the petitioner's salary was stopped from February 2016.
9. The order dated 15.12.2016 was challenged by filing another writ petition, being WP 14480 (W) of 2016, which was disposed of by a Coordinate Bench of this Court by an order dated 19.07.2017. The order dated 19.07.2017 noted that the impugned order dated 15.12.2016 could not be termed perverse. However, the Bench observed that the order dated 15.12.2016 was passed without taking into account the Circular dated 16.11.2010 and the order dated 13.10.2015 passed by the Division Bench in MAT 1252 of 2015. Accordingly, the issue was remitted back to the authority for fresh decision.
10. In MAT 1252 of 2015, although the selection process had been initiated much earlier, the appointment was made only after the publication of the Notification dated 09.06.2010. Consequently, the benefits under the subsequent Notification dated 22.07.2010 were initially denied to respondent no. 1 therein. However, the Hon'ble Division Bench held that the delay in completing the selection process could not be attributed to respondent no. 1, and accordingly directed that the benefits under the Notification dated 22.07.2010 be extended to the respondent no.1, a para-teacher seeking to avail the advantages conferred under the said Notification.

11. However, pursuant to the order dated 19.07.2017 passed in WP 14480 (W) of 2016, a reasoned order was again passed by the District Project Officer on 01.09.2017. This order noted that since the petitioner joined as para-teacher after 09.06.2010, her engagement was issued for one year only. Accordingly, in accordance with the G.O. dated 09.06.2010, the re-instatement of the petitioner in the post was regretted.
12. However, the order dated 01.09.2017 was challenged by the petitioner by filing another writ petition, being WPA 5396 of 2021, which was disposed of by an order dated 25.03.2021, whereby the order dated 01.09.2017 was set aside. The petitioner was granted liberty to apply before the competent authority to get the benefit of the G.O. dated 16.11.2010 within the time specified therein, and the authority concerned was directed to decide whether the petitioner was otherwise eligible to receive the benefit of that Government Order.
13. In the meantime, by an order dated 30.06.2021, the petitioner was re-engaged in the said post, subject to the condition that her joining and service matters will be in strict adherence to the solemn order passed on 25.03.2021 in relation to WPA 5396 of 2021, and also subject to the final outcome of the appeals in MAT 425 of 2020 and MAT 426 of 2020 pending before this Court.
14. Thereafter, the petitioner, through her learned Advocate, sent a legal notice to the District Project Officer requesting the extension of the benefit of the Circular dated 22.07.2010 in her favour and the release of arrear salary for the period from February 2016 to 05.09.2016.

15. It is pertinent to mention here that the petitioner's engagement was discontinued with effect from 05.09.2016. On receipt of such legal notice from the learned Advocate of the petitioner, an opportunity of hearing was afforded to the petitioner and subsequently, a reasoned order was passed on 31.01.2022. The operative portion of the said order runs as follows:-

“Heard the submission of the persons attended & on scrutiny of official documents, I have the opinion that inspite of receiving the memo no. SM/S24Pgs/ Pedagogy/Para-teacher/1302(4) dated 04.03.2016, the attendance of Smt. Pampa Halder till 5th September is purely arbitrary and against the letter and spirit of said memo. As the memo was issued on 04.03.2016 & communicated thereafter, it is being ordered to disburse the remaining two-month remuneration i.e. February 2016 & March 2016.

Regarding confirmation of service till attaining the age of 60 years, the matter is under consideration subject to final outcome of MAT 425/2020 & MAT 426/2020 pending before the Hon'ble High Court Calcutta.

The matter is disposed of.

All concerned be informed accordingly.”

16. Therefore, the petitioner's prayer for the release of honorarium for the period from February 2016 to 05.09.2016 was declined on the ground that the petitioner's absence from the school was purely arbitrary and against the letter and spirit of the memo dated 04.03.2016. However, it is informed that honorarium for two months, i.e., February 2016 and March 2016, would be paid to the petitioner.

17. Mr. Bari, learned Advocate representing the petitioner, after narrating the facts, argues that the Circular dated 09.05.2010 cannot be given retrospective effect. In the case at hand, the selection procedure was started prior to the issuance of such Notification and, therefore, the Notification cannot affect the present selection process. He submits that the respondents misguided themselves and illegally denied the petitioner's legitimate claim despite the petitioner being engaged following a due selection process. He further submits that the respondents cannot claim that by virtue of the Circular dated 09.06.2010, the petitioner is not entitled to the benefit under the Notification dated 22.07.2010. He draws attention to the report filed on behalf of respondent no. 3, particularly the attendance register annexed therein, to contend that the State itself admitted that the petitioner rendered services from February 2016 to 05.09.2016, on which date the petitioner's engagement was illegally discontinued.
18. In rebuttal, Mr. Arjun Roy Mukjherjee, learned Advocate representing respondent no. 2, vehemently contends that whether the petitioner rendered services from February 2016 to 05.09.2016 is a pure question of fact, and to determine such question, the attendance register and other relevant documents must be consulted. He submits that such a question of fact cannot be examined by a Writ Court exercising the power of judicial review. He submits that this issue can at best be remitted to the authority concerned for effective resolution.
19. Inviting attention to the order dated 19.07.2017 passed in WP 14480 (W) of 2017, he submits that a Coordinate Bench of this Court observed that the

order dated 15.12.2016 could not be termed perverse. However, the matter was remitted to the authority to decide whether the petitioner is entitled to the benefit of the Circular dated 16.11.2010 and the order dated 30.10.2015 passed by the Division Bench in MAT 1252 of 2015. He submits that the order dated 19.07.2017 has not been challenged by the petitioner and, therefore, the said order has attained finality and the petitioner cannot claim remuneration for the period from February 2016 to 05.09.2016. He further submits that the order dated 31.01.2022 has not been challenged by the petitioner and it shall be presumed that the petitioner accepted the order. He submits that in view of the orders passed in MAT 425 of 2020 and MAT 426 of 2020, the concerned respondents shall take appropriate decision in accordance with law.

20. Mr. Tapan Kumar Mukherjee, learned Additional Advocate General, representing the State adopted the submission of Mr. Arjun Roy Mukherjee and submits that the petitioner cannot take the benefit of the said Circulars.
21. Heard the learned Advocate for the respective parties and perused the documents placed on record as well as the documents placed before me during the course of hearing.
22. Undoubtedly, the selection process for filling the post was initiated in 2004, and the panel was prepared in 2006. However, as noted earlier, certain dispute arose regarding the legality of the selection process which led to a litigation before this Court. Ultimately, pursuant to an order dated 13.05.2010 passed by a Coordinate Bench in WP 20943 (W) of 2008, the

panel was approved by the District Project Officer on 30.08.2010 and, as mentioned earlier, the petitioner joined the post on 04.10.2010.

23. Therefore, before addressing the issue raised in this writ petition, it is necessary to first determine whether the Circular dated 09.06.2010 can be given retrospective effect, or whether it can affect a pending action, i.e., the ongoing selection process.
24. It is a well-settled principle of interpretation that merely because a notification substitutes, amends, or modifies an existing provision, such substitution, amendment, or modification cannot be given retrospective effect in the absence of an express provision to that effect. There is a presumption in favour of prospective operation attached to every statute, notification, or order. This presumption is embodied in the legal maxim *nova constitutio futuris imponere debet non praeteritis*—meaning that a new law ought to regulate the future, not the past. Courts are expected to lean strongly against the retrospective application of a new Act or an amendment to a pending matter, unless the statutory language clearly compels such interpretation.
25. A statute that creates some disability or impairs any vested right cannot be applied retrospectively in absence of express provision. A selection process is deemed to have commenced on the date of issuance of its advertisement and is considered concluded upon the joining of the selected candidate in the post, unless the process is postponed, abated, or abandoned midway.
26. Typically, any statute, notification, amendment, or modification cannot affect a pending action unless the language used in the statute clearly reflects the

intention of the legislature to do so. For example, if a statute states that "no suit shall be instituted," it indicates the legislature's intention that, from the date of issuance of the statute, no new suit shall be filed on a particular issue. However, it will not affect pending suits. Conversely, if the statute uses the words "no decree shall be passed" or "no decree shall be executed," it would indicate the legislature's intention to affect pending suits or pending execution proceeding as well.

27. It is a settled position in law that delegated legislation or administrative orders affecting vested rights cannot be applied retrospectively unless there is an express provision or a clear legislative intent to that effect. As a general rule, when an earlier notification or order is amended by a subsequent one, references to terms such as 'date of notification' or 'date of issuance of the order' in the amended or substituted notification are ordinarily construed to relate back to the date of the original notification, unless explicitly stated otherwise.
28. The Circular dated 09.06.2010, mandates that there shall be no 'new' engagement of para-teachers or any category of employees 'after the date of issue of the order'. The use of the word "new" and 'after the issue of this order' is indicative of the intention of the authority issuing the circular. The word "new" is consciously employed to exclude anything existing prior to the circular from its operation, and the phrase "after issuance of this order" clearly indicates the date from which the circular is to take effect. Therefore, the use of the words "new" and "after issuance of this order" signifies that the concerned respondent did not intend to affect the pending selection process.

29. The petitioner was engaged through a selection process that was initiated in 2004, although she was appointed after the issuance of the Notification dated 09.06.2010. Therefore, it can be concluded that the Notification dated 09.06.2010 is not applicable to the petitioner's engagement. On this basis, it can also be held that the respondent authority cannot deny the petitioner the benefit under the Notifications dated 22.07.2010 and 16.11.2010 by citing the reason that her engagement occurred after the issuance of the Notification dated 09.06.2010.
30. The petitioner's prayer for grant of benefit under the Circular dated 09.06.2010 was denied on the ground of pendency of two intra-court appeals, being MAT 425 of 2020 and MAT 426 of 2020. A bare perusal of the orders passed in those appeals suggests that no legal proposition was laid down therein. Therefore, in my respectful view, the orders passed in those two appeals cannot stand in the way of granting benefits to the petitioner in terms of the said Circulars.
31. Mr. Roy Mukherjee contends that the matter may once again be remitted to the concerned respondents for reconsideration. However, in the present case, the issue has already been referred to the authority on multiple occasions. On each such occasion, the authority has remained steadfast in its position and has proceeded to pass orders under the guise of complying with the directions of this Court, without addressing the core issues raised.
32. Such stance of the respondents gives reminder of the celebrated decision in *E.T. Sunup vs. C.A. N.S.S. Employees Association* [(2004) 8 SCC 683], where the Hon'ble Apex Court lamented the tendency of government officers

to circumvent Court orders by resorting to various justifications. This conduct demonstrates a complete lack of respect in accepting the authority of the Court. Such a tendency cannot be countenanced. In a democracy, the role of the judiciary cannot be subservient to administrative fiat. The executive and legislature must act within the constitutional framework, while the judiciary serves as a vigilant watchdog to keep both within constitutional limits.

33. The Court remits an issue to the concerned authority not because it is unable to address the matter itself, but rather to avoid unnecessary encroachment upon the domain of the administration. It is not the role of the Court to run the administration; that responsibility lies with the administrative authorities. However, under the guise of compliance with the Court's order, the authority has remained steadfast in its previously taken decision. Having considered the sequence of events in the present case and applying the principles laid down in *E.T. Sunup* (supra), I am not inclined to remit the issue which has already been decided in this order.
34. Therefore, in view of the discussions and reasons set out in the preceding paragraphs, the present writ petition is disposed of by directing the concerned respondents to extend the benefit of the aforesaid Circulars dated 22.07.2020 and 16.11.2020 to the petitioner and to treat her engagement as continuing until she attains the age of sixty years.
35. The respondents are further directed to issue the necessary certificates and/or documents to enable the petitioner to take steps for her online registration for the D.El.Ed. Course. The record, however, reveals that

remuneration for the months of February 2016 and March 2016 were directed to disbursed in favour of the petitioner. As regards the petitioner's claim for remuneration for the period from April 2016 to 05.09.2016, the matter is to be addressed separately.

36. The authority shall revisit the issue and reconsider the petitioner's claim by consulting the attendance register and other relevant documents to ascertain whether the petitioner actually rendered service in the said school during the relevant period. Based on such findings, the concerned respondent shall take an appropriate decision on the petitioner's prayer for release of remuneration for the period from April 2016 to 05.09.2016.
37. It is also clarified that if the remuneration for the months of February 2016 and March 2016 has not actually been credited to the petitioner's account, necessary steps shall be taken to ensure that the same is credited to her account expeditiously.
38. With these observations and order, **WPA 5557 of 2022 is disposed of.**
39. There shall be no order as to costs.

(PARTHA SARATHI CHATTERJEE, J.)