

Form No. J(2)
Item No. ML / 237
ARPAN – A.R.(CT)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

W.P.A. NO 6604 OF 2023

ASHIS KUMAR ROY

VS.

THE STATE OF WEST BENGAL & OTHERS

BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

For the Petitioner	: Mr. Bidhan Biswas, Adv. Mr. Arup Sarkar, Adv.
For the State	: Mr. Biswabrata Basu Mallick, AGP Mr. Sanjib Das, Adv.
Heard On	: 04.08.2025
Judgment On	: 04.08.2025

SAUGATA BHATTACHARYYA, J.:

1. In terms of previous order notice served upon learned advocate representing the State respondents is filed before this Court and same is taken on record.

2. Matter is heard in presence of learned advocates representing the petitioner and the State respondents.
3. Petitioner has prayed for sanction of service benefits from the date of recognition of the school where petitioner was working by modifying approval memo dated 5th December, 2019 issued by the District Inspector of Schools (S.E.), Purba Bardhaman being respondent no.3.
4. Learned advocate representing the petitioner has submitted that an order was passed by a Co-ordinate Bench on a writ petition being WPA 12147 of 2010 on 9th September, 2013 directing respondent no.3 to approve appointment of the petitioner as regular teacher in the vacant post within a specified time upon treating those teachers as *bona fide* organizing teachers. In terms of the order dated 9th September, 2013 within the specified time approval was not granted which prompted the petitioner to initiate contempt proceedings being WPCRC 62 of 2018. During pendency of the contempt proceedings respondent no.3 issued approval memo dated 5th December, 2019 in favour of the petitioner with effect from 9th September, 2013 subject to fate of the *intra-court* appeal being FMA 2278 of 2015.
5. It is submitted appeal being FMA 2278 of 2015 preferred by the State respondents was dismissed for default on 9th January, 2017 and in spite of filing recalling applications said appeal was not restored. It is prayed on behalf of the petitioner to direct the State respondents to

release service benefits in favour of the petitioner from the date of recognition of the school.

6. Mr. Basu Mallick, learned Additional Government Pleader has submitted that after dismissal of the first application seeking recall of the order dated 9th January, 2017 passed in appeal preferred by the State respondents which was dismissed on the ground of default two applications being CAN 6 of 2021 and CAN 7 of 2021 were preferred seeking condonation of delay and recall of the order dated 9th January, 2017. Both the applications are still pending.
7. Considering submissions made on behalf of the respective parties it appears appeal preferred by the State respondents being FMA 2278 of 2015 till date has not been restored. Therefore, this Court needs to proceed on the basis of the order passed by the Co-ordinate Bench on 9th September, 2013 while disposing of the writ petition being WPA 12147 of 2010 directing the respondent no.3 to approve appointment of the petitioner as regular teacher within a specified time.
8. It is submitted on behalf of the petitioner that there was delay in granting approval to the petitioner and it is also stated that petitioner retired on superannuation on 30th June, 2017 whereas approval memo was issued on 5th December, 2019 with effect from 9th September, 2013. Further it is submitted that service benefits were released in favour of the petitioner from 9th September, 2013 till the date of superannuation on 30th June, 2017.

9. Question arises for consideration whether petitioner being an organizing teacher is entitled to receive service benefits from the date of recognition of the school or not.
10. In order to find answer this Court relies upon the order passed by the Co-ordinate Bench on 9th September, 2013 whereby it was directed upon the respondent no.3 to grant approval of appointment to the petitioner within a specified time without stipulating that such approval is required to be granted from the date of recognition of the school where petitioner was working as organizing teacher.
11. Order of the Co-ordinate Bench attained finality after dismissal for default of the appeal being FMA 2278 of 2015 *vide* order dated 9th January, 2017. Respondent no.3 granted approval of appointment from the date of disposal of the writ petition being WPA 12147 of 2010, i.e., 9th September, 2013 and subsequently, released service benefits from 9th September, 2013 till 30th June, 2017 being the date of superannuation of the petitioner. Petitioner did not prefer any appeal against the order dated 9th September, 2013 asserting his right to get approval from the date of recognition of the school.
12. In addition thereto reliance is placed on the order of the Hon'ble Division Bench dated 6th July, 2018 passed on an *intra-court* appeal being **MAT 1626 of 2017 [The District Inspector of Schools (Secondary Education), Burdwan & Ors. vs. Abdul Barik Shaikh & Ors.]**. In paragraph 19 of the said order dated 6th July, 2018 it was

succinctly held by the Hon'ble Division Bench that any decision of a learned Judge or Judges, which runs counter to the *dicta* in ***Manindra Nath Sinha & Ors. vs. State of West Bengal & Ors.***, reported in ***(2006) 4 CHN 513, State of West Bengal & Ors. vs. Smritikana Maity***, reported in ***(2008) 1 CHN 582, Headmistress, Garifa Arati Academy for Girls' vs. Gita Banik***, reported in ***(2008) 1 CLJ 453*** and ***State of West Bengal & Ors. vs. Gopal Singh & Ors.***, reported in ***(2008) 1 WBLR (Cal) 229***, is not good law.

13. Therefore, right of an organizing teacher to get approval of appointment after law laid down in ***Abdul Barik Shaikh (supra)*** is found to be impermissible.
14. However, in the present case, service of the petitioner was already approved based on memo dated 5th December, 2019 with effect from 9th September, 2013 as per order of the Co-ordinate Bench dated 9th September, 2013.
15. Therefore, State respondents are directed to release admissible retiral dues to the petitioner, if same are not released by this time, within a period of four (4) weeks from the date of communication of this order.
16. With the aforesaid direction writ petition stands disposed of.
17. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)