

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 7567 of 2017

**Mohammad Ali Molla
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Ekramul Bari
: Sk. Intiaj Uddin

For the State : Mr. Pantu Deb Roy, Ld. AGP
: Mr. Pannalal Bandopadhyay

Heard on : 07/03/2025

Judgment on : 07/03/2025

Rai Chattopadhyay, J. :-

- (1) The writ petitioner is a temporary appointee and a Group-D staff of the madrasah namely Bartala Ainul Uloom Senior Madrasah (hereinafter referred to as the “said madrasah”), who has been admittedly working in the said madrasah, temporarily with effect from **2nd January, 2000**. Subsequently, the petitioner has submitted a letter to the Superintendent of the

said madrasah, praying for approval of his long-standing, continuous and uninterrupted service, which was received by the said authority on **23rd December, 2014**. Since thereafter as no steps were taken for approval of service of the petitioner in the said madrasah, the petitioner has filed the present case for appropriate relief.

- (2) Mr Bari appears for the writ petitioner. He submits that at the relevant date of appointment of the writ petitioner that is, **2nd January, 2000**, neither the West Bengal Madrasah Service Commission Act 2008 [henceforth to be referred as “Act of 2008”] had seen the light of the day, nor there was any other recruitment rules available and applicable in case of appointment of non-teaching staff in a madrasah. He says that the madrasah authority did possess the power and authority to recruit a non-teaching staff therein. He says that the petitioner’s appointment was in exercise of such unfettered power of the madrasah authority, as existent at the said relevant period.
- (3) He has further submitted that since from the date of appointment of the petitioner on **2nd January, 2000**, the petitioner has been working in the same capacity, continuously and uninterruptedly. He says further that in such a situation, not granting approval to the petitioner would be regarded as an unfair practice, always deprecated by the Courts. Apart from the same allowing the petitioner to work temporarily for a prolonged period in the post which is perennial in nature that too continuously and uninterruptedly would amount to gross illegality, he has stated.

- (4) A judgment of the 3 judges Bench of this Court, in the case of ***Rabindra Nath Mahata vs State of West Bengal & Others reported in (2005) 3 CHN 337 (FB)*** has been referred to by Mr. Bari. The same has been referred to in support of the contention of him that a guideline which was available at the relevant point of time, in the form of government notification ***No.2066-G.A. dated 27th October, 1995***, [hereinafter referred to as “No.2066”], providing for procedure for recruitment of teaching and non-teaching staff of secondary schools, including madrasahs, are mere directions or guidelines issued by the Director of School Education, West Bengal, in exercise of the power under Rule 28 (1)(i) and (ii) and 28 (4)(i) of the Management of Recognised Non-Government Institutions (aided and unaided) Rules, 1969, having no statutory force. Therefore, violation thereof even if any, shall not render the action taken by the managing committee, if otherwise than in compliance with the provisions made in the said notification “No.2066”, as an illegal action. As regards the self same proposition, Mr Bari has also referred to a Single Bench decision of this Court, in the case of ***Mehabuba Begum vs State of West Bengal and Others reported in (2016) 3 CHN 666***.
- (5) Mr Bari has further contended that unfair exploitation to deny the legitimate claim of a long serving employee, in the guise of him being engaged perennially temporarily, though the foundational purpose of temporary employment being to address short term needs, has time and again been overturned by the Court, by settling the law in a manner that the said employee would be entitled for regularisation of his service. That, the label “temporary” or “contractual” for the job which is essential, recurring and integral to the functioning of an

institution and exactly replicates the job description of a permanent and/or regular employee, as like the nature of job of the present petitioner, is the misuse of labour and deprivation of the legitimate right of regularisation of the said person. As regards this he would refer to a judgment of the Supreme Court, in ***Jaggo vs Union of India and Others reported in 2024 SCC Online SC 3826***. Relying on the ***Jaggo's case (supra)***, the Single Bench of this Court has held similarly in the case of ***Indian Oil Corporation Limited vs Union of India in order dated 18th February, 2025, in WPA 27693 of 2024***, which Mr.Bari has also relied on.

- (6) Objection of the State respondent is based on the alleged invalidity of the process by dint of which the petitioner has been recruited in service. Mr. Deb Roy, learned Additional Government Pleader represents the State and submits on the basis of a report of the District Inspector of Schools (Secondary Education) Kolkata, dated January 30, 2025. He submits that no due process has ever been followed in case of his appointment and his engagement has been purely on temporary basis. Such terms of employment has been voluntarily accepted by the petitioner, pursuant to which he has discharged duties in madrasah till date. Hence, according to the State, it is only the private arrangement between the petitioner and the madrasah. He further states that even appointment of the petitioner has never been in terms of any prior permission being accorded by the competent authority, in this regard. He has emphatically placed that in terms of the West Bengal Madrasah Service Commission Act, 2008, which has come into force with effect from 22nd October, 2008, the State authorities do not have any power regarding recruitment to happen in a madrasah

and by virtue of the statutory enactment, such power is now vested with the Madrasah Service Commission. Hence, on behalf of the State respondent, he has raised strong objections as to the contention and prayer of the writ petitioner and seeks dismissal of the writ petition.

- (7) The petitioner's appointment in the said madrasah with effect from 2nd January, 2000, is an admitted fact in the present case. The petitioner has been appointed there as a Group-D staff, against a sanctioned vacant post and has been, since then, working there, though on temporary basis, his service having not been approved till date. No doubt the nature of job he is discharging is no different from that of a permanent employee, if was placed in that post. His job is undoubtedly an essential and integral part of the functioning of the said madrasah, recurring and coextensive in nature with the existence of the madrasah itself. In this regard the Court is duty bound to look to the facts of this case in the light of the ratio decided by the Supreme Court. In the case of **Jaggo (supra)**, the relevant portion of which may be extracted as hereinbelow:

“25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

- Misuse of “Temporary” Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as “temporary” or “contractual,” even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

- Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

• Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

• Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

• Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.”

- (8) Therefore, in a perennial nature of job, as that of the petitioner, which is definitely not in terms of the foundational purpose of temporary nature of job addressing temporary needs and requirements, the expression “temporary” is definitely a misuse of label. It would become a form of exploitation if ultimately becomes a mechanism to evade obligations owed to the said employee.
- (9) The question may then arise if each and every employer would be at liberty to employ people, in perennial nature of work in its institution, in a way as it may think fit and later on can seek their regularisation, which would ultimately involve government exchequer and public money. The Supreme Court in the case of **Secretary, State of Karnataka vs Uma Devi reported in (2006) 4 SCC 1**, has sought to curtail the practice of backdoor entries and propounded for appointments in adherence to the Constitutional principles only, thereby distinguishing between “illegal” and “irregular” appointments and categorically holding 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 regularisation as a one-time measure.
- (10) Therefore, appointments which are not illegal but merely lack adherence to procedural formalities, cannot be indiscriminately rejected, so far as regularisation of such appointees are concerned.

- (11) In the present case, though the State has raised a ground of invalid and illegal initial appointment of the writ petitioner, to deny his claim of approval of service, this Court finds that in view of the Full Bench's decision in ***Rabindra Nath Mahata (supra)***, non-adherence by the employer of the non-statutory guidelines, as was prevalent at the relevant point of time in the form of notification "No. 2066", cannot be held to be an illegal action of the said employer. Let the relevant portion of the said judgment be quoted here, for better understanding of the proposition and its applicability in this case.

"17. Considering the said guidelines providing for procedure for recruitment of teaching and non-teaching staff of secondary schools including Madrasha issued by the Director of School Education, West Bengal vide memo No. 2066-G.A., dated 27 October, 1995 effective from 1 December, 1995, it appears that in exercise of power conferred on the Director of School Education, West Bengal by Cls. (i) and (ii) of Sub-rule (1) and by Cl. (i) of Sub-rule (4) of Rule 28 of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969, the said directions were issued. It, therefore, appears that the aforesaid are mere directions/guidelines issued in exercise of the aforesaid power but are neither statutory provisions nor statutory rules. In such circumstances, it is not possible to uphold that the said procedure enjoys the status of statutory rules according to which the managing committee is bound to act and that the same having been held as directory in nature any deviation therefrom by the managing committee cannot be held to be an illegal action.

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- (12) Thus, a person, whose appointment is not illegal in terms of the settled law, though labelled as a "temporary" employee at the time of appointment and throughout his service life of more or less 24 year and actually discharging not a short-term or temporary but perennial nature of job, is entitled under the law to be approved and regularised in service.
- (13) The State respondent has contended further that after promulgation of the West Bengal Madrasah Service Commission Act, 2008, which has come into force with effect from 22nd October, 2008, it would cease to have any further power or authority in case of appointment in a madrasah in the State. The Court however, does not find any necessity to spend much words in this regard, in so far as firstly in case of the present petitioner, who has admittedly been appointed on 2nd January,

2000, should not be considered to be governed under the provisions of the said Act of 2008, since the same would not be retrospectively effective. Since being only prospectively effected, the Act of 2008, as above, should not have any manner of application in case of the present petitioner, who has been admittedly appointed prior to the said Act having come into force. Secondly, that the statutory body created under the said Act of 2008, that is the Madrasah Service Commission is a body for selection and recommendation of the prospective appointees, whereas the respondent State, still remain the competent authority for approval of such an appointee. In the present case the core issue remains to be the approval of service of the petitioner and his dispute or grievance is nothing otherwise. Therefore, the Court is not inclined to accept the submission of the State in this regard, the same being irrelevant.

(14) Hence, the Court concludes that the petitioner would be entitled to be approved in service and the present writ petition should be allowed.

(15) The writ petition being WPA No.7567 of 2017, is allowed with the following directions:

(i) the respondent No.3/District Inspector of Schools (Secondary Education), Kolkata shall immediately issue an order of approval of the service of the petitioner, with effective from the date of his appointment, that is 2nd January, 2000;

(ii) pay fixation of the petitioner should be made effected, from the date of his appointment, immediately and positively within a period of 3 weeks from the date of communication of copy of this order;

(iii) arrear pay of the petitioner shall be disbursed positively within a period of 8

weeks from the date of communication of copy of this order.

- (16) The writ petition is allowed and disposed of.
- (17) Since no affidavit has been called for, the allegations made in the writ petition are deemed to have been denied by the respondents.
- (18) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)