

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE REETOBROTO KUMAR MITRA

WPA 10208 of 2017
CAN 1 of 2019 (Old No.CAN 5773 of 2019)

Moktar Hossain
versus
The State of West Bengal and others

For the petitioner	Mr. Ekramul Bari Sk. Imtiaj Uddin
For the State	Mr. Supriyo Chattopadhyay Ms. Iti Dutta
Last heard on	15.12.2025
Judgment on	15.12.2025

REETOBROTO KUMAR MITRA, J:

1. The petitioner has sought for absorption to the post of a clerk in a Government-aided recognised school guided by the West Bengal Board of Secondary Education. In the Bhagilata High School (HS) in the district of Uttar Dinajpur (hereinafter the school).

2. The school has one sanctioned post for appointment of a clerk.
3. In the sanctioned post of clerk, the school had an appointed incumbent (Netai Mondal) who was serving as such. Thus, there was no vacancy for the post of a clerk.
4. The petitioner submitted that he was appointed as a clerk on August 2nd, 2004 by the Managing Committee in one of its resolutions. The petitioner, pursuant to such appointment, had joined as a clerk and has been working there since 2004.
5. The petitioner further submits that the incumbent, Netai Mondal, retired from service sometime in 2005. However, the petitioner was not appointed to that post, which became vacant upon his retirement. In fact, neither the school nor the petitioner sought permission from the District Inspector of Schools even retrospectively though the applicable guidelines under Memo No. 1736(21)-G.A. dated Kolkata, 1st November, 1999, specify that prior permission from the District Inspector of Schools is necessary.
6. It is this appointment made by the managing committee of the school of the petitioner as a clerk that the petitioner seeks approval by way of this writ petition.
7. I have heard the learned advocates for the parties and considered the documents, records, and decisions relied upon by the parties.

8. Mr. Ekramul Bari, learned senior advocate appearing for the petitioner, has placed reliance on the decision of *Secretary, State of Karnataka v. Umadevi* reported in 2006 (4) SCC 1. He has also relied upon the decision in *Rabindra Nath Mahata v. State of West Bengal* reported in 2005 (3) CHN 337. Furthermore, reliance has been placed on the decision of a coordinate bench of this court in *Mehebuba Begum v. State of West Bengal* reported in 2016 SCC OnLine Cal 670, wherein it was held that the new appointment of the petitioner as an assistant teacher was a valid appointment. Since the initial appointment was valid, the direction by the directorate to regularize the appointment of the petitioner was upheld. It is not in dispute that the decision in *Rabindra Nath Mahata* (supra) has been watered down by the decision of *Umadevi* (supra). Even if the initial appointment of the petitioner was not in accordance with the direction issued by the Directorate of School Education, such appointment was held to be valid, since the direction of the Directorate of School Education was held not to have any statutory force and was merely directorial in nature. *Umadevi* (supra), in no uncertain terms, held that if the initial appointment was not valid, the petitioner could not be absorbed.

9. In the decision of *Rabindra Nath Mahata* (supra) it has been held that the guidelines do not have any statutory force and are merely directory in nature. Mr. Bari has also placed reliance on two unreported decisions of a coordinate bench of this Hon'ble Court one is *Md. Hassan Mallick and Ors. vs. The State of West Bengal and Ors.* in WPA 22981 of 2016 dated December 9th, 2025 and another is *Mohammad Ali Molla vs. The State of West Bengal and Ors.* in WPA 7567 of 2017 dated March 7th, 2025.

10. The decisions of the Hon'ble Supreme Court of India reported in *Umadevi* (supra) categorically deprecated the practice of "back door entry". The decision relied upon of this Hon'ble Court in *Mehebuba Begum* (supra), *Md. Hassan Mallick* (supra) and *Mohammad Ali Molla* (supra) were all where the initial appointment was valid and it was the mere regularisation by way of permission from the District Inspector Of School that was awarded.
11. In the decision reported in *Mehebuba Begum* (supra) the appointment of the writ petitioner was made against a sanctioned vacant post as also was the case in *Mohammad Ali Molla* (supra).
12. In these aforesaid decisions referred by the petitioner, the appointments made were awaiting the regularisation. As the petitioners therein had all been appointed to approved posts, which were not only sanctioned, but were vacant at the time of appointment.
13. In the present case, the appointment of the petitioner pursuant to a resolution adopted by the Managing Committee of the School on 2nd August, 2004, cannot be held to be a valid appointment since there was already a clerk who was discharging his duties in the said post. The post fell vacant sometime in 2005. It is not the petitioner's case that he had been appointed or reappointed upon the superannuation of Netai Mondal to the permanent post of clerk.
14. In addition to the aforesaid, neither the school authority nor the petitioner had taken any steps to apprise the District Inspector of Schools to accord permission to the appointment of the petitioner and thereby regularize such appointment.

From the records, there is no resolution of the Managing Committee which is available, nor has any other resolution recording his reappointment been disclosed. A mere letter of appointment of 2nd August, 2004, has been disclosed, which has been issued by the Headmaster of the High School, bereft of the date of the decision of the Managing Committee.

15. Even if, one were to consider that the guidelines are merely directory in nature without the binding force of a statute, and such guidelines were held not applicable in view of their directory nature to the present case, the petitioner's appointment to the post of a clerk cannot be held to be initially valid or legal, as the petitioner was appointed in addition to an incumbent who was already working in the school as a clerk against only one sanctioned vacant post. Thus when the petitioner was appointed, there was only one sanctioned vacant post of a clerk, which was already occupied. Clearly, the petitioner's appointment was not only invalid but clearly illegal. Invalidity could have been regularised by directing the DI to accord his permission post facto. However, since the appointment was illegal, such direction cannot be made at this stage.

16. Invalidity and illegality are two separate aspects. Invalidity can arise from non-compliance with a statutory provision or an infraction of a guideline. Such an infraction may be remedied in view of several decisions of this Hon'ble Court. However, illegality is a quite separate issue illegality stems from appointments which are void ab initio. The petitioner's case squarely falls within the realm of illegality, since he was appointed by the Managing Committee not against a

sanctioned vacant post, but merely on the basis of its resolution, despite there already being an incumbent serving as a clerk against the sanctioned vacant post.

17. Mr. Chattopadhyay, learned AGP appearing for the State has brought to the notice of this court that a person has already been appointed to the sanctioned vacant post of clerk, which appointment has been accepted by the managing committee of the school. Thus, the managing committee, as well, did not apprise the authority that the petitioner had been working in the said school as a clerk, even though his initial appointment was not only invalid but was illegal, since there was no vacancy for the sanctioned post of clerk in the said school.
18. In view of the fact that the initial appointment of the petitioner was invalid and indeed illegal and that an incumbent to the post has also been appointed subsequently, the petitioner's appointment as a clerk to the school cannot be said to be a mere irregularity pending approval of the district inspector of school.
19. In view of the aforesaid, the Writ Petition fails and is accordingly dismissed.
20. There shall be no order as to costs.

(Reetobroto Kumar Mitra, J.)