

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Ajay Kumar Gupta

FMA No. 728 of 2023

With

CAN 2 of 2025

State Projects Director, Paschim Banga Sarva Shiksha Mission

Vs.

Krishnendu Biswas & Ors.

For the Appellant : Mr. L. K. Gupta, Ld. Sr. Adv.
Mr. Arjun Roy Mukherjee, Adv.
Ms. S. Mukherjee, Adv.
Mr. J. Medhi, Adv.

For the Respondent No. 1 : Mr. Samim Ahammed, Adv.
Mr. Anka Maiti, Adv.
Ms. Abmiya Khatun, Adv.

For the Respondent No. 7 : Mr. Pranit Kumar Ray, Ld. Sr. Adv.
Mr. Rahul Sarkar, Adv.

Mr. Atmaja Bandopadhyay, Adv.

Ms. Dipika Sarkar, Adv.

For the State : Mr. Sanjib Das, Adv.

Heard on : 17.03.2025

Judgment on : 04.04.2025

Ajay Kumar Gupta, J:

1. This instant intra Court appeal has been filed by the Appellant challenging the Judgment and Order dated 26.04.2023 passed by the Learned Single Judge in WPA 24767 of 2022.

2. By the said Judgment and Order, the Learned Single Judge disposed of the writ petition and directed, inter alia as follows: -

“The impugned order dated 30th June, 2022 passed by the State Project Director, Paschim Banga Sarva Shiksha Mission is hereby quashed.

The State respondents are directed to allow the petitioner to perform duties as a Shiksha Mitra in the educational institution namely, Kechuadanga B.C. Vidyaniketan (HS) or any other educational institution forthwith after the communication of this judgment and order. The engagement of the petitioner shall remain up to the age of 60 years. The State respondents are further directed to extend all the service benefits to the petitioner as is available to Shiksha Mitras in terms of the Government

Order dated 9th June, 2010 and clarificatory memorandum dated 9th August, 2010 immediately after communication of this judgement and order.

The State respondents are further directed to pay the arrear honorarium to the petitioner which is admissible to Shiksha Mitras treating his engagement as a continuing one within a period of 8 weeks from the date of communication of this judgment and order. The relevant terms of the memorandum dated 7th February, 2011 and the memorandum dated 30th march, 2011 which restrict or affect the engagement of the petitioner as Shiksha Mitras are hereby set aside.”

FACTS OF THE CASE:

3. The brief facts are essential for the purpose of disposal of the instant appeal, are as under:

3a. The Respondent No. 1 was a Shiksha Mitra. Initially, he was appointed as a Bridge Course Instructor in a Bridge Course Centre in a school on 5th August, 2004 to assist backward classes children in their education. Presently, he is working as an Education Volunteer at Kechuadanga B.C. Vidyaniketan (HS).

3b. In the year 2000-2001, the Government of India launched a scheme, namely, Sarva Shiksha Abhiyan (SSA) to provide elementary education to children. All the Shiksha Mitras including the respondent

no. 1 were working under the said scheme. The scheme was introduced to extend the benefit of alternative schooling to those children who left out school due to some unspecific reason.

3c. In West Bengal, this alternative schooling programme was launched in different mode and the persons who are actually carrying out the scheme are designated as Para Teachers, Shiksha Mitras, Special Educators, Volunteer Resource Persons and Shiksha Bandhus. All of them were engaged on contractual basis. The programme of alternative schooling was launched in different Bridge Course Centers of Upper Primary Sectors and Rabindra Mukhya Vidyalaya.

3d. At the inception of the scheme, in order to engage Bridge Course Instructor, the District Project Director invited applications from the intending candidates through Panchayat Samity and Gram Panchayat. Accordingly, by notice, Hogalberia Gram Panchayat invited applications from the eligible candidates having qualification of graduation/bachelors for engagement of Bridge Course Instructors. Ultimately, the respondent no. 1 was engaged as a Bridge Course Instructor in Raghunathpur Upper Primary School. His engagement was approved by the Project Director vide memo dated 21st July, 2004.

3e. By a memo dated 28th January, 2005, the Block Development Officer, Karimpur-I Development Block, Nadia made a proposal to the District Project Director to convert the Bridge Course Centre in which the respondent no. 1 was working to Rabindra Muktya Vidyalaya. Accordingly, the proposal was accepted and following the contention of the proposal, the Bridge Course Centre was converted to Rabindra Muktya Vidyalaya.

3f. By a memo dated 4th August, 2004, the District Project Director prescribed procedure in detail for engagement of Shiksha Mitra (the then Community Tutor). Para Teachers and Shiksha Mitras were engaged under the aforesaid scheme in the year 2004. The duties of Para Teachers were to find out weaker students and to teach them in a better way. Whereas, the duties of Shiksha Mitras, like the respondent no. 1, were to teach the students who were left out from regular schooling. On the other hand, Voluntary Resource Persons and Shiksha Bandhus were engaged as non-teaching staff.

3g. Considering the long and diligent service of Para Teachers, Voluntary Resource Persons, Shiksha Bandhus, Special Educators, the Secretary, School Education Department (Primary Branch) by issuing a memo dated 23rd April, 2010 declared that they would be re-engaged until they attained the age of 60 years or until Sarva Shiksha Project was

wound up. By the said memo, the remuneration of those contractual employees was enhanced. The respondent no. 1 contended that though he is similarly situated and working under the same scheme, the benefit as extended to the aforesaid persons, was not extended to the Shiksha Mitras.

3h. By a memo dated 9th June, 2010, it was clarified that remuneration of contractual teachers and others, who were associated with Paschim Banga Sarva Shiksha Mission the salary would be enhanced at the rate of 5% of the existing pay on expiry of every 3 years and they would remain engaged till they attained the age of 60 years even if the Government of India withdrew the scheme. By issuing another memorandum dated 9th August, 2010, by the Officer on Special Duty and Ex-Officio Deputy Secretary, School Education Department it was clarified therein that the persons like the respondent no. 1 who were working through West Bengal Council of Rabindra Open Schooling and discharging their duties under Sarva Shiksha Mission would also remain engaged until they attained the age of 60 years. This memorandum also speaks of providing enhanced remuneration at the rate of 5% of the existing remuneration on expiry of every 3 years and also for retiral benefits as similar to others.

3i. The respondent no. 1 complains that even after issuance of the aforesaid memorandums, his honorarium has not been enhanced.

3j. By an order dated 16th November, 2010, Special Educators who were working under the same scheme were also extended with the similar benefits but the order is silent about Shiksha Mitras. The respondent no. 1 himself and through his association made representations seeking for equal benefits as extended to others under the same scheme, but the concerned authority did not consider his representations.

3k. The Right of Children to Free and Compulsory Education Act has been enacted in the year 2009, the Project Director, Paschim Banga Sarva Shiksha Mission by issuing a letter dated 28th February, 2013 informed all the District Magistrates to engage Shiksha Mitras having requisite qualification as Education Volunteer in Primary and Upper Primary Schools. The respondent no. 1 submits that the memo dated 28th February, 2013 is illegal and arbitrary. The respondent no. 1 asserts that he is entitled to remain in his service till he attains the age of 60 years.

3l. By the aforesaid memo, it was stated therein that the service of Shiksha Mitras re-designated as Education Volunteer would be extended for up to 2 years only. The respondent no. 1 and other Shiksha Mitras, because of the aforesaid memo dated 28th February, 2013, were re-

designated as Education Volunteer with effect from 9th October, 2013. He joined as Education Volunteer in Kechuadanga B.C. Vidyaniketan as per the direction of the authority. The respondent no. 1 alleges that he was compelled to make his endorsement accepting the terms and conditions of engagement that he would have to serve as an Education Volunteer for a period of only 2 years.

3m. The respondent no. 1 asserts that even after expiry of 2 years, he has been working as Education Volunteer in the said school. In such context, it may be noted here that the Principal Secretary, School Education Department (Primary Branch) by issuing a notification dated 28th March, 2012, decided to extend benefits to all Shiksha Mitras, who were working as contractual teachers under Sarva Shiksha Abhiyan to upgrade their academic qualification in terms of the Act of 2009.

3n. The respondent no. 1 applied for enhancing his qualification which was duly received by the respondent authority on 15th May, 2012, but no opportunity was given to him to enhance his qualification. The respondent no. 1 has been discharging his duties associated with the Sarva Shiksha Aviyon or Mission for last 19 years. If the benefit has not been extended, then the respondent no. 1 will be unemployed claiming that he should be extended the same benefits as available to Para Teachers, Shiksha Bandhus, Special Educators, etc at the late stage of

his life under the said scheme as he was also a part of Sarva Shiksha Avijan or Mission. However, his case was not considered by the authorities as such the petitioner filed a writ Petition being WPA No. 16713 of 2016 earlier against the respondents' authorities.

3o. Upon hearing, a Single Bench of this court finally directed to the State Project Director, Paschim Banga Sarva Shiksha Mission to consider and dispose of the representation filed by the Petitioner within a specific period of time. However, case of petitioner was not considered and the representation was also rejected.

3p. The writ petitioner/respondent no.1 feeling aggrieved with the said rejection of his representation, filed another writ petition being WPA 24767 of 2022 praying for similar benefits as extended to Para Teachers, Shiksha Bandhus, Special Educators, etc working under Sarva Shiksha Abhiyan.

3q. The said writ petition was finally disposed of by the Learned Single Bench vide judgment and order dated 26.04.2023 whereby allowed the prayer of the writ petitioner as aforesaid.

3r. The appellant being aggrieved by and dissatisfied with the aforesaid judgment, filed appeal. Hence, this instant appeal.

SUBMISSION ON THE BEHALF OF APPELLANT:

4. Mr. Gupta, learned senior counsel along with others representing the Appellant/Respondent submitted that Shiksha Mitras, as were subsequently designated, had been initially engaged as Community Tutors to provide training and tutorial support to drop out children at the upper primary level (for Class VI to VIII) in the Informal Alternative and Innovative Education (AIE) Study Centres run by Rabindra Mukta Vidyalaya [RMV] under the West Bengal Council of Rabindra Open Schooling [WBCROS]. They were receiving a monthly remuneration of Rs. 1,000/- and were engaged on a purely contractual basis for a period of six months, with no provision for extension or renewal of the said post.

4a. The Community Tutors were re-designated as Shiksha Mitras vide memorandum no. 22(20)/CM&AS/PBRPSUS dated 12.05.2006. Subsequently, by another memorandum no. 261/CM&AS/PBSSM dated 11.05.2009, a provision for their re-engagement was introduced, extending the engagement period from six months to one year, with the condition of a one-day break in between.

4b. The Right of Children to Free and Compulsory Education (RTE) Act, 2009 has been enacted and same came into effect on and from 01.04.2010. To implement the said RTE, the West Bengal Free and Compulsory Training for Elementary Teachers Rules, 2012 framed for age

group of children between 6 to 14 years. They were required to be enrolled in formal schools according to their age, appropriate classes were enrolled and the concept of informal schooling was done away with. Consequently, the Centres operating under the aegis of WBCROS, along with any other non-formal centres, could not continue after the enactment of the RTE Act, 2009 and as a corollary, funding for these centres were also stopped after 31.03.2012.

4c. An order was also issued by the SPD, PBSSM vide Memo No. 627/CM & AS/PBSSM dated 07.02.2011 directing that all existing AIE Centres under RMV, which were informal in nature, be closed after 31.03.2012. With the closure of all informal/AIE Centres and the enrolled children in formal schools as such the services of the then Shiksha Mitras became redundant.

4d. The School Education Department, Government of West Bengal, by a memorandum no. 189-SE (EE)/10M-86/2019 dated 03.07.2012 informed the SPD, PBSSM, that as per the mandates of the RTE Act, 2009, all Bridge Course Centres had ceased to function with effect from 01.04.2012 and the said children were admitted to formal schools. The SPD was further informed that the State Government had decided to engage Shiksha Mitras as Education Volunteers on a temporary basis for

a term of six months, extendable to a maximum period of two years. This memorandum has not been challenged by the petitioner.

4e. The SPD, PBSSM, in compliance with the memorandum dated 03.07.2012, issued a memorandum no. 8(16)/CM & AS/PBSSM dated 28.02.2013 for the implementation of the decision of the State Government. The petitioner accepted the terms of the memorandum dated 28.02.2013 and executed an agreement on 07.10.2013 with the District Project Officer, Sarva Shiksha Abhiyan, for appointment of him as an Education Volunteer for a period of three months, extendable up to a maximum of two years. The agreement explicitly stated that the petitioner would not claim further re-engagement or any permanent appointment.

4f. After completing the term of the agreement, the petitioner filed the writ petition, challenging the memorandum no. 8(16)/CM & AS/PBSSM dated 28.02.2013 and the agreement on 07.10.2013. As stated hereinabove, the petitioner also challenged the order dated 30.06.2022, whereby, his prayer for regularization was rejected by the SPD. The writ petitioner, however, did not challenge the Memorandum no. 189-SE (EE)/10M-86/2019 dated 03.07.2012.

4g. As a matter of fact, after the discontinuance of the services of Shiksha Mitras, there could not have been any question of continuance of service of Shiksha Mitras or making any financial provision therefor.

4h. In compliance with the provisions of the RTE Act, 2009, the State Government had to create additional posts of Assistant Teachers in order to maintain the specified children-teacher ratio. This was done by a notification no. 1584-SE(S)/1A-01/09(Pt)-21st December, 2011 dated 28.12.2011. By the said notification, 10% posts for such recruitment were kept reserved for Shiksha Bandhus, Shiksha Mitras etc. in order to give them proper opportunity for regular employment. The petitioner, however, did not avail of such opportunity offered and has thus waived his recruitment rights.

4i. Shiksha Mitras including the petitioner did not have experience of taking regular classes for students in regular schools. The contractual teachers, who had been working in regular schools were duly protected by the notifications no. 273 SE(P)/PBRPSUS/ADMN/9/04-05 dated 23.04.2010 and notification no. 376-SE(Pry) 09.06.2010 by continuing their services upto 60 years on the terms specified in those notifications. The petitioner, not having any experience of teaching in regular schools cannot claim parity with the contractual teachers imparting education in regular schools. The respondents could not lawfully treat unequal as

equals. Therefore, the Judgment passed by the Learned Single Bench directing the State to allow the petitioner to continue as a Shiksha Mitra until the age of 60 years and to pay all arrear honorarium treating his engagement as continuous placing sympathy to the petitioner has no merit and is liable to be dismissed.

4j. It was further submitted that the memorandum dated 07.02.2011 and memorandum dated 30.03.2012 were not under challenge and therefore, the learned Single Judge travelled beyond the scope of the prayer as such judgement under challenged is required to be set aside and the writ petition should be dismissed. Learned Sr. Counsel has placed a reliance of a judgement passed in ***State of Utterakhand and Another versus Mandi Sri Laxman Sidh Maharaj***¹ particularly paragraph No. 24 thereof.

4k. The Learned counsels appearing on behalf of the state and Respondent No.7 supported the contention and submission made by the Learned Sr. Counsel representing the appellant.

SUBMISSION ON BEHALF OF THE RESPONDENT No. 1:

5. Per contra, learned counsel appearing on behalf of the Respondent no.1/Writ petitioner submitted the Hon'ble High Court at Calcutta considered the prayer of the writ petitioner regarding his

¹ (2017) 9 SCC 579

entitlement to continue serving under the Sarva Shiksha Abhiyan (now Samagra Shiksha) until the age of 60. The Court directed the appropriate authority to consider the petitioner's claim in light of government orders dated June 9, 2010, August 9, 2010, and communication dated March 4, 2013 vide order dated November 26, 2021 passed in W.P.A No. 16713 of 2016. This order has not been challenged and has attained finality, thereby the applicability of these orders to the petitioner's case remains undisputed and binding to the parties.

5a. It was further submitted that the Sarva Shiksha Abhiyan was established prior to the enactment of the Right of Children to Free and Compulsory Education Act, 2009, to universalize elementary education amongst drop out children and/or out of school children. The scheme engaged personnel such as Siksha Mitras, Para-teachers, and Siksha Bandhus under the framework of a notification dated December 23, 2011. The petitioner, engaged as a Siksha Mitra, was entrusted with the responsibility of identifying out of school or drop out children and integrating them into mainstream education. While other categories of personnel under the Sarva Shiksha Abhiyan continue to work despite the advent of the RTE Act, only Siksha Mitras have faced termination.

5b. The Government Order dated June 9, 2010, explicitly provided for retaining staff under the Paschim Banga Sarva Shiksha Mission

(PBSSM) until the age of 60, including all personnel associated with PBSSM, which also includes Siksha Mitras. The inclusion of Siksha Mitras is evident from the categories of staff disclosed in the affidavit filed by the respondents in earlier litigation. Furthermore, the said Government Order dated June 9, 2010, affirmed the right of the petitioner indicating therein that “other associated” with PBSSM to continue service until the age of 60, while the communication dated March 4, 2013, reinforced that all individuals imparting lessons under the SSA are regarded as teachers by the funding agency.

5c. The decision dated June 30, 2022, passed by the State Project Director, dismissing the petitioner's claim, demonstrates a clear non-application of mind. Despite recording the relevant government orders, the authority failed to substantively consider their binding nature. The rejection of the petitioner's claim was based on arbitrary grounds, including the cessation of funding for Rabindra Mukta Vidyalaya centres, the alleged limited tenure of the petitioner's engagement, and the purported closure of these centres following the implementation of the RTE Act. Such reasoning is fundamentally flawed.

5d The RTE Act neither mandates the closure of schools nor justifies the termination of services. Instead, Section 19 of the Act emphasizes

compliance with prescribed norms within a specified period to strengthen educational institutions.

5e. Rabindra Mukta Vidyalaya centres, operated under the aegis of the West Bengal Rabindra Open Schooling system, provided elementary education funded by both the state and central governments. Certificates issued by these centres are recognized for secondary school admissions, placing them squarely within the definition of "school" under Section 2(n) of the RTE Act. The decision to close these centres on the pretext of the enactment of RTE Act is therefore baseless. Moreover, central government guidelines which was issued on October 8, 2013, explicitly call for the establishment of special training centres for out of school children and/or drop out children within regular schools, rather than closing them down. The petitioner's role as a Shiksha Mitra aligns with these objectives, as he provided training and instructions from the premises of a regular school.

5f. The appraisal report of the Sarva Shiksha Abhiyan in West Bengal highlights the persistent issue of out-of-school and never-enrolled children, further substantiating the continued need for the petitioner's services. The Comptroller and Auditor General's (CAG) report on the implementation of the RTE Act for 2017 also acknowledges the ongoing challenges in universalizing education. Contrary to the authority's

claims, the implementation of the RTE Act necessitated, rather than obviated, the petitioner's engagement.

5g. The petitioner's right to continue service is protected by multiple binding government orders and judicial decisions. The order dated June 9, 2010, categorically provided for the continued engagement of SSA personnel, including Shiksha Mitras indicating therein as “other associates”, until the age of 60. The subsequent order dated August 9, 2010, reaffirmed that contractual employees under SSA were entitled to continue until that age of 60 years.

5h. Additionally, the Ministry of Human Resource Development (MHRD), through its communication dated March 4, 2013, explicitly recognized individuals working under SSA as teachers, thereby entitling them to equal treatment. The Hon'ble Calcutta High Court, in WPA 16713 of 2016 by order dated November 26, 2021, directed the authorities to consider the petitioner's claim in light of these orders. The decision of the State Project Director (SPD) rejecting the petitioner's claim on June 30, 2022, not only disregarded these binding directives but also failed to apply any reasoned consideration to the case. The rejection is a classic example of non-application of mind and demonstrates mala fide conduct of the State Project Director.

5i. It was further submitted that the State's decision to terminate the services of Shiksha Mitras while continuing the employment of other categories of SSA personnel is an instance of blatant discrimination and a direct violation of Article 14 of the Constitution of India. Despite performing similar functions within the same scheme, only Shiksha Mitras were singled out for termination, while Para Teachers, Shiksha Bandhus, and VRPs were retained.

5j. There exists no reasonable classification or intelligible differentia to justify such differential treatment. The authorities have attempted to justify this arbitrary action by citing the Right to Education (RTE) Act, 2009, claiming that its implementation necessitated the termination of Shiksha Mitras. This reasoning is entirely flawed and legally unsustainable. Nowhere does the RTE Act mandate the closure of schools or the dismissal of existing educational personnel. On the contrary, the Act prescribes norms to strengthen the education system and ensure its compliance with prescribed standards. The continued engagement of other SSA personnel despite the RTE Act clearly demonstrates that the alleged requirement to terminate Shiksha Mitras is an afterthought and not a genuine necessity.

5k. The rejection of the petitioner's claim is based on arbitrary and contradictory justifications that expose the mala fide intent of the authorities. The primary reason cited in the rejection order dated June

30, 2022, is the alleged cessation of funding for Rabindra Mukta Vidyalaya Centers. However, budget records for 2016-2017 confirm that SSA funding from the Union Government continued for the scheme. Furthermore, the Appraisal Report of SSA, West Bengal, acknowledged the continued necessity of SSA personnel, including Shiksha Mitras. The Comptroller and Auditor General (CAG) Report (2017) highlighted the persistent issue of out-of-school children, demonstrating that the need for the petitioner's services remained unaddressed.

5l. The authorities also claimed that the petitioner's engagement was for a limited tenure, despite the fact that multiple government orders including orders dated June 9, 2010, and August 9, 2010- expressly ensured continued engagement until 60 years of age. The attempt to retrospectively classify Shiksha Mitras as "temporary" is therefore wholly unfounded and contradicts the State's own policy decisions.

5m. Finally, it was contended that the final justification offered by the authorities was the purported closure of centres due to the RTE Act. This claim is equally baseless, as the RTE Act never mandated the shutting down of such centres. In fact, central government guidelines dated October 8, 2013, directed that special training centres be established within regular schools to cater to out-of-school children, thereby reinforcing the continued relevance of Shiksha Mitras. The rejection

order, therefore, relies on flawed reasoning and contradicts established legal and policy frameworks. The rejection order is full of arbitrary, discriminatory and violation of fundamental right of the petitioners. Therefore, the appeal is liable to be dismissed with exemplary costs.

DISCUSSION AND FINDINGS OF THIS COURT:

6. We have heard the arguments of the rival parties and submission made by the Learned counsels and upon perusal of the record, this court finds there is no denial from the Appellant that the petitioners were not engaged for the purpose of extending the benefit of alternative schooling to those children who were drop out of school and it was the object and purpose of SSA in the state of West Bengal. Various categories of personnel like Para Teachers, Shiksha Mitras, Special Educators, Volunteer Resource Persons and Shiksha Bandhus were engaged under the SSA for the purpose of providing education to the children. The SSA was established by the Government of West Bengal prior to enactment of RTE Act.

7. The prime object of the SSA was to achieve universalisation of elementary education to the children under the Government of West Bengal. Subsequently, the RTE Act was enacted in the year, 2009 which mandates the state to provide education under Article 21A of the Constitution of India and the same was given effect from April 1, 2010 to

ensure free and compulsory education as well as equal opportunities for education for children between age group of 6 to 14 years. State must have provided adequate infrastructure, facilities, and qualified teachers and removes financial barriers to education.

8. The said RTE Act also requires surveys to identify children who need education and setup facilities to provide education.

9. Even after RTE Act came into force, the State project Director PBSSM utilized the service of Shiksha Mitras as education volunteers under special training. Earlier also utilized them for the purpose of providing education to the children, who are deprived of formal schooling especially girls. State project office, SSM entered into an agreement in 2004 with The West Bengal Council of Rabindra Open Schooling (WBCROS) an institution established under West Bengal Act XI of 2001 published in the Calcutta Gazette on 24th March, 2001 for extending educational facility through the existing study centres of Rabindra Mukta Vidyalaya (RMV).

As per the said agreement, the functions of the WBCROS includes amongst other things: -

- “1) Provide support to RMV Centres*
- 2) Developing quality study materials for classes VI, VII and VIII*

- 3) *Conducting evaluation in collaboration with State Project Office (SPO), Paschim Banga Sarva Siksha Mission (PBSSM) and District Project Office, Sarva Siksha Mission (SSM) at the end of Class VIII and issuing certificate to successful learners (who were mainstreamed in class IX in a formal school.)*
- 4) *Selection and training of Key Resource Persons at the State level for imparting training to the Community Tutors at the CLRC level.*
- 5) *Monitoring and supervision of District and Study Centres activities throughout the year.*

The Community Tutors engaged in those RMV Centres called (Siksha Mitras) were selected as per the guideline framed by the SPO, PBSSM in the then prevailing context and environment and as circulated to all concerned vide this office Memo No. 22(20)CM&AS/PBRPSUS, dated 12.05.2006 in which minimum prescribed qualification was a Bachelors' Degree.

After coming into force of the Right to Education Act 2009 all these Centres were directed to be closed down within March 2012 as the Act mandates all children to be enrolled in their appropriate class only in formal schools and as a corollary, funding for support of such centers were also stopped after 31st March 2012.

State is under an obligation to provide special training by developing the materials for Out of School Children who have been admitted to their age-appropriate classes but need their level of learning

to be enhanced to the desired level of the class to which she/he is enrolled. In this connection, the districts have already mapped the children and the schools/institutions where special training will be imparted.

As far as special training is concerned, the State has adopted the policy of engaging the regular teachers for imparting special training in regular institutions. It is felt that special training is a specialized job which requires some level of basic educational background and experience in dealing with the hardest to reach children. However, there is a fear that where the number of children is large, regular Teachers may find it difficult to handle both the regular classes and special classes and may require some human resource support.

Taking into consideration the above facts, it has been decided that the Siksha Mitras of the erstwhile RMV Centres run by the WBCROS may be engaged in Primary and Upper Primary schools to assist the regular teachers conducting “Special Training” completely on temporary basis.”

10. According to the documents available on records, Shiksha Mitras must possess a Bachelor degree, who were working in various education centres namely, Rabindra Mukra Vidyalaya under the West Bengal Council of Rabindra Open Schooling had played a vital role to bring drop out children to those education centres and impart tutorial support to

them so that they may educated themselves. Therefore, their duties were/are important for the purpose of making success of SSA and/or RTE Act.

11. The importance of the education workers, like Para Teachers, Shiksha Bandus etc were recognized by the state Government by issuing two Notifications dated 9th June, 2010 and 9th August, 2010 and granted benefits and engaged them till they attain 60 years of age with other consequential benefits as well.

12. This Court would like to indicate those two notifications for consideration and ready reference as under:

“Government of West Bengal

School Education Department

Bikash Bhawan, Bidhannagar,

Kolkata -700 091

No. 376-SE (Pry)

Date: 09/06/2010

ORDER

*In continuation and partial modification of the
Memorandum No. 273SE(P)/PBRPSUS/ADMN/9/04-05
dt. 23-04-2010 & 275SE(P)/PBRPSUS/ADMN/9 /04-05
dt. 23-04-2010, the undersigned is directed by the order*

of the Governor to make the following inclusion / modifications in the aforesaid G.O.: -

- i) No other allowance will be admissible to the Para Teachers, Siksha Bandhus, VRPs and other associated with PBSSM and the Contractual Teachers except the enhancement @ 5% of the remuneration, at every interval of 3 years, after the enhancement done as on 01-06-2010.*
 - ii) These persons will remain engaged till they attain 60 years of age, and the State Government will bear the expenditure if the Government of India stops funding the PBSSM Project before their cessation of engagement attaining 60 years of age.*
- 2. No new engagement of Para Teacher or any other category of employees can be made after issue of this order.*

Sd/-

(Vikram Sen)

Secretary to the Government of West Bengal

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Government of West Bengal
School Education Department
Primary Branch
Bikash Bhavan, Salt Lake, Kolkata -91

From:
Shri B. Ghosh
O.S.D. & Ex-Officio Deputy Secretary
to the Government of West Bengal

To
The State Project Director
Paschim Banga Sarba Siksha Mission

Sir,

I am directed to inform you that the Contractual employees engaged in West Bengal Council of Rabindra open Schooling/ State Council of Educational Research and Training with the approval of PBSSM doing jobs relating to SSA are entitled to get the benefit in addition to the enhanced remuneration as allowed by you vide Memo Nos. 438/6/PBSSM/2001-2010 dated 24.07.2010 and 473/6/ADMN/PBSSM/2009-10 dated 14.07.2010.

i) The persons will remain engaged till they attain 60 years of age and the State Govt. will bear the expenditure if the Govt of India stops funding the PBSSM Project before their cessation of engagement on attaining 60 years of age.

ii) On attaining 60 years of age or the time of cessation of employment they will be paid an ex-gratia retirement benefit of Rs. 1.00 Lakhs only on lump sum basis.

iii) No other allowance will be admissible to them except enhancement of remuneration @ 5% at every interval of 3 years after the enhancement done as on 01.06.2010.

This is in pursuance of Finance Department's Order under U.O. No. Group "P" 1429 dated 23.04.2010 and I am directed to request you to issue order accordingly.

Yours faithfully,

Sd/- S. Ghosh

O.S.D. & Ex-Officio Deputy Secretary

9/8/2010

Sd/- Illegible

O.S.D. & Ex-Officio Deputy Secretary"

13. After the RTE Act came into force, the State Government recognized them and vide Notification dated 28th December, 2011 created additional posts of teachers and enumerated procedure therein for recruitment. In the said notification the Governor of West Bengal was pleased to declare that during recruitment of the newly created posts be filled up also from the Para teachers, Shiksha Bandhus, Shiksha Mitras, Shiksha Sebis, Sahayaks, Sahayikas, Samprasaraks, Samprasarikas, working under Sarva Shiksha Abhiyans or in shishu Shiksha Kendras and Madhyamik Shiksha Kendras run by Panchayat and rural development department.

14. State utilized their service for more than two decades for the purpose of fulfilling the object of SSA and also subsequently RTE Act. It was the obligation of the state to provide education to all children. Now, Article 21A of the Indian Constitution has been inserted by the 86th Amendment in 2002. It mandates the State to provide free and compulsory education to all children aged 6 to 14 years, as determined by law, making education a fundamental right.

15. The Appellant granted benefits to all the workers to work till they attain the age of 60 years along with other consequential benefits leaving the Shiksha Mitras though their duties were/are very important even after enactment of RTE Act because even today there are many drop

out and out of school children. It cannot be denied by the state that there is no drop out or out of school children in the society due to various reasons. Those children are required to be brought in the main stream to educate them and to fulfil the object of the RTE Act. The contention of the appellant that rendering the services of Shiksha Mitras is unnecessary and as a corollary is unsustainable. Denial of benefits to Shiksha Mitras though they work under the same project namely SSA along with other associates for long period under the Government of West Bengal is wholly illegal, arbitrary and discriminatory.

16. The petitioner's termination also constitutes a violation of his "Fundamental Right to Livelihood under Article 21 of the Constitution of India". Depriving the drop out or out of school children from their free and compulsory education to children aged 6 to 14 years is sheer violation of RTE Act and also Article 21A of the Indian Constitution, inserted by the 86th Amendment in 2002 which mandates the State to provide free and compulsory education to all children aged 6 to 14 years as determined by law, making education a fundamental right.

17. There is no dispute that there are no drop out students. The issue of dropout student continued to prevail in the country, preventing many children from attending school due to mainly engagement in domestic work to support their families, lack of interest in studies and sometimes

especially difficult for girls to continue study because of concerned about their safety and sanitary problems due to poor infrastructural facilities. To curb such problems, state should provide efficient and sufficient infrastructure. Apart from that, the state shall also set up an alternative and innovative school education as well as bring back them to have education. State can involve those Shiksha Mitras to educate them and/or also inculcate awareness amongst the dropout children and their parents so that children may attend the school regularly for having education then only actual object of SSA and RTE act, will be fulfilled.

18. Drop out or out of school children between aged 6 to 14 years are also coming within the purview of RTE Act. Stripping employment of the writ petitioner after serving in the SSA framework for nearly two decades without means of subsistence is illegal and discriminatory at the late stage of life. Most of his life was devoted for the children to fulfil the mission of SSA with meagre amount of honorarium.

19. The Supreme Court has consistently held that the right to livelihood is an essential component of the right to life, and any deprivation thereof must be legally justified. Furthermore, the petitioner was compelled to accept an engagement as an Education Volunteer on October 7, 2013, under coercion and economic duress. Clause 16 of the engagement agreement prohibited him from legally challenging the

nature of his employment, effectively stripping him of his constitutional right to seek redressal. Such a provision is patently illegal and violative of the principles of natural justice.

20. The treatment meted out to the petitioner is also a glaring example of exploitative labour practices after serving for two decades. Despite performing duties equivalent to those of a school teacher etc, he was paid a meagre amount per month. An amount that falls far below the line of minimum wages standards applicable to teachers under similar engagements. The petitioner, having dedicated a substantial portion of his career to SSA, was not only denied the opportunity to continue in service but was also subjected to unjust economic hardship. Such treatment is antithetical to the principles of fairness, equity, and good conscience.

21. Judgment relied by the learned senior counsel is not applicable in the present case because it is well settled that writ Court can mould the relief to ensure substantial justice, meaning thereby it can be modified or shaped the relief sought by the Writ Petitioner in a legal proceeding based on the specific circumstances of the case. Moulding relief will shorten the litigation or enable complete justice to be done between the parties.

22. Considering the above facts and circumstances, the impugned decision dated June 30, 2022 passed by the State project Director, Paschim Banga Sarva Shiksha Mission, which approves the arbitrary memorandum dated 7th February, 2011 and memorandum dated 30th March, 2012 is wholly illegal, arbitrary and discriminatory and same is liable to be quashed insofar as the petitioner is concerned. The petitioner's accrued rights under the government orders of June 9, 2010, August 9, 2010 and March 4, 2013 by allowing him to serve until the age of 60 with other consequential benefits since he comes within the meaning of "other associates" as stipulated in the aforesaid Government Orders. Furthermore, the petitioner is entitled to remuneration commensurate with that of other similarly placed personnel, such as Para-teachers and Siksha Bandhus etc under the Sarva Shiksha Abhiyan. Therefore, the appeal filed by the State Project Director is hereby found meritless. For the reasons stated hereinabove, this Court finds no reason to interfere with the Judgement and order passed by the learned Single Judge in the writ petition being WPA No. 24767 of 2022.

23. Accordingly, **F.M.A. No. 728 of 2023** shall stands **dismissed** without any order as to costs.

24. Consequentially, **CAN 2 of 2025** and all connected applications, if any, are also, thus, disposed of.

25. The impugned judgment and order dated 26.04.2023 passed by the Learned Single Bench is hereby affirmed.

26. Urgent photostat certified copy of this Judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

I Agree.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)