

22.04.2025
SI No.3
Court No.8
(gc)

**FMA 569 of 2025
CAN 1 of 2023**

**Samar Kumar Ghosh
Vs.
State of West Bengal & Ors.**

Mr. Saikat Banerjee, Sr. Adv.,
Ms. Juin Dutta Chakraborty,
Mr. Bidan Modak,
Mr. Shirsho Banerjee,
Ms. Arpita Kundu
... for the Appellant.
Mr. Biswabrata Basu Mallick, Ld. A.G.P.
Mr. Sayan Ganguly
...for the State Respondents.

1. The appeal is arising out of an order passed by the learned Single Judge on 13th June, 2022 in a writ petition filed by an Assistant Teacher of Sherpur Ramchandrapur High School (for short "school") challenging an order passed by the Commissioner of School Education on 19th April, 2019 whereby the prayer of the appellant for transfer for the period from 28th January, 2004 to 31st August, 2011 in the said school was declined on the ground that the post was approved on 1st September, 2011. The said decision of the Commissioner was rendered by reason of an order passed by the learned Single Judge in a writ petition being WP No.7919 (W) of 2018 dated 4th April, 2019 in which the appellant claimed transfer for the aforesaid period

which became necessary for him to qualify for pensionary benefits. The learned Single Judge dismissed the said application on the ground that the initial appointment of the writ petitioner pursuant to the order dated 28th January, 2004 was illegal as he was not appointed by a regular process of appointment, that is, advertisement, interview and fulfilling all eligible criteria. It appears that from the order dated 28th January, 2004 which is peremptory order from which subsequent proceedings follow that in spite of giving several opportunities to the State to file affidavit, no affidavit has been filed. The learned Single Judge proceeded on the basis that one sanctioned post of Assistant Teacher was available on the date of pronouncement of the order. The learned Single Judge has followed the judgments in similar matters, namely, WP No.3152 (W) of 2002 (Rahamat Ali Shah Vs. The State of West Bengal & Ors.) and W.P. No.8071 (W) of 2002 (Samsuddin Ahmed & Ors. Vs. The State of West Bengal & Ors.) wherein the District Inspector of Schools (S.E.) was directed to approve the appointment of the petitioners therein within a specified time-frame. The learned Single

Judge, after recording that the petitioner joined the school on 2nd May, 1994 and since then he has been working in the said school without any break but till date his appointment has not been regularized as an assistant teacher of the said school and there was available vacancy, disposed of the writ petition with the following direction:-

“Thus having regard to the facts and the circumstances of the case and the above judicial authenticities of this Court the concerned respondents namely, the second respondent herein the Director of School Education, West Bengal is directed to regularize the appointment of the petitioner as Assistant Teacher in Social Science Group of the said School. If necessary, by sanctioning an additional post within period of four weeks from the date of communication of this order. As a natural consequence of this order, however, the petitioner shall be entitled to the salary in arrears and the current salaries month by month in accordance with the relevant rules.”

2. It appears that the said order was not complied with and it had resulted in a contempt proceeding being CPAN 807 of 2004. The said application was disposed of on 9th July, 2011 on the basis of an affidavit of compliance filed by the alleged contemnors. It appears that on 9th June, 2011, the District

Inspector of Schools (S.E.), South 24-Parganas in its communication to the Director of School Education, West Bengal has stated that as per the vacancy statement submitted by the Headmaster of the school it is found that one post of Assistant Teacher in Social Science Group is lying vacant with effect from 1st April, 2011. Hence there would be no need of sanctioning any additional post for compliance of the order dated 6th May, 2011. Thereafter the contempt application was disposed of. The authority concerned granted approval from 1st September, 2011. On 4th January, 2012, the appellant raised objection in writing with regard to the granting approval from 1st September, 2011 but he continued to work in the school till he was superannuated on 30th June, 2019. It appears that the Commissioner of School Education on 3rd April, 2012 sought a report from the District Inspector of Schools (S.E.), South 24-Parganas with regard to the approval. That was followed by a communication made by the Commissioner of School Education to the Secretary to the Government of West Bengal regarding the implementation of the order passed on 28th January, 2004 in which it was

stated in paragraph 8 that from the enquiry report it appears that the appellant's case was the first ever case of approval of appointment in pursuance of the Court order directing legalization of appointment as well as creation of post and that for 1563 students in 2003-04 there were 21 teaching posts sanctioned and for 1919 in 2011 there were 28 teaching posts.

3. Thereafter in paragraph 9 it was stated that in order to approve the appointment of Sri Samar Kumar Ghosh for the remaining period, an additional teaching post is required for the school for the period from 28th January, 2004 to 31st August, 2011. This was the subject matter of challenge in the second writ petition that was disposed of on 4th April, 2019 by directing the Commissioner of School Education to take a decision in the matter of transfer of the petitioner for the period from 28th January, 2004 to 31st August, 2011. The decision of the Commissioner of School Education declining to accede to such prayer in the impugned order on 19th April, 2019 was the subject matter of challenge in the third writ petition. The reason for such litigation as would be

relevant for the present purpose are indicated hereinbelow:-

“Since the Commissioner of School Education is not the competent authority to create or sanction any personal post, the erstwhile Director of School Education, vide memo no.949-LS dated 12.12.2012, requested the School Education Department to sanction an additional post, personal to Sri Samar Kumar Ghosh, to approve the appointment of Sri Ghosh for the remaining period from 28.01.2004 to 31.08.2011. Thereafter, several communications were made between the School Education Department and this Directorate. But, till date, no such post of assistant teacher has been sanctioned by the School Education Department to approve the appointment of the petitioner, Sri Ghosh, as an assistant teacher in the said school in social science group for the remaining period from 28.01.2004 to 31.08.2011.

Until or unless, a post of assistant teacher in the school in social science group is made available to approve the petitioner, Sri Ghosh, for the remaining period from 28.01.2004 to 31.08.2011, the appointment of Sri Ghosh for the remaining period from 28.01.2004 to 31.08.2011 cannot be approved.

So, no relief is given to the petitioner. Therefore, the prayer of the petitioner for approval of his appointment for the remaining period from 28.01.2004

to 31.08.2011 cannot be allowed and is hereby regretted. All concerned be informed accordingly.”

4. It appears from record that no additional post could have been created in the year 2004 by reason of the pupil-teacher strength and even in 2011 considering the pupil-teacher strength, possibly the additional post was not called for. However, it appears that in deference to the wishes of the learned Single Judge in the first writ petition, approval was granted in the year 2011.
5. Mr. Saikat Banerjee, learned Senior Counsel appearing on behalf of the appellant has submitted that the learned Single Judge in the coordinate jurisdiction cannot hold that the initial appointment of the petitioner was *ex facie* illegal as the order passed by the learned Single Judge was not challenged and in the contempt proceeding, the school authorities have filed a compliance report showing that the service was approved from 1st September, 2011. The contempt application was disposed of by recording the aforesaid fact.
6. It appears that the writ petitioner had accepted the said position and did not urge in

the contempt proceeding that the compliance report is not in accordance with the order passed by the learned Single Judge. Moreover, there was no contemporaneous challenge to the said decision of the authority concerned and it was only in 2019 when he realized after enjoying the benefit that there may be short-fall. The order of the Commissioner of School Education read with the observation made in paragraph 8 of the communication from the Commissioner of School Education to the Secretary to the Government of West Bengal School Education Department dated 19th December, 2012 are to be read together. The State cannot be asked to incur any expenditure towards pension when the approval was granted in the year 2011 and pupil-teacher ratio might not entail appointment of the additional teacher for the post.

7. Although, we may not agree with the observation of the learned Single Judge that the Coordinate Bench decision can be set at naught, the reason for not allowing the appeal is different from the reasons furnished by the learned Single Judge.
8. The appeal fails.

9. Accordingly, the appeal and the application are disposed of for the reasons stated hereinabove.
10. However, there shall be no order as to costs.
11. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)