

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FMA 1102 of 2022
With
CAN 1 of 2022
Saroj Kumar Panigrahi
vs.
The State of West Bengal & Ors.**

Appearance:

For The Appellant	:	Mr. Milan Bhattacharya, Sr. Adv. Mr. Uttam Kumar Bhattacharya, Adv. Mrs. Sulagna Bhattacharya, Adv. Mr. Kaustav Mishra, Adv.
For The State	:	Mr. Tapan Kumar Bhattacharya, Ld. AGP. Mr. Pinaki Dhole, Adv. Mr. Avishek Prasad, Adv.
Judgment on	:	07.02.2025

Harish Tandon, J.

Initially, the writ petition being WP 25180(W) of 2015 was filed by two persons including the appellant herein but at the time of the final disposal

of the writ petition it was pointed out that the other writ petitioner who was arraigned as petitioner no. 2 attained superannuation and, therefore, the principal relief claimed in the writ petition so far as the other writ petitioner was concerned cannot be granted. By the impugned judgment dated 30th June, 2022, the Single Bench dismissed the writ petitioner with categorical finding that the appellant cannot be regarded as an organizing teacher and, therefore, prayer for regularization of their service upon upgradation of a school to Class IX and X cannot be granted.

Admittedly, the school in question i.e. Saotia High School was a Class IV Junior High School which was subsequently upgraded to high school having Class IX and X w.e.f. 1st May, 1999 and subsequently w.e.f. 1st May, 2000 respectively. Both the writ petitioners including the appellant herein claimed to have requisite qualification and were appointed from their respective dates as teaching and non-teaching staff. Since the instant appeal is at the behest of the writ petitioner no. 1 who claimed to have appointed on 11th March, 1996 as assistant teacher, we are deciding the aforesaid issue on the proposition of law argued by both the parties.

It is a specific claim of the appellant as he was appointed by the managing committee of the junior high school at the aforesaid relevant point of time which was recognized by the West Bengal Board of Secondary Education (WBBSE) and subsequently, it was upgraded to Class X high school. Prior to according the recognition for upgradation for Class IX and X, the first notification was issued on 12.02.1996 and the second notification was issued on 12.06.1998 on the basis of the relevant document

submitted by the school authorities. Since the appellant was not considered to be absorbed into the post of an assistant teacher in the upgraded high school, a writ petition was moved before this Court which was disposed of on 25.09.2000 directing the Director of School Education to consider the prayer of the appellant and to dispose of the same after affording an opportunity of hearing. Pursuant to the said order, the matter was taken out by the Director of School Education but did not find the claim tenable in law and, therefore, the said prayer for absorption and/or regularization in the post was rejected. The second writ petition was filed for regularization of the appellant after setting aside the Director of School Education which was disposed of on 03.04.2002 with the specific direction to approve the appointment of the appellant. The respondent herein challenged the said order before the Apex Court in the Special Leave Petition wherein the leave was granted and ultimately, the Apex Court disposed of the same civil appeal with the following directions:

“The appellants, in fact, were appointed, as it appears from the facts of the case, in such school by the Managing Committee of the Junior High School as at that point of time was Class IX and X previously recognized by the Authorities Meaning thereby, the West Bengal Board of Secondary Education subsequent thereto, it appears to us that the said School was upgraded and was duly recognized by the State Secondary Education Board. In view of that, it appears to us that the appellants since working for such a long time in the said School, their cases should be considered by the Authorities in the light of the provisions of law taking into consideration the West Bengal School Service Commission Act, 1997 and in our opinion at the time of such

consideration, it would be the pleasure of the State Authorities to find out whether the appellants who have filed this appeal before us are still with the school or not. We, however, make it clear that the State Authorities without being influenced with the Orders so passed by the High Court based on Judgment reported in 2006(4) SCC 1 shall deal with the matter and pass a reasoned order in the matter in accordance with law after giving personal hearing to the appellants herein. If they find that the appellants were working in the School, in that case, they shall consider the case of the appellants sympathetically, The appeal is disposed of in the afore-stated terms.”

In compliance of the said direction passed by the Apex Court, the respondent authorities after taking into consideration the entire facts again declined to approve the appointment of the appellant as assistant teacher which is assailed in the instant writ petition wherein the final order so passed is challenged in the instant appeal. A point is sought to be argued by the appellant that the moment the Apex Court has directed the authorities to consider the case sympathetically in accordance with law, the authorities cannot act in defiance of the said mandate. It is sought to be contended that the appellant was appointed in an unrecognized section and the moment the Government grant approval for upgradation of the school for Class IX and X, such approval must be construed to have been granted with the existing staff and, therefore, it cannot be regarded as newly created school. The reliance is placed upon an unreported judgment of the Division Bench of this Court in **Niranjan Sahoo @ Niranjan Sahoo & Anr. vs. State of West Bengal and Ors. (FMA 2089 of 2015 decided on 02.09.2022)** wherein the distinction was sought to be made in relation to a situation

where the upgradation was granted by the competent authority without any staff pattern to come within the purview of the newly created school, whereas the approval is granted for upgradation with the existing staff it would come within the ambit of a staffed school. It is sought to be contended that there is a manifest distinction between a recognition of school as staffed school and a newly created one which appears to have been overlooked by the Single Bench. It is further contended that the other Co-ordinate Bench decisions rendered in ***Manindra Nath Sinha & Ors. vs. State of West Bengal reported in (2006) 4 CHN 513*** and the ***State of West Bengal & Ors. vs. Smritikana Maity and Ors. reported in (2008) 1 CHN 582*** were in relation to a grant of approval for higher section without any staff pattern already existing or appointed by the managing committee and, therefore, the aforesaid judgments cannot have any application in the present case. The appellant relies upon an unreported judgment of the Supreme Court rendered in case of ***Prabir Kumar Ghosh & Ors. vs. State of West Bengal & Ors. decided on 6th May, 2022*** where in an identical situation it was held that the appointment if not found to be illegal and it appears that as on the date of upgradation they were rendering services, there is no fetter on the part of the authorities to approve the appointments to such post on such upgradation. The appellant further relies upon another unreported judgment of the Co-ordinate Bench rendered in case of ***Asit Ranjan Gayen & Ors. vs. State of West Bengal & Ors. (FMA 992 of 2021 decided on 1.9.2023)*** where in an identical situation the Apex Court held that once the school which has been running as a private institution is recognized, the teaching and non-teaching staff, legitimately in the employment of the

school, has to be recognized as an exception to the procedure prescribing for filling up vacancies under the relevant Act which came subsequently.

On the other hand, the respondent submits that the school was upgraded to Class IX w.e.f. 1.5.1999 and to Class X high school w.e.f. 1.5.2000 and, therefore, would be governed by the provisions of West Bengal School Services Commission Act, 1997. It is further submitted that after coming into force of the aforesaid Act, the appointment to a teaching and non-teaching staff is vested upon Commission constituted therein and the power of the managing committee to appoint the teacher and non-teaching staff is taken away. It is further contended that at the time of upgradation of the school, there was no existing staff in the aforesaid section and, therefore, the appointment within the sanction strength can only be made under the provisions of the said Act and not otherwise. It is thus contended that the appointment as claimed by the appellant is not in conformity with the said Act nor they were found to have been rendering services prior to the grant of such upgradation as much they are not entitled to the regularization of their services. The respondent relies upon a judgment of the Division Bench rendered in ***Manindra Nath Sinha vs. Government of West Bengal (supra)*** where it is held that the moment the school is upgraded it would be regarded as a newly created school for such sections and, therefore, any appointment which runs counter to the statutory provision prevalent at the time of such recognition for upgradation cannot be recognized being illegal, ex-facie. It is further submitted that another Division Bench judgment in case of ***State of West Bengal vs. Smritikana***

Maity (supra) have taken a similar view and, therefore, the decision which runs counter to the same is no longer a good law. In support of the aforesaid contention that the decision which runs counter to the aforementioned decisions is not a good law, the reliance is further placed upon another Division Bench judgment rendered in case of the ***District Inspector of School (Secondary Education) Burdwan & Ors. vs. Abdul Barik Shaikh & Ors. (MAT 1626 of 2017 decided on 6.7.2018)***.

In reply, it is submitted that the judgment of the Co-ordinate Bench in ***Niranjan Sahoo (supra)*** was challenged before the Supreme Court in a Special Leave Petition ***(Civil Diary no. 4340 of 2023)*** and was dismissed on 27.2.2023 meaning thereby the ratio of law laid down by the Division Bench stood affirmed.

On the conspectus of the aforesaid facts and the proposition of law as sought to be argued before us, let us examine whether the decision of the Single Bench impugned in the instant appeal warrants interference having decided contrary to the judgments of the Division Bench rendered in case of ***Niranjan Sahoo (supra)***. In ***Manindra Nath Sinha (supra)***, the writ petitioners therein were claiming as an organizing teacher in a junior high school having appointed by the organizing committee. The school was recognized for the first time as IV class junior high school for 3 years which was extended from time to time. Immediately after the recognition of the said school which was set up by the villagers or the organizing committee, the prayer for approval of their appointment as recognized staff and also the payment of salary and allowances was made before the District Inspector of

School. Since the lifespan of the managing committee expired, a special officer was appointed by this Court in the said writ petition to carry out the day to day administration with further direction upon him to take a step to send the name of the organizing teachers with corresponding direction upon District Inspector of School to take appropriate decision on approval of such appointments. The Special Officer sent the names of the writ petitioner therein to the said authority which was rejected. By filing an *inter-locutory* application in the said writ petition, the challenge was made to the order of the District Inspector of Schools and a direction was passed upon him to take appropriate steps regarding the report of the Special Officer and to grant approval to such appointments. The appointments were duly approved by the D.I. of School but subsequently the same was withdrawn which resulted into filing of another writ petition. The subsequent writ petition was disposed of setting aside the D.I. of school and directing him to hear the writ petitioners and all interested persons and to pass the necessary orders in accordance with law. In compliance of the said direction, the said District Inspector of School observed that the concerned school being newly set up without any organizing staff, does not invite any approval to be granted to the organizing staff so recruited upon disbelieving that the writ petitioners therein were the organizing staffs of the said school. Such rejection led to a third round of the litigation before this Court when the said order was challenged in the writ petition which was ultimately dismissed. The order of the dismissal was further challenged before the Division Bench. The Division Bench took note of the provisions contained in West Bengal School Service Commission Act, 1997 arrived at the conclusion that there is no scope of an

organizing managing committee or even a regularly appointing managing committee to have been vested with the authority to appoint any teacher or non-teaching staff beyond the sanction strength in a sense it is held:

“16. In our view, in the Parent Act, namely, the West Bengal Board of Secondary Education Act, 1963 and rules framed thereunder to achieve the object of the said Act, there is no provision for appointment of any Organizing Managing Committee or organizer-teacher nor is there any authority conferred upon such Organizing Managing Committee to appoint any teacher or employee before the recognition of the school and conferment of the prescribed sanction strength under the Act and the Joint Secretary of the Education Department by issuing certain circulars cannot lay down the guidelines for approval of any teacher or employee illegally appointed by the so-called Organizing Managing Committee. If the initial appointment is illegal according to the Parent Act and the Rules, the Government by issuing notification through its Joint Secretary cannot approve or regularize such illegal appointments.

20. In the present case, according to the existing rules, there is no scope of appointment of an Organizing Managing Committee and even a regularly appointed Managing Committee is not vested the authority to appoint any teacher or non-teaching staff beyond the sanction strength; but by way of Government instructions such illegal act is sought to be regularized. Therefore, the facts of the present case are the worse than involved in the case of R.N. Nanjundappa (supra), where statutory rules were framed to regularize illegal act.

30. On consideration of the entire materials on record, we, thus, find that the petitioners have filed to prove that they had any existing legal right to have their alleged appointment regularized under the

provision of the act or the rules framed thereunder. We further hold that even the writ petitioners could not be said to be organizer-staff of the school and the school was really established by the local Panchayat long thereafter and the petitioners' names even never found place in the inspection report of DLIT."

In **Smritikana Maity (supra)**, the identical view has been taken by an another Division Bench held:

"23. After hearing the learned advocates of the respective parties and considering the judgments of the Hon'ble Apex Court as also of our High Court, we find sufficient merit in the submissions made by the learned Advocate of the appellant. It is an admitted position that all the writ petitioners/respondents were given appointments as organizing staff in Classes IX and X, when those two classes were not even recognized by the West Bengal Board of Secondary Education. Such recognition was given on 29.11.2000 and it appears from the letter dated 29.1.2000 issued by the Secretary, Board of Secondary Education that the secretary of the school was directed to reconstitute the managing committee of the upgraded school by 30.4.2001. So, it is apparent that there was no validity constituted managing committee for X-Class High School (Classes IX and X) when the writ petitioners/respondents were given appointments. Rule 28 of the Management Rules empowers the Managing Committee of a recognized aided institution to give appointments. When the school was first recognized as Class IV Junior High School (Classes V to VIII), it had its managing committee, which was bound by Rule 28. But such managing committee had no power to given any appointments of teaching and non-teaching staff of an unrecognized part of the school i.e. Classes IX and X, which is known as X-class High School. In other

words, a recognized managing committee when gave appointments of teaching and non-teaching staff of the unrecognized portion of the school (Classes IX and X), it must be held that they acted in a manner which is not permissible under the law. Such appointments must be held to be illegal appointments.

24. An argument was advanced before us that Government of West Bengal, School Education Department and Directorate of School Education from time to time, from 1982 to 2003, issued various circulars with an object to regularize the appointments of organizer teachers. At the time of hearing, a bunch of circulars were produced before us by the learned Advocate of the writ petitioners/respondents. It was submitted before us that these circulars are executive instructions and those were issued for the benefit of organizer teachers, who had sacrificed the best part of their lives for such institution. It was further argued before us that such long and uninterrupted service given by these organizer teacher has created a "legitimate expectation" that their services would be regularized in future. But such argument cannot be accepted by us in view of the judgment of the Hon'ble Apex Court in the case of Ram Pravesh Singh(supra), which we have already discussed earlier. In the case of Uma Devi (supra) also the Hon'ble Apex Court observed as follows in paragraph 47 of the judgment:

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following

a proper procedure for selection and in cases concerned, in consultation with the public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot Constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”

Despite the aforesaid Division Bench judgment echoing the principle of law, there has been a divergent views taken by the Single Bench as well as the Co-ordinate Bench which was noticed in the subsequent decision in **Abdul Barik Shaikh (supra)** wherein it is held in unequivocal terms that any judgment which runs counter to **Maninda Nath Sinha (supra)** and **Smritikana Maity (supra)** cannot be regarded as a good law in the following:

“19. Applying the law laid down here, we hold that Manindra Nath Sinha (supra) having been affirmed by the Supreme Court, all Benches of this Court in cases involving similar fact situation are bound to follow the same as a binding precedent and any decision of a learned Judge or Judges, which runs counter to the dicta in Manindra Nath Sinha (supra), Smritikana Maity (supra), Gita Banik and Gopal Singh (supra), is not good law.”

Despite the aforesaid decision operating consistently in the legal parlance, the Co-ordinate Bench in **Niranjan Sahoo (supra)** attempted to distinguish the ratio laid down therein creating a distinction between a

newly created school and the staffed school in the said judgment. The Division Bench was swayed by two factors – Firstly, the moment the upgradation of the school to Class IX and X is granted by the authority upon noticing that the staff in unupgraded section having appointed by the managing committee, it would be regarded as a staffed school, distinct from the newly created one; secondly, the DLIT (District Level Inspection Team) in its report found the teaching and non-teaching staffs rendering services uninterruptedly are entitled to a regularization and/or approval to such service w.e.f. the date when the upgradation is granted by the competent authority. Though the judgment of the Co-ordinate Bench in **Niranjan Sahoo (supra)** was challenged before the Supreme Court in Special Leave Petition which was dismissed in *limine*, it does not invite the Doctrine of Merger in view of the judgment rendered by the Apex Court in **Kunhayammed & Ors. vs. State of Kerala & Anr. reported in (2000) 6 SCC 359**. In a subsequent unreported judgment rendered in **Asit Ranjan Gayen (supra)** the aforesaid salient facts were found to exist and in such factual scenario, it was held that the proposition of law rendered in **Manindra Nath Sinha (supra)** and **Smritikana Maity (supra)** has no manner of application.

As indicated hereinabove at the time of granting approval to upgrade the school to Class IX and X level the West Bengal School Service Commission Act, 1997 was in vogue. The appellant claims to have been appointed prior to coming in force of the said Act so in one sense it cannot be said that such appointment was made in an unupgraded section by the

managing committee. There is no fetter on the part of the latter Co-ordinate Bench in applying the ratio laid down in **Niranjan Sahoo** and **Asit Ranjan Gayen (supra)** provided the distinguishing fact are eminent and evident from the record. We are conscious if earlier Co-ordinate Bench found a salient distinguishing feature, there is no fetter on the part of the Court to distinguish the earlier judgments as an additional fact or a little difference of fact may invite the decision otherwise. The supplementary affidavit is filed by the respondent after the leave having granted by this Court disclosing that the report of the DLIT on first and second occasion does not reveal the name of the appellant no. 1 to have been appointed before such upgradation is granted by the competent authority. Such salient fact distinguished the instant case from the fact involved in the **Niranjan Sahoo** and **Asit Ranjan Gayen (supra)**. A plea is sought to be taken by the appellant that the school authorities did not disclose their names at the time of inspection for the reasons best known to them. According to the appellant, the extract from the attendant registrar would reveal that they would continuously and uninterruptedly attending the school, taking the class and discharging their duties. In our view of the aforesaid facts does not render the report of the DLIT as factually incorrect as at the time of inspection, the inspecting team did not find the presence of the appellant in the school. The report of the DLIT has not been assailed in any proceedings and, therefore, in absence of any cogent and convincing material having produced, it cannot be said to be illegal and/or infirm. Since the DLIT did not find the appellant either to have been appointed as an organizing teacher or rendering services uninterruptedly since the date of his appointment, we do not find that the

ratio led in the ***Niranjana Sahoo (supra)*** and/or ***Asit Ranjan Gayen (supra)*** is applicable in the instant case. The moment the law as on the date of upgradation creates an embargo on the school authorities to appoint any teaching or non-teaching staffs as the same has been vested upon the authority constituted under the West Bengal School Service Commission Act, 1997, any appointment *de hors* or in contravention therewith shall be regarded as illegal and, therefore, the prayer for absorption and/or regularization has been rightly rejected.

In view of the discussions made hereinabove, we do not find any infirmity in the judgment of the Single Bench.

The appeal is thus dismissed.

There shall be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Prasenjit Biswas, J.)