

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 22773 of 2023

***Pradip Halder
Vs.
The State of West Bengal & Ors.***

For the Petitioner : Mr. Pankaj Halder,
: Mr. Shibjit Mitra,
: Mr. Subodh Ranjan Ray

For the WBBSE : Ms. Koyeli Bhattacharyya
: Ms. Keya Panja

For the respondent no. 8 : Mr. Sk. Rejaul Alam

For the State : Mr. Rezaul Hossain

Judgment on : **07/07/2025**

Rai Chattopadhyay, J. :-

(1) An order of the District Inspector of Schools (Secondary Education) South 24 Paraganas, dated July 17, 2020, is under challenge in this writ petition and the petitioner has prayed for setting aside of the same. The petitioner has also prayed for release of salary, which according to him, stands due and outstanding pursuant to the order of the Court dated January

14, 2004 in writ petition No. W.P. 17062 (w) of 2002. He has prayed for release of arrear salary from the date May 1, 1997 to April 30, 2000 and from November 1, 2003 to January 7, 2015. He has also prayed for the arrear revised monthly salary for the said period, with interest @ 10% per annum. Accordingly, he has prayed for appropriate pension, considering the revised salary as his last drawn pay.

(2) The checkered background of this case is required to be narrated in a nut-shell, which is as follows:

(3) The organizing managing committee appointed the petitioner as the Assistant Teacher in the school namely, Alipara Ambedkar Siksha Niketan (in short “Alipara school”) in 1986. The exact date of appointment is not mentioned in the writ petition. Alipara school was accorded recognition as Class-IV Junior High School, with effect from May 1, 1997. 7 persons including the writ petitioner had moved before this Court a writ petition, seeking their approval, being W.P. No. 9407 (w) of 1999. Pursuant to the order thereof dated March 31, 2000, all the 7 writ petitioners including the present petitioner was granted approval vide letter dated May 10, 2000, with effect from May 1,

1997. The financial benefit was awarded with effect from March 31, 2000.

(4) The other writ petition filed by the present petitioner along with the other persons was W.P.No. 4656 (w) of 2012, in which they had sought for release of arrear as well as current salary. The Court had directed the District Inspector of Schools (Secondary Education) South 24 Paraganas, to consider and decide about the petitioner's prayer there.

(5) Subsequently vide an order dated October 27, 2014, the Alipara school was de-recognised with effect from October 1, 2014. Vide an order on the same date, that is October 27, 2014 the petitioner was transferred to Dholtikari Junior High School (in short "Dholtikari school"), where he joined on January 8, 2015.

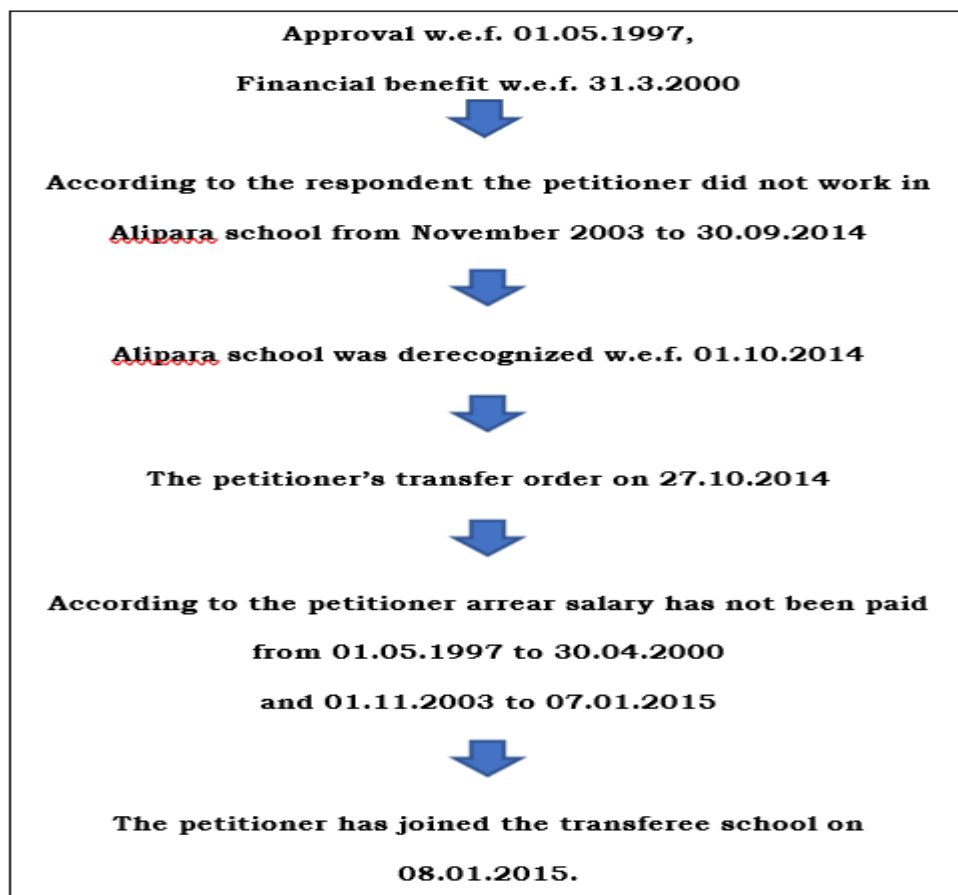
(6) The petitioner's grievance is that despite the Alipara school being derecognized and he being transferred vide orders dated October 27, 2014, his approval in the transferee school has been accorded with effect from January 8, 2015, thereby resulting into break in his service. Hence, he challenged the same immediately by filing another writ petition, being W.P.No. 16105 (w) of 2018. The Court had directed the District

Inspector of Schools (Secondary Education) South 24 Paraganas, to consider the prayer of the petitioner. The resultant order is that dated July 17, 2020 which is challenged by the petitioner in the present case.

(7) In the said impugned order the District Inspector of Schools (Secondary Education) South 24 Parghanas, has held and directed inter alia, as follows:

- The petitioner has been approved as the Assistant Teacher of Dholtikari school, with effect from October 1, 2014, instead of January 8, 2015;
- The earlier order of approval of the petitioner was thus rectified;
- That the petitioner has served in the Alipara school from May 1, 1997 to October 2003;
- That the petitioner did not serve in any school from November 2003 to September 30, 2014;
- Hence the petitioner's pay was fixed on the basis of the pay drawn by him in October 2003.

- (8) For benefit of discussion, the relevant facts may be reproduced in a flow-chart:



- (9) Therefore, it appears that for the period from May 1, 2000 to October 31, 2003 the petitioner has not raised any claim of arrear salary. During the said period he was engaged in Alipara school and has been remitted with the appropriate salary. This fact is admitted by the respondent, since in the impugned order the respondent has alleged regarding the petitioner not serving in the school, from November 2003 to September 30, 2014.

However, as a matter of fact, this plea has been taken by the respondent for the first time in the said impugned order. The petitioner has been entangled in several litigations for all these years in which the said respondent has also been a party. This fact has never been placed before the Court, prior to issuance of the said impugned order by the District Inspector of Schools (Secondary Education) South 24 Paraganas, with respect to the petitioner.

(10) Further the Court is of the opinion that the finding of the respondent/ District Inspector of Schools (Secondary Education) South 24 Paraganas, as above, is based on no evidence. The order itself or any record have not revealed any basis on which the said respondent could have come to a finding regarding the petitioner having not served in the school during the concerned period. Admittedly there is no show cause notice issued against the petitioner or any disciplinary proceeding initiated against him on the allegation of unauthorized absenteeism. In such circumstances the Court is constrained to hold that the finding of the respondent/ District Inspector of Schools (Secondary Education) South 24 Paraganas, in the impugned order dated July 17, 2020 is baseless, unreasonable and arbitrary. The Alipara school was

derecognized with effect from October 1, 2014. Simultaneously, having recognized the petitioner as an Assistant Teacher therein, the respondent authority has issued his transfer order. The petitioner has joined in the transferee school. His pay fixation has been allowed from the date of derecognition of the Alipara school, that is from October 1, 2014. Therefore, the status of the writ petitioner as an Assistant Teacher of the said school has never been in question. The respondent in the said impugned order has only abruptly held about the petitioner having not served in the school from November 2003 to September 30, 2014 that too without placing reliance to any documentary or other evidence in this regard. The period of alleged absence of the petitioner is fairly a long one. One is taken aback to think as to how can a permanent approved teacher of a recognized school be allowed to remain absent for such a prolonged time period, without any steps being taken against him in accordance with the law, particularly when since thereafter the said teacher has been issued transfer order being accepted as a teacher of the newly derecognized school that is Alipara school and has been allowed appropriate financial benefits. The respondent cannot be allowed to blow hot and cold at the same time, by once considering the petitioner as a teacher of the derecognized school and also finding him not

having worked therein, for a prolonged period of time, particularly when admittedly no steps have been taken against him ever.

(11) Mr. Halder learned advocate appearing for the writ petitioner has placed strong reliance to an order of the Hon'ble Co-ordinate Bench, in writ petition No. WPA 24103 of 2018 (Dinabandhu Purkait vs The State of West Bengal), dated June 21, 2023. The matter related with a similarly placed Assistant Teacher of the said school. In the same the Court had found that the respondent authority would not be proper in finding break of service of the petitioner there. Thus, the order of the respondent was set aside by the Court and the petitioner there was allowed the arrear salary which till then stood unpaid. He says that similar benefit may be extended to the present writ petitioner too, he being on the same footing with the other person mentioned above.

(12) Mr. Halder has relied on a letter of the Joint Secretary to the Government of West Bengal dated May 3, 2016, by dint of which the Commissioner of School Education, West Bengal, has been requested to advice the District Inspector of Schools (Secondary Education), to release salary to the staff of Alipara

school, though, he says that the same has never been adhered to. He has also referred to an order of a previous writ petition filed by the present petitioner dated January 16, 2019 [in W.P.No. 16105 (w) of 2018]. In the same the Court has recorded its finding that continuity of service of the writ petitioner should remain maintained. In the appeal in which the said order of the Hon'ble Single Judge was challenged, the Court has passed an order dated January 2, 2020 [MAT 1275 of 2019] that no interference to the said order of the Hon'ble Single Judge is warranted. Hence, according to Mr. Halder, continuity in service of the writ petitioner cannot be jeopardised in any manner other than through the due process under the law. According to him, during the period when the school was enjoying the benefit and protection of recognition under the Government, the salary due and payable to an approved permanent teacher cannot be lawfully withheld by the respondent authority or otherwise that should stand as gross violation of the law.

- (13)** The State respondent has taken a stand akin to what has been found and held by the respondent/ District Inspector of Schools (Secondary Education) South 24 Paraganas, in the said impugned order that the petitioner did not work in the school for the period for which he has claimed salary. It has been

contended that the school was not in existence during the said period. Hence, that the said period for which the petitioner has claimed salary cannot be considered as a qualifying service period of the writ petitioner.

(14) Again, such a fact that the school was not in existence during the said concerned period, is devoid of any supporting material. Contrarily, there are records speaking eloquently that during the period from November 2003 to September 30, 2014, the Alipara school was recognized under the Government. The same was derecognized only with effect from October 1, 2014. It is not only a matter of surprise but also of concern as to why for about eleven years a non-existent school should be shown as a recognized institution, in the Government records. More so, as discussed earlier, even after derecognition, the writ petitioner has been accepted as a teacher of the said school and was transferred to another school. In view of these facts the Court is compelled to hold that the stand of the respondent/State is unsubstantiated in this case.

(15) In the report dated December 19, 2024, submitted by the respondent/ District Inspector of Schools (Secondary Education) South 24 Paraganas, in this case, the said

respondent has sufficiently relied upon an interim order of this Court passed in an earlier writ petition dated December 1, 2003. However, while disposing of the writ petition the said interim order has merged with the final order in the case, in which the Court has not directed for withholding of grant to the Alipara school in any manner whatsoever. Hence, the respondent cannot be allowed to proceed in accordance with the said interim order of the Court any further which has already merged with the final order in the case.

(16) Similar factual aspects were for consideration before the Hon'ble Co-ordinate Bench in the case of Dinabandhu Purkait (supra). Relevant portion of the order may be extracted as herein bellow:

*“the decision for derecognising the school and withdrawal of its recognition had taken by the Joint Secretary to the Government of West Bengal dated **October 27, 2014 Annexure-P6 at page 50 to the writ petition** with effect from **October 1, 2014** for the reasons mentioned therein. Therefore, prior thereto, i.e. **till September 30, 2014 the recognition of the first school was there and was not withdrawn. The first school with all its employees had enjoyed its recognition without any hindrance till the time before October 1, 2014.** From the said communication it then appeared to this Court that, inter alia, the petitioner was directed to join and shifted to the **second school**. The petitioner admittedly **joined in the***

second school and rendered his service till September 30, 2015, the date of his retirement.

*In the eye of law, on the strength of the said document dated **October 27, 2014** the **recognition of the school was withdrawn with effect from October 1, 2014** and as such, the **school stood recognised till September 30, 2014**. The petitioner being an employee of the said school had rendered his service and thus, was entitled and eligible to receive his salary and all emoluments arising of his employment while he was in the **first school till September 30, 2014**. The petitioner then joined the **second school** pursuant to the decision of the State employer.”*

(17) Also that:

*“In exercise of its power under judicial review under Article 226 of the Constitution of India this Court has a limited authority to assess the impugned order dated **October 1, 2018** only with regard to the decision making process of the respondent no.2 while passing the said impugned order in the light of the materials before it.*

*On a close scrutiny of the said impugned order dated **October 1, 2018**, it appeared to this Court that, the respondent no.2 had taken note of the said decision of the Joint Secretary to the Government of West Bengal dated **October 27, 2014, Annexure-P6 at page 50 to the writ petition** which specifically mentioned that, the recognition of the **first school** was taken away and/or cancelled with effect from **October 1, 2014**. Even then, the respondent no.2 had failed to ascribe any reason in correct and proper appreciation of the purport and content of*

*the said communication that, as to why the petitioner should not get his arrear salary during the time the school stood recognised. **One of the basis of the impugned order in rejecting the claim of the petitioner was the interim direction made by the coordinate Bench in the earlier writ petition but the respondent no.2 did not take note of the fact that, such interim order was merged with the final order of the writ petition when no relief was granted ultimately in the writ petition.***

(18) Similar is the situation in the present case. Hence the ratio decided by the Hon'ble Co-ordinate Bench in the case of Dinabandhu Purkait (supra), is squarely applicable in the present case. In the same the Court has directed as follows:

*“In view of the foregoing discussions and reasons, this Court is of the firm view that, the impugned order dated **October 1, 2018** is not sustainable in law and, accordingly, **stands set aside and quashed.***

*This Court is of the considered view that, the petitioner rendered his service without any interruption with an unblemished career in the **first school till September 30, 2014** immediately the date before when the recognition of the school was withdrawn with effect from **October 1, 2014** and thereafter pursuant to the decision of the appropriate State authority the petitioner had joined the **second school** with an immediate effect. There was no charge against the petitioner for any unauthorised absence from his employment or discontinued*

service in any manner. Therefore, **the claim of the petitioner succeeds in this writ petition.**

*The jurisdictional District Inspector of Schools, i.e. the respondent no.5 is directed to release the arrear salary receivable by the petitioner in accordance with law for the period from **November 1, 2003 till December 31, 2014 together with an interest @ 10% per annum since November 1, 2003 till the date of actual payment to be made to the petitioner.***

The petitioner shall furnish his bank account details and particulars to the respondent no.5 within seven days from today and thereafter the respondent no.5 shall forthwith release the entire payment of arrear salary along with interest as directed herein to the petitioner positively within a period of three weeks from the date of receiving the bank account details and particulars from the petitioner upon being communicated with a copy of this order.

*Since the petitioner had already retired from his service with effect from **September 30, 2015** about eight years ago and remained without receiving his retiral benefits, the entire retiral benefits along with all pension and gratuity accrued in favour of the petitioner in accordance with law out of his employment shall be paid with interest @ 8% per annum since the date of his retirement till the date of actual payment to the petitioner to be made by the respondent no.5 and/or other appropriate authorities positively within a period of four weeks after expiry of the said three weeks period as directed above for disbursement of the arrear amount.*

The petitioner shall communicate this order to the respondent no.5 and all other appropriate authorities as required in law to carry out the direction made in this order.

The State authority shall go on paying the pension to the petitioner without any hindrance, receivable by the petitioner regularly in accordance with law.

*In view of the above, this writ petition WPA **24103 of 2018** stands allowed without any order as to costs.*

Photostat certified copy of this order, if applied for, be furnished expeditiously."

(19) In view of the entire discussions as made above, the Court finds no justifiable reason to differ from what has been held and directed by the Hon'ble Co-ordinate Bench in the case of Dinabandhu Purkait (supra).

(20) Hence, the instant writ petition stands allowed with the following directions:

- (i) The respondent/ District Inspector of Schools (Secondary Education) South 24 Parghanas, is directed to immediately release the arrear salary receivable by the petitioner in accordance with law, for the period from May 1, 1997 to April 30, 2000 and from November 1, 2003 to January 7, 2015;
- (ii) Interest on the amount paid is to be released at the rate of interest of a savings bank

account in a nationalized bank from the date of this judgment till the date the entire due amount is actually paid to the writ petitioner;

(iii) In case the petitioner has already retired, his pension shall be fixed and granted as per the scale of pay last drawn by him, in terms of the above directions.

(iv) The entire exercise shall be concluded by the concerned respective respondents, within a period of four weeks from the date of communication of copy of this judgment.

(21) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)