

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 22981 of 2016

**Md. Hassan Mallick & Ors.
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Ekramul Bari
: Mr. Imtiaz Uddin

For the State : Mr. Tapan Kr. Mukherjee, ld. AGP
: Mr. S. Naskar

Judgment on : **09.12.2025**

Rai Chattopadhyay, J. :-

- 1.** The writ petitioner's grievance is with respect to their non-approval in service as the teacher of the respondent Madrasah / respondent No. 4. The petitioners say that their right for being approved in service emanates firstly from their long, continuous and uninterrupted service rendered in the said Madrasah, secondly, due to the order of this Court dated May 12, 2016 in WP 23173W of 2007 and finally, since they have the constitutional right to be treated equally with the other persons on similar footing, in so far as the other two teachers similarly placed as the writ petitioners, have been approved in service vide the order of the respondent /

District Inspector of Schools, Secondary Education, Paschim Medinipur dated August 19, 2016.

- 2.** Before any discussion about the grounds pleaded by the writ petitioners, the factual background of the case is required to be stated in a nutshell. The petitioners have stated to have been appointed by dint of resolution of the Managing Committee in the said Madrasah in the year 1994. Before their appointment, the Madrasah was recognized as Junior High Madrasah vide order of the respondent authority dated January 01, 1986. Therefore, the petitioners were appointed though against non-sanctioned posts, in the Junior High Madrasah.
- 3.** They say that, since from the respective dates of their appointment in the year 1994, the petitioners have been serving therein continuously, without any break. The Madrasah has been upgraded to High Madrasah with effect from May 01, 2005. Further, vide memo dated June 28, 2011, the West Bengal Council of Higher Secondary Education has granted permission to start higher secondary section in the Madrasah, with effect from 2011-12 academic session. Therefore, the petitioners have pleaded in the instant writ petition that, as against the sanctioned vacant post their respective services may be directed to be approved by the concerned respondent authority.

4. Mr. Ekramul Bari appeared on behalf of the petitioners. He submits with reference to a report of the District Magistrate that the petitioners have been rendering duty in the Madrasah without any break, since the date of their appointment in the year 1994.
5. Mr. Bari has also relied on the order of this Court in **WP 23173W of 2007** dated **May 12, 2016** (**Md. Hassan Mallick & Ors. vs. The State of West Bengal & Ors.**) reported at **2016 SCC OnLine Cal 9413** to submit that the Court has noted the District Magistrate's report which contained the petitioner's names to have been appointed in the Madrasah after first recognition and before the upgradation. Also, the Court has recorded that no dispute can be raised based on the omission of names of the petitioners in the DLIT report.
6. Mr. Bari relies on a Division Bench judgment of this Court dated **December 24, 2024** in **FMA No. 1946 of 2018** (**The State of West Bengal and Ors. vs. Mrinal Kanti Kumar & Ors.**) reported at **2024 SCC OnLine Cal 11540** to submit that Court in the same has relied on another decision of the Supreme Court in **Prabir Kumar Ghosh and Others Vs. State of West Bengal & Ors.** dated **November 29, 2019** reported at **MANU/SCOR/50757/2019**, wherein the Court directs that the appointment as approved staff before the upgradation or recognition shall not be rendered as illegal and therefore such appointment should be regularized.

7. Mr. Bari has also relied on another judgment of this Court dated September 05, 2023 in WPA 25121 of 2016 (**Sk. Obaidulla & Ors. vs. The State of West Bengal & Ors.**) in this regard. He ventilates the petitioners' prayer that the respondents be directed to approve service of the writ petitioner.
8. Mr. Tapan Kr. Mukherjee, Id. AGP has appeared for the respondents. He says that the petitioners have been appointed after recognition of the Madrasah as Junior High Madrasah and before its upgradation as a High Madrasah with effect from May 01, 2006. Hence, according to the said respondents, the petitioners have been appointed as against the unsanctioned posts. This contention of the respondents is also not under serious challenge in the instant writ petition.
9. Mr. Mukherjee has submitted further that, upgradation of Madrasah to a Class X High Madrasah with effect from May 01, 2006 created six posts of Assistant Teachers. From amongst the said six posts of Assistant Teachers, five teachers have already been appointed and approved with effect from January 01, 2008 on condition that, their approval shall abide by the result of writ petition No. WP 23173W of 2007, which was pending at that point of time before this Court.

- 10.** Mr. Mukherjee has submitted that, after promulgation of Madrasah Service Commission Act, 2008, any appointment in Madrasah without compliance of provisions thereunder shall stand de hors the statutory provisions as contained therein. He says that a mandamus cannot be issued in defiance of the specific statutory provision, as prayed for by the petitioners in this case.
- 11.** Mr. Mukherjee has further submitted that, it is not the report of the District Magistrate but that of a District Level Inspection Team, which is to be considered, so far as the existence of any organizer teacher in the institution at the time of its recognition is concerned. He says that, admittedly in the report of DLIT, the petitioner's name do not find place. He has summed up his argument with the submission that, since as on the date of appointment of the writ petitioners there was no sanctioned post and the petitioners have been appointed, if at all, in the institution without following any due procedure under the law for a valid recruitment and also without any prior permission of the respondent authority, they are not entitled for approval of service.
- 12.** In support of his contentions, Mr. Mukherjee for the respondent authorities have relied on a judgment ***Veer Kunwar Singh University Ad Hoc Teachers Association & Ors. vs. Bihar State University (C.C.) Service Commission & Ors.*** reported at ***(2009) 17 SCC 184.***

13. It appears that, the petitioners have claimed to have been working in the respondent Madrasah since from the year 1994, when the said institution was recognized as a Junior High Madrasah, vide order dated January 01, 1986. The petitioners worked continuously since from the respective dates of their appointment, towards the greater goal of the institution to cater the educational need of the children of locality. That, they have served in the said institution continuously from 1994 has not though reflected in the report of District Level Inspection Team at the time of upgradation of the said Madrasah to a High Madrasah with effect from May 01, 2005, the petitioners, therefore, have relied on a report of the District Magistrate in support of their claim as above. The said report of District Magistrate duly depicts the fact of the petitioners' appointment and continuous service in the said institution from the year 1994.

14. It would be beneficial in this regard to mention the following portion of the judgment of the Division Bench of this Court dated September 02, 2022 in **FMA No. 2089 of 2015 (Niranjana Sahoo @ Niranjana Sahoo & Anr. Vs. State of West Bengal & Ors.)** which is as following –

“A school staffed with teaching and non-teaching staff recognized by the government after the commencement of the said Act of 1997 cannot be said to have any vacancy to be filled up following the selection procedure under Section 8 of the said Act. Nonetheless, Section 9 makes it

plain that after commencement of the Act no teacher or non-teaching staff could be appointed in contravention of the Act.

The appellants/petitioners found to be bonafide working in the Mamadpur Gobinda Smriti Siksha Niketan School at the time of its said inspection by the District Level Inspection team shall be presumed to be the organizing staff and should be recommended by the Commission to the Board for appointment under Section 7 of the Act. The Board would have the obligation to regularize such appointments from the date of recognition of the school."

- 15.** Similar has been the view of the Supreme Court in order dated **November 29, 2019SLP(C) 27804 of 2019 (Prabir Kumar Ghosh & Ors. vs. State of West Bengal & Ors.)**, reported at **MANU/SCOR/50757/2019**. Relevant portion thereof may be quoted as herein below:-

"It was observed by the Division Bench that if the initial appointment itself was illegal, the appointments could not be regularized and that the decision rendered by the Single Judge was otherwise unsustainable.

As the record indicates that the school was set up by the villagers. The facility of the school in the neighborhood was not made available by the official agencies. In a situation such as that the engagement of the writ petitioners cannot strictly be called to be illegal. They were definitely imparting education in keeping with the letter and spirit of the legislation enacted by the Parliament being Right to Education Act.

In the circumstances, the Division Bench was not justified in setting the order passed by the Single Judge. Consequently, we allow the appeal, set aside the order passed by the Division Bench and restore the order passed by the Single Judge of the High Court.

The appeal is accordingly, allowed."

- 16.** Therefore, the consistent view of the constitutional Courts with regard to approval of service of the organizer teachers/staff has been to some extent lenient in so far as in the particular facts and circumstances of the case the Courts have been placed to hold that strictest compliance with the statute may be relaxed towards the goal of sub serving the ends of justice.
- 17.** By relying on the said two judgments as mentioned above, a Bench of this Court in WPA 25121 of 2016 (**Sk. Obaidulla & Ors. Vs. The State of West Bengal & Ors.**) vide order dated September 05, 2023 has held similarly, directing for approval of the petitioners who were there before the Court in the said case. Likewise, the judgment of the Hon'ble Division Bench of this Court in **Mrinal Kanti Kumar (Supra)** may also be mentioned in which the Hon'ble Division Bench of this Court has relied on an earlier judgment of Three-Judges Bench of this Court in **Prabir Kumar Ghosh's case (Supra)**, and found that, appointment as approved staffs before upgradation or recognition of the institution shall not be recorded as illegal and that such appointment should be regularized.
- 18.** Admittedly, the petitioner's name has not been figured in the DLIT report which precedes the upgradation of the Madrasah to a High Madrasah in the year 2005. The said fact is established in the report of the District Magistrate. According to the respondent, the

report of the District Magistrate is not a valid document in this regard though it has not contended about falsehood or unsustainability of the contentions thereof. Keeping in mind the lenient approach of the Courts in the matter of approval of the organizer teachers as held in the various judgments, as discussed above, the Court in the particular factual background of this case, is inclined to accord careful and lenient consideration of the petitioner's claim. The report of the District Magistrate bears fair amount of authenticity and credibility which should go to the petitioner's way, for the ends of justice.

- 19.** Pertinent is to mention here the order of this Hon'ble Court dated May 12, 2016 in WP 23173W of 2007, in which the Court has taken note of the appointment and continuous service of the petitioners during the period, after the first recognition of the institution and before upgradation thereof. The Court further takes note of an order of the respondent/District Inspector of Schools, Secondary Education, Paschim Medinipur dated August 19, 2016. Two other similarly placed teachers who have been the colleagues of the present petitioners, were approved in service, by the said respondent. Those persons and the present petitioners being exactly similarly circumstanced, there is not intelligible differentia as to why the respondent Authority should not extend the similar benefit of approval of service as against the present petitioners. Be it mentioned here that, admittedly, the petitioners do not lack

eligibility in terms of qualification as well as age and also experience. In that view of the matter and following the ratio of the judgments as discussed above, the Court is of considered view that the petitioners' continuous service which genuinely catered the need of the society for imparting higher education to the local children, cannot left behind without any acknowledgement or recognition on the part of the State.

20. In that view of the matter, the Court is of considered opinion that the present writ petitioners are eligible for approval of their service. Also that, the writ petitioners are eligible to be approved as against the respondent institution where they have been the organizer teachers since from the year 1994 subject to availability of vacancy. Otherwise they may be approved and posted suitably in other institution, provided they be granted with the opportunity of hearing by the respondent authority, before such posting.

21. On the findings as above, the present writ petition is disposed of with the following direction:-

- i) The writ petitioners are entitled and eligible for being appointed as the organizer teachers as against the respective posts created at the time of upgradation of the Madrasah with effect from May 01, 2005 with notional effect;

ii) The petitioners shall be immediately approved as against the said posts respectively in the manner as directed above, maximum within a period of six (06) weeks from the date of communication of copy of this order and posted subject to availability of vacancy;

iii) The respondent Authority may otherwise suitably post the petitioners, upon approval of their service, to any other institution.

22. With the directions as above, this writ petition No. WPA 22981 of 2016 is allowed and disposed of.

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

(Rai Chattopadhyay, J.)