

Item No.- 21
12.02.2025
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**MAT 1873 of 2024
with
I.A. No.: CAN 2 of 2024**

**The South 24-Parganas, District Primary School
Council & Anr.
Versus
Nityaranjan Mandal & Ors.**

Mr. Gourav Das

... for the appellants

**Mr. Sudipta Dasgupta,
Mr. Bikram Banerjee,
Mr. Arka Nandi,
Ms. Suryatapa Das**

... for the respondent No. 1

**Mr. Bhaskar Prasad Vaisya, Ld. AGP
Mr. Nilay Baran Mandal**

... for the State

1. Let the office memorandum being No. 43/LP/RO dated 30.01.2025 issued by the Directorate of School Education, Government of West Bengal filed by the appellant be kept with the record.
2. The order terminating the service of the writ petitioner/respondent No. 1 was assailed before the Single Bench on the premise of non-adherence of the rule of law and the mandate given under West Bengal Primary Education (Conduct of Service of Teachers of Primary Schools) Rules, 2001. In an identical situation, the other persons moved this Court which ultimately reached before the Division Bench in an Intra-Court Appeal. The Division Bench was of the view that the order of termination could not be valid having passed in gross violation of the provisions of the said Rules as well as the principles of natural justice and directed the authorities to reinstate those terminated teachers

by creating a supernumerary post as all the vacancies within the sanctioned strength were already filled up.

3. When the instant appeal was taken up on 14th January, 2025, the order of the earlier Division Bench passed in MAT 1813 of 2017, MAT 1814 of 2017, MAT 417 of 2018 and MAT 418 of 2018 were placed before us and having found that the present writ petitioner/respondent No. 1 was similarly circumstanced person, i.e., standing on the same pedestal as that of the writ petitioners in the aforementioned mandamus appeal, the direction was passed upon the appropriate authority to treat the present writ petitioner in an identical and similar manner with all the others. The matter was adjourned so that the report in this regard may be filed by the appropriate authorities.
4. Today, we have been given to understand that by virtue of Office Memorandum dated 30th January, 2025, the writ petitioners have been accommodated in the vacancies prevalent at present as there is no question of any creation of a supernumerary post. Obviously, in the earlier mandamus appeals, there was no vacancy in the sanctioned post and for such reason, the direction was passed to create a supernumerary post but the moment the authorities found the requisite vacancies within the sanctioned strength, there is no point in creating a supernumerary post to accommodate the petitioners who were admittedly occupying the post within the sanctioned strength before the alleged order of termination was inflicted upon them.
5. A point arose whether the direction passed by the Single Bench in the instant matter can be sustained with full compliments of reliefs granted therein. Both the counsels for the appellant as well as the writ petitioner/respondent No. 1 uniformly submits that the

writ petition was restricted to quashing and setting aside the order of termination without any further consequential reliefs in the form of arrear salary and the other backwages admissible to the said post.

6. The Court cannot grant a relief which is neither prayed nor pleaded in the writ petition. The Court must confine to the relief claimed in the writ petition and shall not grant other reliefs unless the same is necessitated by a changed circumstance, i.e., in the event of changed circumstances, the relief which is originally claimed, become inappropriate.
7. It is discretion of the Court to grant the arrear salary and the backwages while ordering the reinstatement of an employee to the post but such discretion must be exercised with reasonable care and precaution as opposed to the capricious and whimsical exercise thereof. The discretion must be reasonable and rational and not to be exercised arbitrarily or capriciously. The Court should not travel beyond the periphery of the pleadings and the reliefs claimed thereupon which infact appears to have been done in the instant matter.
8. Admittedly, the writ petitioner/respondent No. 1 did not claim for the arrear salary from the date of termination to the date of reinstatement and, therefore, the Single Bench exceeded its jurisdiction in granting such relief.
9. The order impugned is thus modified to the extent that the prayer for payment of the arrear salary is set aside.
10. The other portion of the order remains unaltered and/or uninterfered with.
11. It goes without saying that upon reinstatement to the vacant post within the sanctioned strength, the authority shall treat the service to have been uninterrupted and grant notional benefit attributable to the said post for the said period and the said period

shall be treated to be continuous for the purpose of ascertaining the period at the time of superannuation.

12. The appeal being **MAT 1873 of 2024** is thus disposed of.
13. Connected applications are also disposed of.
14. Urgent Photostat Certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(HARISH TANDON, J)

(PARTHA SARATHI CHATTERJEE, J)