IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

W.P.A. No. 3813 of 2025

Rajesh Kumar Singh

Vs.

State of West Bengal & Ors.

Mr. Md. Galib,

Mr. Dilip Kumar Shyamal.

... for the petitioner

Mr. tarun Kumar Das,

... for the respondent Nos. 4 & 5

Ms. Suchitra Sinha Chatterjee,

Mr. Piyas Choudhury.

... for the State

Heard on: 31.08.2026

Judgment on: 12.11.2026

Uploaded on: 12.11.2026

1) The writ petitioner is an unapproved teacher, appointed and working in a recognised, non-government, DA getting school, whose prayer for approval of service has been rejected by the respondent/ District Inspector of Schools (Secondary Education) Kolkata [hereinafter referred to as "the DI"], vide an

order dated 13.9.2024. the petitioner has challenged the said order of the DI dated 13.9.2024 in the present writ petition and has prayed for the relief that the order of the DI as above may be set aside and necessary direction be issued for approval of service of the writ petitioner.

2) The brief factual background relevant for this case is that the petitioner was appointed by the school managing committee vide the appointment letter dated 07.12.2012, as an assistant teacher in the subject Book Keeping. On the following day that is on 08.12.2012 a fresh appointment letter was issued to him modifying the earlier one, that he is appointed for the subject Book Keeping/Work Education and Physical Education. The petitioner had joined on and from 12.12.2012. From the date of his joining, he has been serving continuously and uninterruptedly in the said school, maintaining an unblemished service record.

3) In 2016, after confirmation of his service by the school authority, the petitioner's prayer for approval in service was placed before the respondent/DI. The DI rejected the petitioner's prayer as above, at that point of time due to the fact that the petitioner lacked requisite qualification and training to be approved as a teacher in Physical Education subject. Be it mentioned that the petitioner was appointed in the school with Graduate qualification, with B.Com Pass Degree. Later, in the academic session 2020-21, the petitioner underwent B.P.Ed Degree course at an University at Allahabad. His final results were declared on 27.9.2021. Since being duly qualified the petitioner obtained B.P.Ed Degree.

4) Subsequently, at the intervention and pursuant to an order of this Court the respondent/DI has again considered the petitioner's prayer for approval and resultantly the impugned order dated 13.9.2024 was passed by the said respondent, rejecting the petitioner's prayer as above for the second time. Hence, this writ petition.

5) According to Mr. Md. Galib, learned advocate for the petitioner, the said impugned order has been passed by the said respondent only mechanically and without application of mind. He has challenged all the stated in the said impugned order as untenable and not maintainable.

6) He submits further that on the contrary, the petitioner having duly obtained the requisite qualification and in view of the provision in the Government Notification No. 1691-SE(S)/4A-53/2001 dated 20.9.2001 [herein after referred to as "No.1691"], is entitled for being approved in service, in the permanent sanctioned post, against which he has been proposed by the school authority to be approved and regularised. It is mentioned that from amongst the two sanctioned posts of assistant teachers in the subject Book Keeping/Work Education and Physical Education in the school, one has become vacant due to retirement of the assistant teacher namely, Sri Ashoke Kumar Mitra. That since then the said post is lying vacant. That the school authority has proposed approval of the writ petitioner as against the said post, by virtue of the provisions under the said memo No. 1691.

7) Mr. Md. Galib, learned advocate for the writ petitioner has submitted that the respondent has already approved service of

the other assistant teacher with B.Com qualification, in another post in the subject Book Keeping/Work Education and Physical Education, in school. Therefore, according to him, there is no scope for the respondent to treat the present petitioner differently. He says that the legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities. In this regard he has referred to a 3 Judges' Bench judgment of the Supreme Court in ***Hope Plantation Limited versus Taluk Land Board, Peermade and Another reported at (1999) 5 SCC 590***, where the Court has upheld the said principles stating about applicability of those as being based on public policy and justice.

8) The affidavit-in-opposition has been reaffirmed and submitted in Court by the respondent State, represented by Ms. Suchitra Sinha Chatterjee, learned advocate. Its first contention in favour and support of the said impugned order is that the petitioner's appointment as assistant teacher for the subject Book Keeping/Work Education and Physical Education vide the second appointment letter dated 08.12.2012 is faulty, in so far as the same has been issued without cancelling the former appointment letter dated 07.12.2012, issued to him. That two appointment letters cannot subsist together. And that according to the first appointment letter, the petitioner was appointed as a teacher in subject Book Keeping, whereas there is no subject as such in normal section of the school. According to the State the second appointment letter dated 08.12.2012 is after thought, motivated and mala fide. The State has also contended that on the date of appointment the petitioner was admittedly not a proper qualified person, hence there remains no question for application in his case in any manner of the provision under

G.O.No. 1691. It has further stated that proper selection procedure was not followed to induct the petitioner in service. Hence, according to the State respondent, there is no requirement or scope for interference with the impugned order of the respondent/DI dated 13.9.2024, as the same is based on lawful and justified grounds.

9) The school authority has also filed affidavit in opposition and supported the writ petitioner's case.

10) It appears that the petitioner's prayer for approval of his service is principally based on the provisions enumerated in the G.O.No. 1691. Admittedly the writ petitioner has obtained B.P.Ed Degree in the year 2021, date of his final results being 27.9.2021. hence, it is an admitted fact in this case that since after qualifying with the B.P.Ed Degree, the writ petitioner had fulfilled shortcomings, if any, in qualification to be appointed as an assistant teacher in Work Education and Physical Education subject.

11) It is necessary in this regard to look into the provision of G.O.No.1691. The same is with regard to the subject matter – *"Filling up of the Vacant Posts within the Govt sanctioned strength of the Schools in receipt of DA from the Government"*. The said notification is specifically meant for the unapproved teachers working in a DA getting school, making provision for their absorption in permanent sanctioned post, fallen vacant. The notification explicitly addresses the regularization and absorption of qualified teachers who were working beyond the government-sanctioned strength in Dearness Allowance (D.A.)

getting schools. Relevant provision of the same may be quoted below:

Govt. in the |Education Department has since considered the matter at length and decides to permit the authorities of such D.A. getting schools to fill up the vacant post within the sanctioned strength by placing properly qualified teachers already working in the school for the Secondary/Higher Secondary Section but not in receipt of D.A. from the Govt. on fulfilment of the following conditions:-

(1) Such teachers working beyond the sanctioned strength should be placed whenever any vacancy arises within the sanctioned strength in strict adherence to the norms of the staff pattern in case of Normal Section (V to X). In case of H.S. Section only those teachers who possess Hons./Master Degree in the subjects in which the vacancy arises should be considered.

(2) Before placement it is to be confirmed that the teachers to be placed within the sanctioned strength had minimum qualification and was within the prescribed age limit at the time of initial appointment.

(3)The managing committee whenever a vacancy arises will approach the concerned D.I. of Schools for permission order, along with a copy of resolution resolving the placement of concerned teacher along with academic certificates of the incumbent.

It there is more than one teacher of the same academic qualification preference should be given to the senior most.

In case of filling up the post of H.M./A.H.M. against sanctioned post proper regard should be given to academic qualification and experience as laid down in Govt. orders.

This order will take effect immediately and any order/Guidelines issued either by the Department of School Education of by the Director of School Education will stand void.

12) The key provisions of this Government Order (G.O.) include:

i. *Vacancy Absorption:* Duly qualified teachers already working in a D.A. getting school beyond the sanctioned limit are permitted to be placed against fresh vacancies that arise within the sanctioned strength.

ii. *Higher Secondary Section Preference*: When vacancies arise in the Higher Secondary (HS) section, preference must be given to existing teachers who possess an Honours or Master's degree in the specific subject where the vacancy exists. and

iii. *Cut-off for Eligibility*: The minimum educational qualifications and the prescribed age limits of the teacher are to be evaluated with reference to the time of their initial appointment rather than the date of absorption.

13) The writ petitioner though accepts that at the time of entering into service he did not have B.P.Ed Degree, but says that that in 2021, he has acquired requite qualification and since thereafter there is no shortfall as regards his qualification, for him to be absorbed in a sanctioned vacant post of the subject concerned. The State has countered this plea of the petitioner on the ground that qualification acquired later would not conform with the requite criteria as prescribed in the notification No. 1691 for him to be accommodated in a sanctioned post in the school, which falls vacant due to retirement of an approved teacher in the subject. In careful consideration of the provisions in the said notification, this Court finds that a later qualification does

not necessarily disqualify the teacher from consideration under the G.O.No.1691. Neither the later qualification by itself, is the source of entitlement of him. According to the Court, the petitioner's entitlement should depend on availability of vacancy on the date of his attaining the requisite qualification, subject to the decision of the school managing committee, in consideration of the requirement of teacher in the said vacant post and his past performance, to place him in the said vacant post. Though the notification speaks about that the person who has been appointed and working in the school as an additional hand and beyond sanctioned strength of assistant teachers in the subject, should possess the requisite minimum educational qualification and age at the time of his initial appointment, the Court finds that in absence of any specific bar being provided in the said notification to accommodate a teacher, who was not duly qualified at the time of his initial appointment but acquired the same at a later stage, though at a time when the post was not filled up, and thus duly made himself qualified for the post, the benefit under the said notification should be withheld in case of such an assistant teacher, like the case of the petitioner, in the instant writ petition.

14) The aforesaid objection of the State respondent, though founded upon the fact that the petitioner did not possess the B.P.Ed. qualification on the date of his initial appointment, cannot be accepted as conclusive of the issue in the manner suggested. The material consideration is whether the subsequent acquisition of the requisite qualification, in the facts and circumstances of the present case, altogether forecloses the petitioner's consideration for absorption against a sanctioned vacancy under G.O. No. 1691. The said Government Order is

intended to provide a mechanism for accommodating eligible teachers already working beyond the sanctioned strength against vacancies subsequently arising within such strength. Its provisions must, therefore, be construed in the context of that object, without either diluting an express eligibility condition or introducing a disqualification which the Order does not expressly prescribe. The stipulation concerning the minimum qualification at the time of initial appointment undoubtedly requires due consideration; nevertheless, the question whether a teacher who was initially appointed without the requisite subject-specific qualification, but subsequently acquired the same while continuing in service and before the relevant sanctioned vacancy was filled up, can ever be considered for absorption must be examined in the light of the precise language and object of the said government order. In the present case, the petitioner acquired his B.P.Ed. qualification on declaration of the final result on 27.9.2021, and it is the admitted position that the vacancy against which his absorption is proposed, has arisen within the sanctioned strength. The subsequent acquisition of qualification cannot, by itself, create an indefeasible right to approval; equally, it cannot, without a proper examination of the applicable conditions, be treated as an absolute bar to consideration.

15) The relevant factors would include the existence and nature of the sanctioned vacancy, the petitioner's suitability for the post, the applicable staff pattern, and the decision of the competent school authority in accordance with law. Such an approach preserves the requirement of qualification while avoiding the mechanical rejection of a claim solely on the ground that the requisite qualification was acquired after initial appointment. It

is not a case of the respondent that vacancy did not exist till the time the petitioner obtained a B.P.Ed Degree in 2021. Therefore, in case of the present petitioner, he stood duly qualified in terms of the G.O.No. 1691, on the date of his acquiring such qualification. In such view of the facts, rejection of the recommendation of the school authority to place the petitioner as against the sanctioned vacant post in the subject, by the authority, appears to be only mechanical rejection without conforming with the object of the said government notification. Rather the writ petitioner, after obtaining the B.P.Ed Degree stands duly qualified, given his continuous service in the school from the date of his joining there, in terms of the said notification, to be accommodated and approved in the sanction post, which has fallen vacant due to retirement of the other approved subject teacher.

16) The other objections raised by the State respondent do not warrant a different conclusion. The contention that the appointment letter dated 8.12.2012 is invalid merely because the earlier appointment letter dated 7.12.2012 was not separately cancelled does not, by itself, establish that the subsequent letter is a nullity. The two documents must be read together in their factual and chronological setting, particularly because the later document was issued on the very next day and purported to modify the subjects in which the petitioner was appointed. Whether the second letter was intended to supersede or modify the first is a matter to be determined from the documents and the contemporaneous records of the school; the mere existence of two letters does not conclusively establish that both were intended to operate independently or that the later one was necessarily a fraudulent or mala fide document.

The further contention that the appointment was motivated or made in bad faith likewise requires support from relevant material and cannot be sustained merely by assertion. As regards the alleged absence of a proper selection procedure, the respondent must identify the applicable requirement and demonstrate how the appointment in question contravened it; a bare allegation, without examination of the relevant rules and records, cannot substitute for such an inquiry. The fact that the petitioner has continued in service since December 2012, that the school authority supports his claim, and that another teacher with a B.Com. qualification has reportedly been approved against a comparable post are relevant circumstances which require due consideration. To the extent that the respondent has rejected the claim by treating the subsequent acquisition of qualification, the existence of the two appointment letters, or the alleged procedural irregularity as self-sufficient grounds without the requisite examination, such reasoning cannot be sustained.

17) On the basis of the foregoing discussion, this Court finds that the impugned order of the respondent/DI is not to be sustained and the instant writ petition should succeed.

18) Hence, the writ petition No. WPA 3813 of 2025 stands allowed with the following directions:

- **i.** The impugned order of the District Inspector of Schools (Secondary Education) Kolkata dated 13.9.2024, is hereby set aside;
- **ii.** The writ petitioner is eligible for being approved in the sanctioned vacant post in the school, in the concerned

subject, with effect from the date of his being qualified with the B.P.Ed Degree;

iii. Hence, the District Inspector of Schools (Secondary Education) Kolkata, shall pass an order in this regard, by approving service of the writ petitioner in the sanctioned vacant post of an assistant teacher in the concerned subject, with effect from the date of his being qualified with the B.P.Ed Degree.

iv. Such an order should be passed within a period of 4 weeks from the date of communication of this judgment;

v. Let it be mentioned that the necessary pay fixation should be given effect to for the petitioner immediately thereafter and arrear salary should be disbursed to him within a period of 3 months from the date of communication of this judgment.

19) Writ petition No. WPA 3813 of 2025 is allowed and disposed of.

20) Urgent photostat certified copies of this judgment, if applied for, shall be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)