

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 4028 of 2013

Gouranga Sardar

Vs.

The State of West Bengal & Ors.

For the Petitioner

: Mr. Anindya Sundar Das, Adv.,

: Mr. Shaunak Ghosh, Adv.,

: Ms. Paramita Mondal, Adv.,

: Ms. Suva Gayen, Adv.,

: Mr. Suman Haldar Adv.

For the State

: Mr. Gourav Das. Adv.,

: Mr. D. Bandhu. Adv.,

Judgment on

: 13/02/2026

Rai Chattopadhyay, J. :-

1. Admittedly the writ petitioner has been appointed in the respondent school (Ramratanpur Bapuji High School), on December 15, 2008, without following a selection process in accordance with law. He joined in the post of Group 'D' Staff in the said school on and from December 24, 2008. He claims that since thereafter he has served in the said school continuously without any break. His further contention is that the post in which he was appointed, fell vacant due to retirement of the permanent approved Class-IV staff of the said school, who was earlier appointed therein.
2. The writ petitioner has further stated that though he has been appointed as against the sanctioned vacant post, with upgradation of the said

school, further posts were also created and sanctioned therein. In such circumstances, the petitioner is aggrieved with declined of his prayer for approval by the respondent authorities.

3. Let the relevant facts leading the filing of this writ petition by the present petitioner be narrated here in a nutshell. A permanent post of Class IV staff fell vacant in the respondent school, due to retirement of the incumbent posted therein. The Managing Committee of the school appointed the petitioner by issuing appointment letter dated December 15, 2008. The petitioner joined in the school with effect from December 24, 2008.
4. In spite of recommendation by the Managing Committee of the school for approval of service of the writ petitioner, the respondent No. 3/ District Inspector of Schools (Secondary Education) South 24 Parganas, allegedly has not taken any action pursuant to the recommendation of the school and by granting approval of services of the writ petitioner. The petitioner says that the school was upgraded from a Junior High School to High School with effect from May 01, 2009. Consequently additional posts of group 'D' staff were created and sanctioned due to upgradation of the school.
5. The petitioner's further ground is that he has been employed in the school as against the sanctioned, vacant and substantive post and work there for more than 02 years continuously without any break. Therefore, according to the petitioner, his right has accrued, to be made permanent by way of grant of approval in his service. He has made representation before the respondent authority on June 29, 2012, praying for approval of service

but to no effect whatsoever. He also moved writ petition before this Court being No. WP 20506 (W) of 2012. This Court by dint of order dated January 3, 2013 as directed the respondent No. 3/ District Inspector of Schools (Secondary Education), South 24 Paraganas to consider his representation and pass a reasonable order.

6. The petitioner's grievance is that respondent has blatantly violated to comply with the Court's order as above. The petitioner's further grievance is with respect to the recommendation order of the West Bengal Regional School Service Commission dated November 19, 2012 whereby the petitioner has been recommended for appointment as a qualified candidate of the 1st RLST, 2010 in the post of a 'Peon'. He submits that his service ought to have been approved with effect from the date of his joining i.e. December 24, 2008 and not from a date pursuant to the recommendation of the West Bengal Regional School Service Commission vide letter dated November 19, 2012.
7. For the reasons inter alia as above, the petitioner seeks relief in this case that the respondent No. 3/District Inspect of School be directed to accord approval of appointment of the petitioner as a non-teaching staff of the respondent school with effect from the date of his joining therein.
8. Mr. Anindya Sundar Das, learned advocate for the petitioner has submitted that petitioner's appointment was for a short term due to the sanctioned post having fell vacant upon retirement of the permanent incumbent employed therein. He submits that in such factual situation, in the petitioner's case the provision under Rule 8 (1) (a) '*proviso*' of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005

should be made applicable. The petitioner has not denied that prior sanction of the respondent authority was not obtained before appointment of the petitioner in the said post. However, according to the learned advocate for the petitioner, prior sanction for his appointment was not necessary in view of the provision of the Rules of 2005 as mentioned above. He submits that since the petitioner's appointment was on short terms basis, for such appointment no sanction was required to be obtained in accordance with the said 'proviso'.

9. Mr. Anindya Sundar Das, learned advocate for the petitioner has also relied on a judgment of the Supreme Court in **Jacob M. Puthuparambil and Ors. Vs. Kerala Water Authority and Ors.** reported in **AIR 1990 Supreme Court 2228**. The Supreme Court has held that interpretation of Rule must be in consistence with the Constitutional philosophy. The Court has held that, ***"the rule must be so interpreted if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long. and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences"***.
10. Accordingly, learned advocate for the writ petitioner has insisted that the instant writ petition be allowed.

11. There is strong objection of the respondent state as to the contentions and prayer of the writ petitioner that the appointment of the petitioner was illegal and not in consistence with the existing Rules and procedures.
12. Mr. Gourav Das, learned advocate for the respondent has submitted on the basis of the Rules of 2005 that petitioner was appointed on a date on which the Rules of 2005 were prevalent and governing the field. Though, however, without following the provisions thereof, he says, that the petitioner was appointed in the respondent/school. As a matter of fact, this has remained uncontroverted in this case that the petitioner did not have to face any selection process, for being appointed in the school. Therefore, according to the respondent, the petitioner's appointment is completely de hors the existing Rules and illegal and that his service cannot be approved.
13. With reference to the judgment of Hon'ble Supreme Court in ***Secretary State of Karnataka Vs. Uma Debi*** reported in **2006 (4) SCC(1)**, learned advocate for the State has submitted that the law is now well settled pursuant to the said judgment of the Supreme Court that an irregular appointee may be regularised upon discharging prolonged services, but in case of an appointment which is made beyond the existing Rules and only illegally regularisation of service is only impermissible. Therefore, according to the State, complying the principles as laid down by the Supreme Court in Uma Devi's case (supra), the appointment granted to the petitioner is only illegally and without complying with the existing Rules (i.e. provisions of Rules of 2005); then the same cannot be approved. For the reasons as argued by the State and narrated above, Mr.

Gourav Das, learned advocate for the State seeks dismissal of the instant writ petition.

14. There is no dispute in this case that the recruitment process as envisaged under Rule (5) of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005 was not followed in case of appointment of the writ petitioner for the respondent's school. Rule (5) of the Rules of 2005 has provided for a Group-D staff of the school be recruited on the basis of selection only (direct recruitment) (as per Rule 5(1)). Rule 5(2) thereto has provided that selection of a candidate in a school shall be made by a selection committee, formation of which should abide by the provision of the said Rule. In this case there is no material on record to suggest or show that appointment of the present petitioner has been pursuant to a duly initiated selection process, as envisaged in the Rules of 2005. In so far as regarding applicability of the Rules of 2005 as above, the same has remained undisputed in the instant case.
15. Admittedly, no prior sanction was obtained by the school authority before engaging the writ petitioner is a Group-D staff in the school. The petitioner's argument is that since his appointment was for a short term period, therefore, in accordance with Rule 8 (1) (a) *proviso* no prior sanction was incumbent at all. However, it is evident that such argument of the petitioner is based on frivolous or no grounds at all. The Court is compelled to notice that the petitioner's prayer is categorically based on the reasoning i.e. appointment has been against a sanctioned vacancy and due to retirement of a permanent employee. The petitioner's argument is self contradictory. He demolishes his own case, by earlier referring to that his appointment was against vacant sanctioned post in which he has

discharged duties continuously without any break, for more than 2 years period and contradicting the same later, by stating that he was given short term appointment is the post. Fact remains that he cannot be said to have been given short term appointment, as neither in his appointment letter dated December 15, 2008 any term has been mentioned, nor that he has ever been discontinued after expiry of a particular period of time. Hence, this Court finds that Rule 8 (1) (a) *proviso*, is not attracted or coming to aid the petitioner in any way.

16. The Supreme Court has settled the law in ***Uma Devi's case (supra)***, that services of persons irregularly appointed, who have worked for 10 years and more in duly sanctioned posts may be approved without the process of recruitment being mandatorily followed. That is not so in case of appointments not made in terms of the prevalent law and Rules. The Court has termed such appointments as 'illegal' and not sustainable. The ratio decided by the Supreme Court in case of ***Jacob M. Puthuparambil (Supra)***, is in line not hostile to the ratio as decided in ***Uma Devi's case (supra)***, in which the Supreme Court has held that compliance of the existing Rule as regards basic requirement like qualification etc. would be necessary for regularisation of an incumbent in service.

17. This is being the settled position of law, this Court is unable to find merits in the prayers of the writ petitioner made in this case. Hence the same is liable to be dismissed.

18. With the above observations and directions, the writ petition being WPA 4028 of 2013 is dismissed, along with the pending applications, if any.

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

(Rai Chattopadhyay, J.)