

14.05.2026
Item No.04
Court No.11
KCP

**FMA 541 of 2026
with
IA No. CAN 1 of 2026
and
IA No. CAN 2 of 2026**

**State Project Director,
Paschim Banga Sarva Shiksha Mission
- Versus -
Al-Khatib Shaikh & Ors.**

Mr. Arjun Ray Mukherjee
Ms. Saheli Mukherjee
Ms. Debapriya Mitra
..... For the appellant

Mr. Biswarup Biswas
Mr. Pradip Kumar Ghosh
Ms. Nupur Choudhuri
..... For the respondent no.1

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred by the State Project Director, Paschim Banga Sarva Shiksha Mission challenging a judgment dated 14th May, 2025 passed by the learned single Judge in a writ petition being WPA 7830 of 2020. In connection with the same, an application for condonation of delay being CAN 1 of 2026 and an application for stay being CAN 2 of 2026 have been filed.

Mr. Arjun Ray Mukherjee, learned advocate appearing for the appellant submits that after receiving a server copy of the judgment dated 14th May, 2025, the appellant found certain typographical

errors. Accordingly, the matter was mentioned before the learned single Judge but as Her Ladyship was mostly sitting in a Division Bench at that juncture, the matter could not be listed and heard. In view thereof, a formal application for rectification was filed which was taken up for hearing on 20th February, 2026 and the Court was pleased to correct the typographical error. Immediately thereafter, the appeal was preferred. In view thereof, there had been no intentional delay on the part of the appellant in preferring the appeal.

Mr. Biswas, learned advocate appearing for the writ petitioner/respondent no.1, namely, Al-Khatib Shaikh (in short, Al-Khatib) denies the contention of Mr. Mukherjee and submits that the delay occurred due to negligence on the part of the appellant.

There were certain typographical errors in the judgment and as it appears that the appellant, upon mentioning, ultimately filed an application for such correction, the time expended in the midst thereof may not be construed to have occurred for any laches on the part of the appellant. In view thereof, the delay in preferring the appeal is condoned and the application being CAN 1 of 2026 is disposed of.

With the consent of the parties, the main appeal along with the application for stay being CAN 2 of 2026 are taken up for final hearing.

Records reveal that Al-Khatib participated in a selection process for appointment to the post of a para teacher. Upon completion of the selection process, a panel was prepared and Al-Khatib was empaneled. Though the first empaneled candidate tendered resignation during validity of the panel, the authorities did not issue any letter of appointment to Al-Khatib. Aggrieved thereby, he preferred a writ petition being W.P. 8542 (W) of 2010 which was disposed of by an order dated 13th September, 2012. Complying with the said order, Al-Khatib was issued a letter of appointment on 16th November, 2012 and he immediately joined the concerned post. Subsequent to his appointment, the competent authority issued a notification dated 30th July, 2013 pertaining to enhancement of consolidated remuneration of para teachers, who were on the pay roll as on 1st June, 2010 and who have completed three years of service as on 1st June, 2013. The authorities, however, denied such enhancement of remuneration to Al-Khatib. In view thereof, he preferred another writ petition being WP 23125 (W) of 2019 which was disposed of by an order dated 24th

December, 2019, directing the appellant to consider Al-Khatib's representation and to dispose of the same, in accordance with law. Pursuant to such direction, the appellant passed an order on 8th June, 2020 rejecting Al-Khatib's claim for enhancement of remuneration. Aggrieved thereby, Al-Khatib preferred a writ petition being WPA 7830 of 2020 and the same was disposed by a judgment dated 14th May, 2025 accepting Al-Khatib's claim and setting aside the order dated 8th June, 2020 passed by the appellant. The said judgment has been impugned in the present appeal.

Mr. Mukherjee, argues that the learned single Judge erred in law in setting aside the order dated 8th June, 2020 though the notification dated 30th July, 2013 explicitly provided *inter alia* that '*only those personnel who were on the roll on 01-06-2010 and got the benefit of 60 years and who have completed three years' service as on 1st June, 2016*' would be entitled to enhancement of consolidated remuneration.

He contends that the appellant being a functionary of the Paschim Banga Sarva Shiksha Mission is under an obligation to follow the government notifications pertaining to enhancement of remuneration of para teachers. The order dated 8th June, 2020 was passed by the appellant in strict consonance with the

notifications issued by the State and as such the learned single Judge ought not to have entertained the writ petition.

He further argues that Al-Khatib was granted appointment *vide* memo dated 16th November, 2012 and pursuant thereto, he joined the post on 1st December, 2012. Having accepted such letter of appointment, he cannot claim to have been appointed retrospectively on and from the date of resignation tendered by the 1st empaneled candidate. In the said conspectus, the learned single Judge ought not to have exercised discretion in favour of Al-Khatib *moreso* when there was no error in the decision making process.

Mr. Biswas, however, denies and disputes the contention of Mr. Mukherjee and submits that though the vacancy occurred during the period of validity of the panel due to resignation of the first empanelled candidate, Al-Khatib being the next empanelled candidate ought to have been immediately appointed by the authorities. For the delay and inaction on the part of the authorities to immediately grant such appointment, Al-Khatib cannot be made to suffer. Such issue when urged before the Court in the earlier round of litigation in the writ petition being W.P. 8542 (W) of 2010, it was contended on behalf of the

appellant that since there was a ban towards engagement of para teachers, appropriate steps could not be taken for appointment. Such defence, as urged, was not accepted by the learned Court in view of an order passed by a co-ordinate Bench of this Court in an appeal being MAT 1004 of 2012 on 6th August, 2012 wherein it was categorically observed that the appointment of the concerned incumbent was pertaining to a vacancy which occurred prior to imposition of the embargo. On the rudiments of such reasoning, the writ petition was disposed of directing the District Project Officer to issue letter of appointment and ultimately such appointment letter was issued *vide* memo dated 16th November, 2012. Having not challenged the said order dated 13th September, 2012 passed in W.P. 8542 (W) of 2010, the appellant could not have been denied the benefits of enhancement of remuneration treating Al-Khatib to have completed three years of service.

He argues that in the case of one Shyamal Kumar Biswas involving similar facts, the appellant herein passed an order on 1st November, 2019 granting the benefits of enhancement of remuneration and as such the appellant cannot apply a different yardstick in the present case.

In reply, Mr. Arjun Ray Mukherjee argues that even after appointment in 2012, Al-Khatib did not approach the Court contemporaneously. In the midst thereof, the validity of the panel, which was prepared in the year 2007, expired and in such changed circumstances Al-Khatib ought not to have been granted the benefits of enhancement of consolidated remuneration.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, Al-Khatib participated in a selection process which was initiated in the year 2007 to fill up an existing vacancy in the concerned school. The first empanelled candidate tendered resignation within the period of validity of the panel. However, the authorities did not grant appointment to Al-Khatib being the next empanelled candidate on a purported plea that a financial ban was operative towards engagement of para teachers. It is only after the order dated 13th September, 2012 was passed in the earlier writ petition being WP 8542 (W) of 2010, Al-Khatib was appointed by a letter dated 16th November, 2012. In view thereof, the learned single Judge, in our opinion, rightly observed that the delay which

occurred towards grant of appointment is clearly attributable to the appellant.

The ground for denial of appointment to Al-Khatib contemporaneously with the resignation of the first empanelled candidate was for existence of a financial embargo but such defence towards denial of appointment was rejected by the order dated 13th September, 2012 which had not been challenged by the appellant and as such the learned single Judge rightly observed that Al-Khatib's appointment by virtue of the said order 13th September, 2012 would relate back to the date the vacancy arose.

The learned single Judge upon dealing with the factual issues arrived at specific findings and we do not find any patent error of law in the same warranting interference in appeal.

Accordingly, the appeal and the stay application are dismissed.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)