IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK

WPA 19888 of 2026
Tarikul Molla & Ors.
versus
State of West Bengal & Ors.
with
WPA 19902 of 2026
Bimalendu Bikash Tung & Ors.
versus
The State of West Bengal & Ors.
with
WPA 19910 of 2026
Syed Ahyea Ali & Anr.
versus
The State of West Bengal & Ors.
with
WPA 19914 of 2026
Ramkrishna Mandal & Ors.
versus
The State of West Bengal & Ors.
with
WPA 19923 of 2026
Mrinal Kanti Das & Ors.
versus
The State of West Bengal & Ors.

For the Petitioners in WPA 19888 of 2026, WPA 19902 of 2026 and WPA 19914 of 2026	:	Mr. Biswaroop Bhattacharya, Advocate Mr. Abu Sohel, Advocate Mr. Rahul Kumar Singh, Advocate Md. Danish Farooqui, Advocate
For the petitioners in WPA 19910 of 2026	:	Mr. Abhratosh Majumder, Senior Advocate Mr. Abu Sohel, Advocate
For the petitioners in WPA 19923 of 2026	:	Mr. Subir Sanyal, Senior Advocate Mr. Abu Sohel, Advocate
For the State in WPA 19888 of 2026	:	Mr. Lokenath Chatterjee, Advocate Mr. Brijendra Pratap Singh, Advocate Ms. Sneha Chatterjee, Advocate
For the State in WPA 19902 of 2026	:	Mr. Lokenath Chatterjee, Advocate Mr. Brijendra Pratap Singh, Advocate Ms. Sneha Chatterjee, Advocate Mr. Avik Biswas, Advocate

For the State in WPA 19910 of 2026	:	Mr. Lokenath Chatterjee, Advocate Mr. Brijendra Pratap Singh, Advocate Ms. Sneha Chatterjee, Advocate Mr. Rohit Banerjee, Advocate
For the State in WPA 19914 of 2026	:	Mr. Lokenath Chatterjee, Advocate Mr. Brijendra Pratap Singh, Advocate Ms. Sneha Chatterjee, Advocate Mr. Subit Majumder, Advocate
For the State in WPA 19923 of 2026	:	Mr. Lokenath Chatterjee, Advocate Mr. Brijendra Pratap Singh, Advocate Ms. Sneha Chatterjee, Advocate Mr. Swastik Saha, Advocate
For Madrasah Service Commission	:	Mr. Pratik Dhar, Senior Advocate Ms. Madhurima Sarkar, Advocate
For Madrasah Board	:	Mr. Nadeem Sulaiman, Advocate Mr. Mijanul Kabir, Advocate
For respondent no. 6/the Managing Committee	:	Mr. Soumen Kumar Dutta, Advocate Mr. Rajdeep Pramanik, Advocate
Heard on	:	06.08.2026, 10.08.2026
Judgment on	:	07.10.2026

Bivas Pattanayak, J. :-

1. By the present petitions the petitioners challenge the letter under memo no.684 (10)-ME dated 28th July, 2026 and memo no.688(2)-ME dated 29th July, 2026 issued by the respondent-Director of Madrasah Education, West Bengal whereby the petitioners have been called for a hearing to re-verify the validity and legality of the recruitment of the petitioners in teaching and non-teaching posts in different Madrasahs in the State of West Bengal.

2. The petitioners contend that they are all approved teaching and non-teaching staff of respective Madrasahs in the State of West Bengal. The petitioners were appointed during the period when certain provisions of West Bengal Madrasah Service Commission Act, 2008 *(hereinafter referred to as 'Commission Act, 2008')* was

declared *ultra vires* by the Hon'ble High Court at Calcutta *vide* judgment dated 9th December, 2015 passed in AST 192 of 2014. The said judgment was stayed by Hon'ble Supreme Court on 14th March, 2016 in SLP (C) no.6661 of 2016 *(Sk Mohd Rafique versus Managing Committee, Contai Rahamania High Madrasah & Ors)*. The details of appointment and approval of the petitioners in their respective Madrasahs as contended are provided herein below.

(i) The petitioners in WPA 19888 of 2026 *(In short 'WP-I')* are posted as Assistant teachers at ***Basirhat Aminia Senior Madrasah (Fazil), P.S-Basirhat, District-24-Paraganas (North)*** and were appointed on 10th March, 2016 and their approval were made on 28th November, 2016.

(ii) The petitioner nos. 1 to 4 in WPA 19902 of 2026 *(In short 'WP-II')* are Assistant teachers and petitioner no.5 is a Group-D Staff posted at ***Gimageria Welfare High Madrasah (H.S), P.S-Contai, District-Purba Medinipur*** and were appointed in the month of December, 2015. The approval of petitioner no. 1, 2 & 4 was initially made on 26th July, 2016 and extended from time-to-time till on 17th October 2016, such extension of approval was made until further orders. The petitioner nos. 3 & 5 were approved until further orders on 15th November 2016 and 2nd November 2016 respectively.

(iii) The petitioners in WPA 19910 of 2026 *(In short 'WP-III')* are posted as Assistant teachers at ***Contai Shawkatia Junior High Madrasah (English Medium), P.S-Contai, District-Purba Medinipur*** and were appointed on 27th January, 2016 and their approval were made on 15th November, 2016 until further orders.

(iv) The petitioners in WPA 19914 of 2026 *(In short 'WP-IV')* are posted as Assistant teachers at ***Majna High Madrasah, P.S-Contai, District-Purba Medinipur*** and

were appointed on 27th November, 2015. The approval of petitioner no. 1, 2 & 4 was initially made on 26th July, 2016 and extended from time-to-time till on 17th October 2016, such extension of approval was made until further orders. The petitioner nos. 3 & 5 were approved until further orders on 15th November 2016.

(v) The petitioner nos. 1 to 5, 7 and 8 in WPA 19923 of 2026 *(In short 'WP-V')* are posted as Assistant teachers and petitioner no.6 is a librarian (non-teaching staff) at ***Contai Rahamania High Madrasah (H.S), P.S-Contai, District-Purba Medinipur***. The petitioner nos. 3, 4, 5 and 6 on being appointed, joined on 14th December, 2015. The petitioner nos. 1, 7 & 8 on being appointed, joined on 21st December, 2015. The petitioner no.2 on being appointed, joined on 18th January, 2016. The approval of petitioner nos. 1, 3, 4 & 5 were initially made on 26th July, 2016 and extended from time-to-time till 17th October 2016, such extension of approval was made until further orders. The petitioner nos. 6, 7 & 8 were approved on 2nd November, 2016 until further orders. The petitioner no.2 was approved on 15th November, 2016 until further orders.

3. The petitioners further contend that the services of the petitioners were approved by the State respondents pursuant to the orders of the Hon'ble Supreme Court and was subject to the final outcome of SLP (C) no. 6661 of 2016 *[Sk Mohd Rafique (supra)]*. The Hon'ble Supreme Court *vide* its final judgement dated 6th January 2020 passed in the aforesaid appeal expressly held that the appointments made by the Madrasas after the judgment passed by the Hon'ble Division Bench shall be deemed to be valid for all purposes. The impugned memo dated 29th July 2026 seeks to reopen a settled issue nearly after a decade citing a subsequent judgment of Hon'ble Supreme Court passed in

Najma Khatun and Others versus State of West Bengal and Others[1] on 13th July 2026, which is restricted only to the petitioners therein and is not at all applicable to the present petitioners as they were neither parties to the said proceeding nor their appointments were scrutinized by the Committee whose report was considered by the Hon'ble Supreme Court in the said case. The impugned memo is wholly without jurisdiction, barred by principles of *res judicata*, estoppel and inordinate delay and is based on a patent misreading of the law. The respondent-Director of Madrasah Education has no statutory power of review and thus his action is nothing but an attempt to unsettle the rights vested with the petitioners which have been ratified by the highest court of the land. Being aggrieved by and dissatisfied with the impugned memos of respondent-Director of Madrasah Education, the petitioners have preferred the aforementioned writ petitions.

4. All the aforementioned writ petitions were taken up together for consideration and heard analogously, as the matter pertains to similar issues.

5. Both learned advocates representing West Bengal Madrasah Service Commission *(in short 'Commission'),* added respondents, as well for the State respondents submitted that they would not be filing any affidavit-in-opposition to the aforementioned writ petitions since the issues involved in the present writ petitions precisely relate to point of law.

6. Mr. Biswaroop Bhattacharya, learned advocate for the petitioners in WP-I, WP-II, WP-IV submitted that the petitioners have already been approved by the competent educational authority upon scrutiny of recruitment records and supporting documents forwarded by the respective institutions. Upon grant of such approval, the petitioners

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[1] ***2026 SCC Online SC 1313***

became approved Assistant teachers and their salaries were duly released from the State exchequer. The petitioners have continuously been discharging their functions in their respective institutions for nearly last 10 years. The memorandum under challenge proceeds on an erroneous and misconceived premise that the judgement of the Hon'ble Supreme Court dated 13th July 2026 passed in *Najma Khatun (supra)* authorizes or mandates the Director of Madrasa Education to re-verify and reopen every appointment. The Hon'ble Supreme Court has not issued any such direction to reverify the credentials of the teaching staff who have already been approved. Thus, the very foundation upon which the impugned memos have been issued is legally unsustainable. The respondent authorities themselves accepted the validity of the petitioners' appointment by releasing salary in their favour which is continuing for almost a decade treating the petitioners as approved Assistant teachers. Having acted upon such approvals for several years, the respondents are stopped from proceeding on a contrary basis without following the due process of law. By the impugned memos the respondent authorities seek to reopen matters which have already been examined by the competent educational authorities by granting approval in favour of the petitioners.

In the year 2008, the Government of West Bengal enacted Commission Act, 2008 and Section 8 of the said Act *inter alia* provided that it shall be the duty of the Madrasa Service Commission to select and recommend teachers in the vacant posts. The Managing Committee of *Contai Rahamania High Madrasah* challenged the constitutionality of the Commission Act by filing a writ petition being WPA 20650 (W) of 2013 before the Hon'ble High Court. By its judgement dated 12th March, 2014, the learned Single Judge of Hon'ble Court declared sections 8, 10, 11 and 12 *ultra vires* the Constitution of India. The said judgment was assailed before the Hon'ble Division

Bench in Letters Patent Appeal being AST No. 192 of 2014 *(Sk Md Rafique and others versus Managing Committee of Contai Rahamania High Madrasah and others)*. However, the Hon'ble Division Bench *vide* its judgement dated 9th December, 2015 upheld the judgement of learned Single Judge observing that the Commission Act violates the fundamental rights. The aforesaid orders were challenged before the Hon'ble Supreme Court by way of Special Leave Petition being SLP(C) 6661 of 2016. During the pendency of such appeal before the Hon'ble Supreme Court, approvals of appointment were granted to the petitioners which was subjected to the final outcome of the SLP. On 6th January 2020 the appeal was disposed of by the Hon'ble Supreme Court ***(Sk Mohd Rafique versus Managing Committee, Contai Rahamania High Madrasah and Others[2])*** whereby the orders passed by the Hon'ble High Court were set aside and the provisions of sections 8, 10, 11 and 12 of the Commission Act were held to be valid and constitutional. However, the appointments of teachers made by the Madrasah concerned after the disposal of matters by the Hon'ble High Court were protected and deemed to be valid for all purposes. The petitioners being appointed during the said window period were thus protected by the order of the Hon'ble Supreme Court. The rights of the petitioners so far as their appointment is concerned have crystallized after the disposal of the appeal by the Hon'ble Supreme Court. The impugned memos seek to reopen and reverify such approvals of service of the petitioners the legality of which has already been decided by the Hon'ble Supreme Court. Further the memos under challenge have been issued in complete disregard of the doctrine of administrative finality that too after a lapse of 10 years. Pursuant to such approvals, salaries have been

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[2] ***(2020) 6 SCC 689***

released which clearly shows that such administrative decision has been acted upon consistently and thus cannot be reopened after inordinate lapse of time.

Some of the teachers who did not receive salaries filed contempt application before the Hon'ble Supreme Court and a Committee was constituted to decide on certain questions which were formulated by the Hon'ble Supreme Court in ***Snehasis Giri and Others versus Subhasis Mitra***[3]. Be that as it may, the petitioners were not parties to the said proceedings since the petitioners regularly received salaries from the State respondents. Neither any notice was issued to the petitioners by the said Committee nor were they called to produce documents before the said Committee. There are also no adverse findings of the Committee so far as the validity of appointments of the petitioners are concerned. The appointments of the teachers who were before the Hon'ble Supreme Court were found to be illegal by the Committee. Such finding of the Committee was challenged in *Najma Khatun (supra)* where the appointments of the said teachers who were before the Hon'ble Supreme Court were struck down. The observations of the Hon'ble Supreme Court in the said proceeding cannot be mechanically extended to the petitioners, whose appointments and approvals were never questioned.

In light of his aforesaid submissions, he prayed that the impugned memos under challenge should be set aside in the interest of justice.

7. Mr Subir Sanyal, learned Senior Advocate appearing for the petitioners in WP-III submitted that the approval of appointment of the petitioners was never questioned before Hon'ble Supreme Court. The petitioners since their appointments have been receiving salaries. As the question of validity and constitutionality of the Commission Act, 2008 was pending before the Hon'ble Supreme Court in Civil Appeal no. 5808 of

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[3] ***(2023) 18 SCC 529***

2017 (arising out of SLP 6661 of 2016), the approval of the appointment of the petitioners were granted subject to the final outcome of the pending appeal. The aforesaid appeal was disposed of by the Hon'ble Supreme Court on 6th January 2020 whereby the appointment of the petitioners was protected. The decision of Hon'ble Supreme Court in *Najma Khatun (supra)* dated 13th July 2026 is restricted only to the petitioners who were before the Hon'ble Court. The approval of appointment granted to the petitioners during the window period has been protected by Hon'ble Supreme Court in *Sk Md Rafique (supra)* and thus such approvals of appointment given to the petitioners having been crystallized cannot once again be called upon for reverification of their status. Referring to the affidavit of compliance submitted before the Hon'ble Supreme Court by the Principal Secretary, Minority Affairs and Madrasah Education Department, Government of West Bengal, he submitted that as the State respondents in such compliance released the salaries of the petitioners upon proper verification of their appointments, hence the approval of appointments of the petitioners cannot be called in question by way of the impugned memo at a later stage after a lapse of a decade. He seeks for quashing of the impugned memo.

8. Mr. Abhrotosh Majumdar, learned Senior Advocate appearing for the petitioners in WP-V submitted that certain provisions of the Commission Act, 2008 were declared *ultra vires* by the learned Single Judge which was upheld by the Hon'ble Division Bench on 9th December 2015. The said order of the Hon'ble Division Bench was stayed by the Hon'ble Supreme Court in appeal on 14th March 2016. The appointments that were given by the Managing Committee of the respective Madrasas in between the period from the date of order passed by the Hon'ble High Court till the such order was stayed by the Hon'ble Supreme Court were protected by the Hon'ble Apex Court *vide*

its judgment dated 6th January 2020 in the appeal being 5808 of 2017, arising from the order of the Hon'ble High Court. The petitioners were given appointment during the said window period. The appointments of the petitioners were approved subject to result of the appeal. Thus, after disposal of the appeal the approval of appointments granted in favour of the petitioners has reached its finality and cannot be once again reopened and reverified by State respondents on the basis of observation of Hon'ble Supreme Court in *Najma Khatun (supra)* for the simple reason that the petitioners were not parties in the said proceedings and the judgement passed in the said writ petition is restricted to the petitioners who were before the Hon'ble Supreme Court. Moreover, upon proper scrutiny and verification of the appointments of the petitioners, salaries were released in favour of them. Hence the impugned memo for reopening a settled issue is arbitrary and ought to be quashed at the threshold in order to avoid any future complications.

9. On the contrary, Mr. Pratik Dhar, learned Senior Advocate appearing for the Commission, the added respondents, at the outset indicated that the as petitioners have heavily relied on the observation of Hon'ble Supreme Court in paragraph no.64 of its judgment in *Sk Md Rafique (supra)* contending that their appointments have been protected by the Hon'ble Supreme Court, hence it necessitates consideration whether such observation ended thereat or it travelled further and subsequently examined by the Hon'ble Supreme Court in its later judgments. In the event the decision in *Sk Md Rafique (supra)* put to rest all disputes and controversies, then the contention of the petitioners basing on such observation can be accepted, if not, then the status of the petitioners needs to be examined by the court. Some of the teaching and non-teaching staff of different Madrasas since did not receive salaries filed contempt application before the Hon'ble Supreme Court alleging wilful and deliberate disobedience of the

order passed by the Hon'ble Court in *Sk Md Rafique (supra),* which came to be considered in *Snehasis Giri (supra)*. In the said decision the Hon'ble Supreme Court in order to examine the validity and legality of the appointments of the petitioners therein formulated certain questions and formed a Committee headed by Justice Debi Prasad Dey, retired Judge of this Hon'ble Court to consider the claims of the petitioners. Upon due examination, the Committee found that none of the petitioners' appointment is legal and valid. Such finding of the Committee was challenged by the petitioners therein in *Najma Khatun (supra)* wherein the Hon'ble Supreme Court was pleased to struck down the appointments of all the petitioners who were before the Hon'ble Supreme Court. Therefore, the observation of the Hon'ble court in *Sk Md Rafique (supra)* in paragraph no.64 did not end in itself rather it was considered and examined in subsequent decisions. Hence, the tenability of the impugned memos under challenge has to be decided in the light of the observation made by the Hon'ble Supreme Court in *Najma Khatun (supra)*. This gets further support from the observation of Hon'ble Apex Court in its above decision noting that the closure of the appellate proceedings, triggered by the challenge to the Commission Act did not bring about a quietus to the controversy rather it was quickly followed by initiation of petition alleging contempt of order passed in *Sk Md Rafique (supra)*. Further the Hon'ble Supreme Court has also observed that building a case placing reliance on the observation in paragraph no. 64 of *Sk Md Rafique (supra)* in the changed circumstances is like building on sand and to rest a claim on such observation is to mistake a whisper for authority. From the above observations of the Hon'ble Supreme Court, it is quite clear that one cannot rest his claim only on the basis of the observations in paragraph no.64 of *Sk Md Rafique (supra).*

The period between 9th December 2015, when the provisions of Commission Act, 2008 was struck down by the Hon'ble Division Bench till 14th March 2016, when such order was stayed by the Hon'ble Supreme Court, was the window period when appointments were made following notifications dated 9th February 2015 and notification dated 4th March 2016. By the impugned memos the State respondents have sought to examine whether the appointments of the petitioners were made following the aforesaid notifications. Challenging the at the stage of examination of the appointments of the petitioners is absolutely premature. The Hon'ble Apex court in *Najma Khatun (supra)* also records that the above notifications were required to be followed by the Managing Committee of the Madrasahs, hence verification of such appointments becomes furthermore imperative and necessary. The said impugned memos are nothing but a mere show-cause notice which does not give rise to any cause of action as because it does not result in any adverse order affecting the rights of the parties. Until and unless the notice has been issued by a person having no jurisdiction, a writ petition should not be entertained as it is premature. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in (i) ***Union of India and another versus Kunisetty Satyanarayana***[4]; (ii) ***Union of India and Others versus Coastal Containers Transporters Association and Others***[5]**.**

Furthermore, although the petitioners were not parties in *Najma Khatun (supra)* yet it cannot be contended that the observations in the aforesaid decision is restricted only to the petitioners, who were before the Hon'ble Supreme Court, for the simple reason that the validity and legality of appointments made in Madrasas throughout the State of West Bengal was examined applying certain norms which equally applies in case of the

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[4] ***(2006) 12 SCC 28***
[5] ***(2019) 20 SCC 446***

petitioners herein. In support of his contention, he relied on the decision of Hon'ble Madras High Court passed in ***Union of India Divisional Railway Manager, Divisional Office Personnel Branch Southern Railway Tiruchirapalli & one other versus Satish Kumar Rajan & one other***[6]. Moreover, the aforesaid judgement of the Hon'ble Supreme Court is a judgment in *rem* as it determines the status of a person or a thing as distinct from the particular interest in it of a party to the litigation. Such a judgement is conclusive evidence for and against all persons whether or strangers of the matter actually decided and it settles the destiny of the *res* itself and binds all persons claiming validity of their appointments. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Vidya Drolia and Others versus Durga Trading Corporation***[7] alongwith batch of Special Leave Petitions. He seeks for dismissal of the writ petitions.

10. Mr. Soumen Dutta, learned advocate representing different Managing Committee of Madrasahs in all the aforementioned writ petitions submitted that all the petitioners have been duly appointed following the required criteria as per law and their approvals were also granted by the authority concerned subject to outcome of the final decision in *Sk Mohd Rafique (supra)*. Upon such judgment been delivered on 6th January, 2020, as per observation of Hon'ble Apex Court in paragraph no.64, the appointments of the petitioners were protected by the Hon'ble Court. Relying on the decision of Hon'ble Supreme Court in ***Suganthi Suresh Kumar versus Jagdeeshan***[8] he submitted that it is impermissible for the Hon'ble High Court to overrule the decision of the Hon'ble Apex Court on the ground that the Hon'ble Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High

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[6] ***2016 SCC Online Mad 26537***
[7] ***(2021) 2 SCC 1***
[8] ***(2002) 2 SCC 420***

Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The Hon'ble High Court cannot question the correctness of the decision of the Hon'ble Supreme Court even though the point sought before the Hon'ble High Court was not considered by the Hon'ble Supreme Court. Moreover, the State respondents in contempt proceeding before the Hon'ble Court did not raise any objection to the appointments of the petitioners rather it continued to grant salary to the petitioners on regular basis. Thus, the appointments of the petitioners cannot be touched after a lapse of considerable period.

11. In reply, Mr. Bhattacharya, leaned advocate for the petitioners in WP-I, WP-II, WP-IV relying on the decision of Hon'ble Supreme Court in ***Ahmedabad St. Xavier's College Society versus State of Gujarat***[9]**,** submitted that the Managing Committees of Madrasahs are autonomous bodies and the appointments made by it during the window period are in exercise of such an autonomy. Thus, the appointments of petitioners in WP-II by *adhoc* Managing Committee are nothing but to administer effectively and manage and conduct the affairs of the institutions. The choice in the personnel of management is a part of the administration. Further the State will always have a right to see that there is no mal-administration. If there is mal-administration, the State will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students. Since in the present context there is no case of mal-administration of the

[9] ***(1974) 1 SCC 717***

Madrasahs, hence the action of the State in issuing the impugned memos would disturb the autonomy of minority institutions.

Further when the appointment of the petitioners had been finally adjudicated by the Hon'ble Supreme Court upon due consideration, in such circumstances, it is no longer open to the State to go behind the orders and truncate the effect of the orders passed by the Hon'ble Court by hovering over the rules to get round the result, to legitimise legal *alibi* to circumvent the orders passed by the Court. To buttress his contention he relied on the decision of Hon'ble Supreme Court passed in ***T.R Dhanajaya versus J.Vasudevan***[10].

Furthermore, relying on the decision of Hon'ble Supreme Court in ***Delhi Development Authority versus Tejpal and Others***[11] he submitted that if a case has already been decided, it cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law.

12. Mr. Sanyal, learned Senior Advocate appearing for the petitioners in WP-III, in reply, submitted that the impugned memo is susceptible to judicial review since it has an adverse civil consequence. An administrative order having adverse civil consequence can give rise to justiciable right and it is amenable to writ jurisdiction. Moreover, if such notice to show-cause is issued by an authority not having jurisdiction to do so, then such notice can be challenged in a writ proceeding. In support of his contention, he relied on the decision of a Co-ordinate Bench of this Court passed in ***Abdul Malek versus State of West Bengal & Ors.***[12]

13. Mr. Majumdar, learned Senior Advocate appearing for the petitioners in WP-V submitted that Article 142 of the Constitution enables Hon'ble Supreme Court to pass

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[10] ***(1995) 5 SCC 619***
[11] ***(2024) 7 SCC 433***
[12] ***2012 SCC OnLine Cal 4989***

such an enforceable decree or order as is necessary for doing complete justice in any case or matter. Article 142 of the Constitution is supplementary in nature and cannot supplant substantive provisions of the statute. It is the power that gives preference to equity over the law enabling the moulding of a relief as distinguished from a declaration of law as contemplated under Article 141 of the Constitution. While directions issued under Article 142 of the Constitution do not constitute a binding precedent, a declaration of law under Article 141 of the Constitution does constitute a binding precedent. The decision in *Najma Khatun (supra)* since it is only restricted to the petitioners who were before the Hon'ble Court, hence it cannot be said to be a declaration of law by the Hon'ble Court under Article 141 of the Constitution of India rather it can be considered a decision under 142. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Girish Kumar Suneja versus Central Bureau of Investigation***[13]**.**

Moreover, a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Hon'ble Supreme Court divorced from the context of the question under consideration and treat it to be complete law decided by Hon'ble Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. Therefore, since the decision in *Najma Khatun (supra)* is divorced from the context of the question under consideration, the observation made therein cannot be applied to the facts of the present case. In support of his contention, he

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[13] ***(2017) 14 SCC 809***

relied on the decision of Hon'ble Supreme Court passed in ***Mehboob Dawood Shaikh versus State of Maharashtra***[14]**.**

14. Upon hearing the learned advocates for the respective parties, the only issue which falls for consideration is whether respondent-Director of Madrasah Education is/was justified in issuing the impugned memos dated 28th July/29th July, 2026 calling upon the petitioners, who are presently discharging their function as staff in different Madrasahs in the State, for verification of approval of their appointments.

15. Before examining the aforesaid issue, it would be appropriate to place on record certain facts which are germane to the present context as follows.

16. The State of West Bengal enacted the West Bengal Madrasah Service Commission Act, 2008 to provide for the Constitution of Madrasah Service Commission in the State and for matters connected with or incidental thereto. The statement of objects and reasons in relation to the Commission Act, 2008 stated that a need arose for setting up of a separate body for recommending panel of teachers for appointment in recognized aided Non-Government Madrasahs. In view of this, it was decided to set up the West Bengal Madrasah Service Commission. The proposed Commission would ensure the preparation of panel of teachers by recruitment in free, fair and transparent manner with a quality education for Madrasahs. The said Commission would also take into consideration the special recruitment of teachers in the Madrasahs system in the State.

17. The provisions of section 8, 10, 11 & 12 of the Commission Act, 2008 was challenged before the learned Single Judge of this court in writ petition no. 20650 (W) of 2013 by the Managing Committee of *Contai Rahamani High Madrasah* contending

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[14] (2004) 2 SCC 362

that by virtue of the Commission Act, 2008 the process of appointment of teachers in an aided Madrasahs, which was recognized as a minority institution, was taken over and entrusted to the Commission appointed under section 4 of the Commission Act, 2008 and the Commission was empowered under the provisions of the Commission Act, 2008 to make recommendations which would be binding on the Managing Committee of an aided Madrasahs. The provisions of the Commission Act transgressed on the rights of a minority institutions of choosing its own teachers. Such contention was accepted by the learned Single Judge and the writ petition was allowed on 12th March, 2014 declaring such provisions as *ultra vires* the Constitution. Being aggrieved by such judgement, some of the candidates including one *Sk Mohd. Rafique*, whose names were recommended by the Commission to be appointed as teachers in aided Madrasah filed appeal before the Hon'ble Division Bench being AST 192 of 2014. The State of West Bengal also filed an appeal being MAT 473 of 2014 and an application was also filed by the Secretary, West Bengal Madrasah Service Commission being CAN 3078 of 2014 challenging the very same decision of the learned Single Judge. All the appeals were dismissed by the Hon'ble Division Bench on 9th December, 2015 affirming the view taken by the learned Single Judge with the observation that the impugned legislation abrogated the fundamental rights of the minority community.

18. The decision of the learned Single Judge and the Hon'ble Division Bench was challenged before the Hon'ble Supreme Court in Civil appeal 5808 of 2017, arising out of SPL (C) 6661 of 2016 along with batch of other appeals and contempt petition by *Sk Mohd Rafique* and others. The Supreme Court stayed the operation of the aforesaid judgement of the Hon'ble High Court on 14th March 2016.

19. Numerous *interim* orders were subsequently passed on applications filed in connection with prayers for release of salary and allowances in favour of teachers and non-teaching staff who had been recruited after the Commission Act was declared as *ultra vires* and before the stay was granted by the Hon'ble Supreme Court. The stay was never vacated or modified. By order dated 17th November 2017 the Hon'ble Supreme Court permitted the selection process by the Commission to go on while restraining appointments unless otherwise directed by the Hon'ble Court. Further by order dated 17th May 2018 the Hon'ble Supreme Court lifted the restraining order and permitted appointments to be made from the merit list/panel of candidates prepared by the Commission in connection with the recruitment process of 2014. Orders were also passed directing payment of salary to those teaching and non-teaching staff who had been appointed in the Madrasahs after sections 8, 10, 11 & 12 were declared *ultra vires* and prior to grant of stay by the Hon'ble Supreme Court. Several contempt petitions were also filed alleging of non-compliance with the orders directing for release of salary and allowances. From time-to-time orders were passed for release of payments to those who had the essential qualifications for appointment.

20. The Hon'ble Supreme Court on 6th January 2020 allowed the appeals, setting aside the judgement and order of the Hon'ble High Court and wiped-out the invalidity of the Commission Act, 2008. *[See Sk. Mohd. Rafique (supra)]*. Relevant paragraphs of the said judgment are reproduced hereunder for the sake of convenience of discussion.

> *"58. The regime put in place by the State Legislature thus ensures that the Commission comprising of experts in the field would screen the talent all across the State; will adopt a fair selection procedure and select the best available talent purely on merit basis; and even while nominating, the interest of the minority institution will also be given due weightage and taken care of. The statutory provisions thus seek to achieve "excellence" in education and also seek to promote the interest of the minority institutions. The provisions satisfy the test as culled out in the decision of this Court in T.M.A. Pai Foundation case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] .*

59. In our considered view going by the principles laid down in the decision in T.M.A. Pai Foundation case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , the provisions concerned cannot, therefore, be said to be transgressing the rights of the minority institutions. The selection of the teachers and their nomination by the Commission constituted under the provisions of the Commission Act, 2008 would satisfy the national interest as well as the interest of the minority educational institutions and the said provisions are not violative of the rights of the minority educational institutions.

60. The aforesaid conclusions have been arrived at by us in keeping with the principles laid down by this Court in T.M.A. Pai Foundation case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] .

61. We are aware that in Brahmo Samaj Education Society [Brahmo Samaj Education Society v. State of W.B., (2004) 6 SCC 224 : 2 SCEC 618] , Sindhi Education Society [Sindhi Education Society v. State (NCT of Delhi), (2010) 8 SCC 49 : (2010) 2 SCC (L&S) 522 : 3 SCEC 743] and Chandana Das [Chandana Das v. State of W.B., (2020) 13 SCC 411] , decided after T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , this Court had also dealt with the question whether the authorities concerned could validly nominate teachers to be appointed in minority educational institutions. Brahmo Samaj Education Society [Brahmo Samaj Education Society v. State of W.B., (2004) 6 SCC 224 : 2 SCEC 618] did not specifically deal with the question whether rules were valid or not and left it to the authorities to bring the rules and regulations in conformity with the principles in T.M.A. Pai Foundation case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . Sindhi Education Society [Sindhi Education Society v. State (NCT of Delhi), (2010) 8 SCC 49 : (2010) 2 SCC (L&S) 522 : 3 SCEC 743] dealt with the issue in the context of reservation. It also found that the teachers nominated by the authorities concerned would not be compatible to teach in educational institutions run by linguistic minorities. In Chandana Das [Chandana Das v. State of W.B., (2020) 13 SCC 411] the basic issue was whether the institution concerned was a minority institution or not. Sindhi Education Society [Sindhi Education Society v. State (NCT of Delhi), (2010) 8 SCC 49 : (2010) 2 SCC (L&S) 522 : 3 SCEC 743] and Chandana Das [Chandana Das v. State of W.B., (2020) 13 SCC 411] dealt with statutory regimes which did not have any special features or matters concerning compatibility of teachers which could be required going by the special characteristics of the minority educational institutions. However, the additional feature in the present matter shows that the composition of the Commission with special emphasis on persons having profound knowledge in Islamic culture and theology, would ensure that the special needs and requirements of minority educational institutions will always be taken care of and thus the present case stands on a different footing.

62. We, therefore, have no hesitation in going by the test culled out in T.M.A. Pai Foundation [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] and hold that the provisions of the Commission Act, 2008 are not violative of the rights of the minority educational institutions on any count.

63. In the premises, while allowing these appeals, we set aside the view taken by the Single Judge [Contai Rahmania High Madrasah v. State of W.B., 2014 SCC OnLine Cal 5787 : (2014) 2 Cal LT 332] and the Division Bench [Sk. Mohd. Rafique v. Contai Rahmania High Madrasah, 2015 SCC OnLine Cal 10521] of the High Court and dismiss Writ Petition No. 20650 (W) of 2013 and other connected matters. We also hold Sections 8, 10, 11 and 12 of the Commission Act, 2008 to be valid and constitutional.

64. In the end, we declare all nominations made by the Commission in pursuance of the provisions of the Commission Act, 2008 to be valid and operative.

> *However, if after the disposal of the matters by the High Court any appointments are made by the Madarsahs concerned, such appointments of teachers shall be deemed to be valid for all purposes. But the Commission shall hereafter be competent to select and nominate teachers to various Madarsahs in accordance with the provisions of the Commission Act, 2008 and the Rules framed thereunder."*

21. After disposal of the aforesaid appeal, several petitions were filed alleging of contempt of the directions passed in *Sk Mohd Rafique (supra),* which came to be decided by the Hon'ble Supreme Court in *Snehasis Giri (supra)*. Upon considering the claims and counter claims of the parties, following order was passed by the Hon'ble Supreme Court.

> *"18. Accordingly, this Court exercising its powers under Article 142 hereby constitutes a Committee headed by Justice Debi Prasad Dey, retired Judge, Calcutta High Court. The Committee shall also consist of a Principal Secretary ranking officer of the IAS, who had served in the West Bengal cadre and stationed in Kolkata with experience in the Higher Education Department as well as a retired Registrar of one of the State Universities in West Bengal, residing in Kolkata. The State Government shall nominate the members other than the Chairman. The Committee is requested to consider the claims of the petitioner, keeping in mind the following:*
> *(a) Whether the madrasa or its managing committee was recognised by the State Government on the date on which the appointment was made?*
> *(b) Whether such appointments were made, of candidates who possessed the requisite prescribed qualifications and fulfilled the experience and other eligible conditions stipulated for the post concerned?*
> *(c) Whether such an appointment was made by following the recruitment procedure indicated in the Kolkata Gazette Notification dated 11-3-2015 (No. 93-SE/S/10R-14/2013-9-2-2015) and in Kolkata Gazette Notification dated 4-3-2016 (No. 486-MD/O/2M-11/2016)?*
> *(d) Whether the appointments were made against vacancies that existed and whether the vacancies conformed to the staffing pattern for the institution/madrasas concerned?*
> *(e) Whether after the appointments were made, the persons appointed actually worked on their respective posts?*
> *(f) Whether the appointments were actually made on the date of the appointment letter, or were backdated?*
> *19.xxxxxxxxx*
> *20. Ms Madhumita Bhattacharjee submitted that all necessary cooperation would be extended by the State Government, which is directed to provide infrastructure, and the necessary staff to the committee to complete its task. The State Government is directed to notify the Committee, within four weeks from today, and give appropriate publicity to those interested to seek verification of their claim. Such publicity shall be through appropriate advertisement in newspapers, both in English and in Bengali. In addition, the notification shall also be placed on the website of the State Government's Minority Affairs & Madrasah Education Department, Nabanna, Howrah. The notification shall indicate the time within which representations can be made. It is open to those*

> *claiming benefit, as well as those likely to be affected by the report, to represent to the committee, within the time stipulated. The committee shall also consider a suitable and practicable method of giving hearing to those interested."*

22. In compliance to the aforesaid direction, the Committee was constituted and notifications were issued inviting claims. The Committee examined the individual claims of a little less than 500 (five hundred) claimants, both teaching and non-teaching staff and prepared a report with its observation in respect of each and every claimant. Not a single teacher or non-teaching staff could substantiate his or her claim before the Committee in respect of validity of their appointment, resulting in rejection of such claims.

23. Being aggrieved by and dissatisfied with such rejection of claim by the Committee several writ petitions were filed before the Hon'ble Supreme Court, which were considered and decided in *Najma Khatun (supra)*. The relevant paragraphs are reproduced hereunder for the sake of convenience.

> *"41. In view of the order dated 14th March, 2016 granting stay, the judgment and order of the Division Bench under appeal, in which the judgment and order dated 12th March, 2014 of the Single Judge had merged, did not get "wiped out from existence". However, definitely the same was the operative judgment and order until 14th March, 2016; and, as soon as the stay was granted, it became inoperative. The order of stay read with the subsequent order dated 17th May, 2018, referred to above, thus, created a vacuum. Neither the MSC Act nor NOTIFICATION-I or NOTIFICATION-II could operate, which were issued in the aftermath of the two judicial decisions (Single Bench and Division Bench) of the High Court. To overcome the stalemate regarding filling up of vacancies, the Managing Committees of the madrasahs seeking to fill up vacant posts ought to have approached this Court to guide them as to which law should they follow. They could not have, on their own, proceeded with the appointment process perceiving NOTIFICATION-I or NOTIFICATION-II to be still valid and operative qua the madrasahs. As a stream cannot rise above its source, NOTIFICATION-I and NOTIFICATION-II, owing its existence to the judgments of the Single Judge and Division Bench of the High Court dated 12th March, 2014 and 9th December, 2015, respectively, could not remain operational once the latter judgment was stayed. Indeed, appointments came to be made in a couple of cases post reservation of judgment in Civil Appeal No. 5808 of 2017 by this Court. The undue haste in making the appointments without waiting for pronouncement of the reserved judgment and/or the ante-dating of documents to evade the consequences thereof, speak for itself. Finding merit in Mr. Ahmadi's argument, and apart from what we have held above as to unsustainability of the petitioners' claims, we also hold that any appointment made in any madrasah after 14th March, 2016 without*

> *obtaining express permission of this Court is also ex facie illegal and cannot be sustained.*
> *42. Consequently, we do hereby reject the claims of all the petitioners. Since the claims stand rejected, there is no question of these petitioners being entitled to any arrears of salary and allowances. Appointments not having been made either in accordance with NOTIFICATION-I or NOTIFICATION-II, the State cannot be fastened with any liability to release payment. Orders passed on the writ petitions restraining the respondents from dislodging these petitioners from service and/or directing payment of admissible salary and allowances stand vacated forthwith."*

24. In the backdrop of the aforesaid facts, let me revert back to the issue involved in the present writ petition. In order to sustain their prayers of challenging the impugned memos of respondent-Director of Madrasah Education, calling for the verification of the approval of appointment of the petitioners, much reliance has been placed on the observation of the Hon'ble Supreme Court in paragraph no. 64 in *Sk Mohd Rafique (supra)* wherein it has been observed that if after the disposal of the matters by the High Court any appointments are made by the Madarsahs concerned, such appointments of teachers shall be deemed to be valid for all purposes. Now it is to be seen that whether validity of appointment during the aforementioned period actually did crystalize and reached its finality or the Hon'ble Supreme Court in the subsequent decisions was pleased to revisit the issue. After the appeals were disposed of in *Sk Mohd Rafique (supra)*, several petitions were filed alleging of contempt of the directions made in *Sk Mohd Rafique (supra)*. All the petitioners contended that even during the pendency of the proceedings in appeal, contempt proceedings had been drawn seeking release of salaries of teachers who were appointed after the provisions of the Act were declared unconstitutional by the High Court. The petitioners therein based their claims to *interim* orders dated 10th May, 2016, 1st August, 2016 and 17th May, 2018 passed in *Sk Mohd. Rafique (supra)*, directing that those recruited or working during the pendency of the proceedings ought to be paid salary. It was also argued that the effect of the judgment is that even while upholding the provisions of the Act, the Court at the same time

protected the recruitment of the petitioners. In those circumstances, denial of the benefit of regular service to them on one pretext or the other by the respondent contemnors amounts to deliberate and wilful disregard of the Act, and calls for appropriate stringent action. Taking note of the aforesaid facts, the Court in *Snehasis Giri (supra)* observed as follows.

> *"11. In the present case too, this Court is of the opinion that the respondents' stand that without verification of the petitioners' appointment and whether the procedures prescribed were duly followed in respect of matters such as fulfilling eligibility conditions (essential qualifications and relevant experience); availability of vacancy; staff pattern in respect of madrasas where recognition was granted and if so for what period; whether the institution was aided and recognised or not or recognised and non-aided, and if so for what duration; whether a duly empowered selection body or bodies considered the candidature of the claimant before he/she was appointed and whether the committee or body selecting the individual/claimant was constituted in accordance with the rules or guidelines, etc. is justified. In these circumstances, this Court is of the opinion that further proceedings cannot be continued as no determination can be made unless there is a due verification in regard to the employment of each of the petitioners."*

With the aforesaid observation, the Hon'ble Supreme Court in *Snehasis Giri (supra)* constituted a Committee to verify the employment of the petitioners on the basis of the questions formulated therein which has already been reproduced in the foregoing paragraphs.

25. Further after the Committee appointed by the Hon'ble Supreme Court found that the appointments of none of the petitioners were validly made, the writ petitions were filed before the Hon'ble Supreme Court challenging the decision of the Committee in *Najma Khatun (supra)* wherein the Hon'ble Supreme Court observed in paragraph 5 (n) that closure of the appellate proceedings, triggered by the challenge to the MSC Act, did not bring about a quietus to the controversy. Rather, it was quickly followed by initiation of petitions alleging contempt of the directions made in *Sk. Mohd. Rafique (supra)*. The other observation of the Hon'ble Supreme Court in *Najma Khatun (supra)* which is also relevant in this context is reproduced hereunder.

> *"17. It is, therefore, clear as day that the observation made in paragraph 64 of Sk. Mohd. Rafique (supra), relied on by Mr. Roy, was duly considered in Snehasis Giri (supra) and bearing in mind the factors referred to in the extracted passages, further directions were issued regarding constitution of the Committee for verification of the claims. On the point as to whether the appointments are valid or not, the directions in Snehasis Giri (supra) constitute the binding directions which each party to the lis is now bound to follow. Building a case placing reliance on the said observation in paragraph 64 of Sk. Mohd. Rafique (supra), in the changed circumstances, is like building on sand; to rest a claim on such observation is to mistake a whisper for authority. We, thus, have no hesitation in rejecting this argument of Mr. Roy as misconceived."*

Thus, from the aforesaid orders passed in different proceedings subsequently in *Snehasis Giri (supra)* and thereafter in *Najma Khatun (supra)* the relevant portion of which has been reproduced hereinabove, it leaves no manner of doubt that though the observation were made by Hon'ble Supreme Court in paragraph No. 64 of *Sk Mohd Rafique (supra)* that the appointments made by the Madarsahs concerned after the disposal of the matters by the High Court, shall be deemed to be valid for all purposes yet disposal of appeal did not bring quietus to the dispute and travelled further, which led to subsequent examination by the Hon'ble Supreme Court in the aforesaid proceedings. Accordingly, the contention of the petitioners that validity of their appointments has crystallised after passing of judgment in *Sk Mohd Rafique (supra)* and cannot be called in question by application of doctrine of administrative finality is not sustainable.

26. Mr. Dutta, learned advocate representing the Managing Committee of different Madrasahs though asserted that by observation of Hon'ble Apex Court in paragraph no.64, the appointments of the petitioners were protected by the Hon'ble Court and it is impermissible for the Hon'ble High Court to overrule the decision of the Apex Court on the ground that the Hon'ble Supreme Court laid down the legal position without considering any other point and hence those appointments ought not to be touched placing reliance on the decision in *Suganthi Suresh Kumar (supra),* however, in view of

the discussion made in the foregoing paragraphs the above submissions is not sustainable in the facts and circumstances of the instant case.

27. Mr. Bhattacharya, learned advocate for the petitioners in WP-I, WP-II and WP-IV relying on *T.R Dhanajaya (supra)* strenuously argued that when the appointment of the petitioners had been finally adjudicated by the Hon'ble Supreme Court upon due consideration, in such circumstances, it is no longer open to the State to go behind the orders and truncate the effect of the orders passed by the Hon'ble Court by hovering over the rules to get round the result, to legitimise legal *alibi* to circumvent the orders passed by the Court. In *T.R. Dhanajaya (supra)* the Hon'ble Supreme considered the prayer arising out of Contempt of Court Act, wherein the Government (contemnor) failed to extend the benefit arising out of the judgment of the Division Bench of the Karnataka High Court, which was affirmed by the Supreme Court. When the Contempt Petition was taken up for consideration, the learned counsel appearing for the contemnor took time to implement the court order but later, took a volte-face to see that the court order is not given effect. The core issue in *T.R. Dhananjaya (supra)* was whether the Government's actions constituted contempt of court. The Court analyzed the sequence of events where the Government initially complied with the court's directive by passing a resolution, but subsequently attempted to thwart its implementation. The facts of the cited decision is distinct and different from the case at hand and therefore is not applicable in the instant case.

28. Mr. Bhattacharya, learned advocate for writ petitioners in WP-I, WP-II and WP-IV further relying on *Delhi Development Authority (supra)* vociferously argued that that if a case has already been decided, it cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law. The facts of *Delhi Development*

Authority (supra), involve a batch of land acquisition and development disputes where the Hon'ble Supreme Court classified the matters into three categories and examined issues including the applicability of changed law to already-decided cases, the scope of DDA's powers over *Nazul* land, limitation periods, and the interpretation of statutory provisions governing land acquisition and disposal. In such backdrop, the Court held that subsequent change of law will not be attracted unless a case is pending before the competent court awaiting its final adjudication, and that a case already decided cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law. Thus, the cited decision is factually distinguishable from the case at hand and hence does not apply to the instant case.

29. The respondent-Director of Madrasah Education by dint of the impugned memos sought to verify the approval of the appointment of the petitioners by examining whether such approvals were made following the notifications dated 9th February, 2015 and 4th March, 2016. Now the question which needs to be analyzed at this juncture is whether it is imperative and necessary to scrutinize and verify the validity of appointments of the petitioners by the respondent authorities or not. In this context it would be relevant to note that while dealing with the contempt petitions filed by some of the teachers in *Snehasis Giri (supra)* the Hon'ble Supreme Court formulated several questions which was to be considered by the Committee including the question whether such an appointment of the petitioners therein was made by following the recruitment procedure indicated in the Kolkata Gazette Notification dated 11-3-2015 (No. 93-SE/S/10R-14/2013-9-2-2015) and in Kolkata Gazette Notification dated 4-3-2016 (No. 486-MD/O/2M-11/2016). Further in *Najma Khatun (supra)* when the petitioners approached the Hon'ble Apex Court challenging the decision of the Committee of

rejecting their claims, the Hon'ble Court in paragraph No. 19 has observed that those two notifications were required to be followed by the Managing Committee of the recognised Madrasahs. Further in paragraph No. 42 of *Najma Khatun (supra)* it has been observed that as the appointments of the petitioners therein were not made either in accordance with the aforesaid two notifications, the State cannot be fastened with any liability to release payment. Since the petitioners of the instant writ petitions were receiving salaries, they were not before the Hon'ble Supreme Court and therefore occasion did not arise for examination of their approvals either by the Committee or by the Hon'ble Supreme Court, in the light of the aforesaid two notifications. Mr. Majumdar, learned senior advocate appearing for petitioners in WP-V relying on *Girish Kumar Suneja (supra)* vociferously argued that the decision in *Najma Khatun (supra)* since it is only restricted to the petitioners who were before the Hon'ble Court, hence it cannot be said to be a declaration of law by the Hon'ble Court under Article 141 of the Constitution of India rather it can be considered a decision under 142. Be that as it may, bearing in mind the aforesaid observation of the Hon'ble Supreme Court *Snehasis Giri (supra)* and *Najma Khatun (supra)*, it leaves no manner of doubt that after the disposal of the appeal by the High Court, for the validity of appointment, it becomes necessary and imperative to examine whether such approval of appointments was granted to the teaching and non-teaching staff following the aforesaid two notifications. It manifests from the decision of Hon'ble Supreme Court in *Snehasis Giri (supra)* and *Najma Khatun (supra)* there is requirement to fulfil the *criteria* provided in those notifications and thus it determines the status of the appointees bound by those notifications. Hence such a judgement is conclusive evidence for and against all persons whether or strangers of the matter actually decided and it settles the destiny of the *res* itself and

binds all persons claiming validity of their appointments as has been rightly argued by Mr. Dhar, learned Senior Advocate for the Commission relying on *Vidya Drolia (supra)*. Moreover although the petitioners were not parties in *Najma Khatun (supra)* yet it cannot be contended that the observations in the aforesaid decision is restricted only to the petitioners, who were before the Hon'ble Supreme Court, for the simple reason that the validity and legality of appointments made in Madrasas throughout the State of West Bengal was examined applying certain norms which equally applies in case of the petitioners herein as has been rightly argued by Mr. Dhar, learned Senior Advocate for the Commission relying on *Satish Kumar Rajan (supra)*.

30. It was strenuously argued on behalf of the petitioners that upon examination of the validity of the appointments of the petitioners considering the notifications, payment of salary was made to them and the State respondents have also filed affidavit of compliance before the Hon'ble Supreme Court to such effect and therefore further verification of appointments are uncalled for. In this context it is relevant to note that pursuant to *interim* orders passed in *Sk Mohd Rafique (supra)* for payment of salary to teaching and non-teaching staff, such affidavit of compliance was filed before the Hon'ble Supreme Court. Although in paragraph No. 5 and 9 of such affidavit of compliance it is stated that the eligible *criteria* applicable to teachers is pursuant to the Government order dated 9th February 2015 yet in paragraph Nos. 22 the State respondents have pleaded that it reserved the right to take suitable action against the Madrasahs appointing ineligible teachers who do not possess the basic qualification as laid down in Government order dated 9th February 2015 under which the Madrasahs are seeking to appoint the teachers. Such statement clearly goes to show that the State respondents though made payment of salary but it reserved the right to examine further

the validity of the appointments. Nowhere in the affidavit of compliance the State respondents stated that such validity of the appointment of the teachers have been conclusively done upon examination of the fact that the teachers and non-teaching staff fulfilled the criteria of such notifications.

31. Further in paragraph Nos. 23 of *Najma Khatun (supra)* it is found that the Hon'ble Supreme Court found that one Raj Kumar Bag was appointed as an Assistant teacher to teach environmental science in Gimageria Welfare High Madrasah (H.S) but it subsequently transpired that there was no valid Managing Committee in existence on the date the petitioner therein came to be appointed. The writ petitioners of WP-II are teachers of the said Madrasah who were appointed during such period but were paid salaries. Considering the aforesaid circumstances, the payment of salary to the teaching and non-teaching staff of respective Madrasah by the State respondents cannot *ipso facto* sanctify and validate the appointments of the petitioners. Relying on the decision of Hon'ble Supreme Court in *Ahmedabad St. Xavier's College Society (supra)* Mr Bhattacharya, learned advocate for the petitioners in WP-II submitted that that the Managing Committees of Madrasahs are autonomous bodies and the appointments made by it during the window period are in exercise of such an autonomy. Thus, the appointments of petitioners in WP-II by *adhoc* Managing Committee are nothing but to administer effectively and manage and conduct the affairs of the institutions. Such argument cannot be accepted in view of the observation of Hon'ble Apex Court in *Najma Khatun (supra) in paragraph no.23(e) and 33(c)* which is reproduced hereunder.

> *"23(e). Notably, the Ad hoc Managing Committee was not authorised by the Division Bench to take any policy decision or to incur expenditure other than what was required to run the day-to-day administration of GWH Madrasah. Payment of salary and allowances to a newly appointed teacher would necessarily involve substantial expenditure, which obviously is not comprehended within the meaning of day-to-day administration and was also not permitted. In the absence of express authorisation, the argument of Mr. Kamat that the Ad hoc Managing*

> *Committee did have the authority and competence to appoint this petitioner defies logic and prudence.*
> *33(c). The reason for not entertaining the claim of Raj Kumar Bag applies mutatis mutandis to this petitioner. The Ad hoc Managing Committee for GWH Madrasah, constituted in terms of the interim order dated 17th June, 2014 and continued by the final order dated 24th July, 2014 of the Division Bench of the High Court, lacked the authority to initiate the recruitment process."*

32. Mr. Dhar, learned Senior Advocate appearing for the Commission relying on *Kunisetty Satyanarayana (supra)* and *Coastal Containers Transporters Association (supra)* submitted that the said impugned memos are nothing but a mere show-cause notice which does not give rise to any cause of action as because it does not result in any adverse order affecting the rights of the parties. Until and unless the notice has been issued by a person having no jurisdiction, a writ petition should not be entertained as it is premature. On the contrary Mr. Sanyal, learned Senior Advocate appearing for the petitioners in WP-III strenuously argued that impugned memos are susceptible to judicial review since it has an adverse civil consequence. An administrative order having adverse civil consequence can give rise to justiciable right and it is amenable to writ jurisdiction. Moreover, if such notice to show-cause is issued by an authority not having jurisdiction to do so, then such notice can be challenged in a writ proceeding. Reliance is placed on the decision of a Co-ordinate Bench of this Court passed in *Abdul Malek (supra).* On perusal of impugned memos, it appears that the same has been issued in order to verify the validity and legality of the recruitment process and whether in issuing of appointments by the concerned Managing Committees guidelines of the aforesaid two notifications dated 9th February 2015 and 4th March 2016 has been followed. The petitioners have been requested to attend the office with relevant documents. Thus, the impugned memos are just a mere notice to attend the office of the concerned respondent authorities along with certain relevant documents and nothing more nothing less and cannot be said to be an adverse order affecting the rights of the

parties. As the said impugned memos have no adverse consequence affecting any justiciable right of the petitioners at this stage, hence it is not amenable to writ jurisdiction.

33. Mr. Majumdar, learned Senior Advocate appearing for the petitioners in WP-V arduously argued that a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Hon'ble Supreme Court divorced from the context of the question under consideration and treat it to be complete law decided by Hon'ble Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. Therefore, since the decision in *Najma Khatun (supra)* is divorced from the context of the question under consideration, the observation made therein cannot be applied to the facts of the present case. Reliance is placed on the decision in *Mehboob Dawood Shaikh (supra).* There cannot be any quarrel to the proposition laid down by Hon'ble Court as above. Be that as it may, in the conspectus of facts enumerated in the foregoing paragraphs it goes without saying that the decision in *Najma Khatun (supra)* considered the validity of appointment of the petitioners in different Madrasahs throughout the State of West Bengal whose claim were rejected by the Committee appointed in *Snehasis Giri (supra).* Needless to mention that the impugned memos have been issued by the respondent authorities to verify the validity of the appointment of the petitioners. Although the petitioners were not parties in *Najma Khatun (supra)* yet it cannot be contended that the observations in the aforesaid decision is divorced from the context of the question under consideration, for the simple reason that the validity and legality of appointments made in Madrasas throughout the

State of West Bengal was examined applying certain norms which equally applies in case of the petitioners. Hence the argument advanced on behalf of the petitioners in WP-V as above is not sustainable.

34. In light of the aforesaid discussion, this Court is of the view that the impugned memos issued by the respondent-Director of Madrasah Education cannot be said to be one which has been issued arbitrarily to re-verify and reopen the approval of appointment of the petitioners.

35. Accordingly, all the aforementioned writ petitions stand dismissed.

36. There shall be no order as to costs.

37. All connected applications, if any, stands disposed of.

38. Interim orders, if any, stands vacated.

39. Urgent photostat copy of this judgement and order, if applied, be supplied to the petitioners upon completion of all necessary legal formalities.

(Bivas Pattanayak, J.)