

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble The Chief Justice SUJOY PAUL
&
The Hon'ble Justice PARTHA SARATHI SEN

M.A.T. 1538 OF 2025
with
I.A. NO. CAN 1 OF 2025

RAFIQUL ALAM BISWAS
-Vs-
THE STATE OF WEST BENGAL & ORS.

For the Appellant : Mr. Prahlad Chandra Ghosh, Adv.,
Mr. Subir Hazra, Adv.

For the Respondent No.3 : Mr. Arjun Ray Mukherjee, Adv.,
Mr. S. Mukherjee, Adv.

For the State : Mr. Swapan Kr. Dutta, Ld. GP,
Mr. Arindam Chattopadhyay, Adv.,
Ms. Lipika Chatterjee, Adv.

Hearing concluded on: 10.04.2026
Judgment on: 22.04.2026

PARTHA SARATHI SEN, J. : –

1. The subject matter of the instant appeal is the order dated 01.08.2025 as passed by a learned Single Bench of this Court in WPA 7113 of 2024 whereby and whereunder the writ petitioner's prayer for issuance of writ of mandamus against the respondent authorities commanding them to allow him (writ

petitioner) to continue serving as a Para-Teacher in the relevant school was turned down. The writ petitioner felt aggrieved and thus preferred the instant intra Court appeal.

2. In order to arrive at a logical conclusion of the instant appeal some relevant facts are required to be looked into and those are as under :

- (a) On 10.06.2024 a notification came to be published by the respondent no. 4 authority for appointment of Para-Teachers wherein 50% of the vacancy was reserved for the women candidates.
- (b) Pursuant to such advertisement the writ petitioner applied for his selection in the post of Para-Teacher.
- (c) The writ petitioner was selected and appointed as a Para-Teacher by issuance of an engagement letter dated 31.10.2006 by the Head Master, Dhoradaha Union High School that is the respondent no. 5 herein.
- (d) The private respondent filed WP 25569 (W) of 2006 against the respondent authorities wherein the writ petitioner was not a party seeking issuance of writ of mandamus against the respondent authorities for her appointment as Additional Para-Teacher in Bairadaha Union High School which came to be disposed of on 18.12.2006 by a coordinate Bench of this Court whereby the respondent no. 2 of the said writ petition was directed to consider and dispose of the representation of the writ petitioner (private respondent herein) in accordance with law.
- (e) On 31.01.2011 the respondent no. 4 authority considering the Government Order dated 27.03.2010 declined to entertain the private

respondent's prayer for her appointment as an Additional Para-Teacher in Dhoradaha Union High school in view of the circular of the Government dated 27.03.2010 whereby and whereunder the Government issued a direction that no further Para-Teacher would be engaged in the primary and upper primary school.

- (f) However, on communication of the order dated 18.12.2006 as passed by a coordinate Bench of this Court in WP 25569 (W) of 2006 the self same authority that is the respondent no. 4 revisited the prayer of the private respondent and accordingly by a memo dated 11.07.2011 directed the appropriate authority to ensure engagement of the private respondent as a Para-Teacher in Dhoradaha Union High school in place and stead of the writ petitioner herein.
- (g) The said memo dated 11.07.2011 was challenged by the present writ petitioner by filing WP 11690 (W) of 2011 which came to be disposed of on 04.07.2013 whereby and whereunder the respondent no. 4 authority herein was directed to revise its order dated 29.06.2011 within a specified period and to pass a reasoned order and to deliver the final decision. It was further ordered that till such final decision the present writ petitioner would be permitted to work as a special case along with the respondent no. 6 therein for the sake of fairness in the whole process.
- (h) Pursuant to the order dated 04.07.2013 the respondent no. 4 authority herein passed a reasoned order dated 19.08.2013 and came to a finding

that in the vacancy where the private respondent was absorbed as an Additional Para-Teacher, the same arose on account of resignation of one Susmita Mondal and, therefore, the engagement of the writ petitioner in the said vacancy was unjustified.

- (i) The said order dated 19.08.2013 was again assailed by the writ petitioner by filing WPA 4372 of 2014 before a coordinate Bench of this Court which was disposed of by the said coordinate Bench vide its order dated 20.01.2023 directing departmental Secretary to consider the grievance of the writ petitioner herein in accordance with law after hearing the writ petitioner and the respondents and to pass a reasoned order thereafter.
- (j) The Principal Secretary, School Education Department by its reasoned order dated 06.04.2023 found no substance in the contention of the writ petitioner and thus granted no relief to the writ petitioner as prayed for, which was unsuccessfully challenged before this High Court again by filing WPA 7113 of 2024 and the order dated 01.08.2025 as passed in the said writ petition is impugned before us.

- 3. At the time of hearing learned Advocate appearing on behalf of the writ petitioner submits before this Court that the reasoned order dated 06.04.2023 is faulty in view of the fact that in such reasoned order the Principal Secretary of the relevant department came to a finding that male-female ratio of the Para-Teachers to the extent 50:50 is to be maintained schoolwise. It is submitted that from the advertisement dated 10.06.2004 (Annexure P-2) as published by

the office of the respondent no. 4 it would reveal that the 50% reservation for the female candidate is with regard to the entire vacancy.

4. It is further submitted that on perusal of the order dated 18.12.2006 as passed by a coordinate Bench of this Court (Annexure P-5) it would reveal that the private respondent herein approached this Court for her appointment as an Additional Para-Teacher in Bairadaha Union High School whereas the writ petitioner was appointed as Additional Para-Teacher in Dhoradaha Union High School as would be evident from Annexure P-3 of the instant writ petition. It is thus submitted that the respondent authorities have committed a serious error of law as well as fact in giving appointment to the private respondent as Additional Para-Teacher in Dhoradaha Union High School by replacing the writ petitioner since at no material point of time the private respondent had any claim for her appointment as an Additional Teacher in Dhoradaha Union High School and on the contrary she has approached this Court for her appointment at Bairadaha Union High School.

5. It is thus argued that the learned Single Bench has failed to visualize such discrepancy while sitting in judicial review in respect of the reasoned order dated 06.04.2023. Drawing attention to the page nos. 106 and 107 of the instant writ petition being a copy of the order dated 31.01.2011 and the memo dated 11.07.2011 it is argued on behalf of the appellant that the self same respondent no. 4 authority without assigning any reason whatsoever passed two contrary orders, one against the private respondent and the other in favour of the private respondent. It is further submitted on behalf of the appellant that

the learned Single Bench has also miserably failed to visualize that the appointment of the private respondent in Dhoradaha Union High School in place and stead of the writ petitioner is faulty since the reasoned order dated 06.04.2023 as passed by the Principal Secretary of the concerned department is contrary to the advertisement dated 10.06.2004.

6. Drawing attention to page nos. 128 and 129 of the instant writ petition it is further submitted that before a Single Bench of this Court in WP 4372 (W) of 2014 an affidavit has been filed by the Teacher-in-Charge of Dhoradaha Union High School that there exists a vacancy of male Para-Teacher in the said school. It is argued that in view of such affidavit, there cannot be any predicament on behalf of the respondent authorities to appoint the writ petitioner as an Additional Para-Teacher in such vacancy which the learned Single Bench also did not consider.
7. It is thus argued that in the fitness of the case appropriate relief/ reliefs may be granted to the writ petitioner in terms of the prayer made in the instant writ petition.
8. Per contra, Mr. Ray Mukherjee, learned Advocate appearing on behalf of the respondent no. 3/ Paschim Banga Sarva Siksha Mission also places his reliance upon the advertisement dated 10.06.2004 vis-à-vis the reasoned order dated 06.04.2023 as passed by the Principal Secretary of the concerned department. Attention of ours is also drawn to page nos. 208 and 209 of the instant writ petition being a copy of the guideline dated 07.05.2004 for the engagement of Additional Para-Teachers at upper primary level. It is argued by

Mr. Ray Mukherjee that on conjoint perusal of the said reasoned order dated 06.04.2023 and the guideline dated 07.05.2004 it would reveal that a policy decision has been taken for appointment of Additional Para-Teachers schoolwise considering pupil-teachers ratio ('PTR' in short) as would be evident from point A thereof i.e. 'principle of allotment' of the said guideline. It is submitted further by Mr. Ray Mukherjee that the said guideline postulates that at least 50% of the teachers engaged have to be woman teachers. It is submitted by Mr. Ray Mukherjee that the Principal Secretary of the relevant department while passing the reasoned order dated 06.04.2023 duly considered the said guideline dated 07.05.2004 and thus rightly found that the writ petitioner's claim has got no basis at all.

9. In his next limb of submission Mr. Ray Mukherjee further contended that while passing the reasoned order dated 06.04.2023 the Principal Secretary of the relevant department also noticed that a vacancy in the post of Additional Para-Teacher in Dhoradaha Union High School occurred on account of resignation of one Susmita Mondal and thus in her place the private respondent being a female candidate was appointed. It is thus submitted by Mr. Ray Mukherjee that the writ petitioner being a male candidate cannot seek his employment in a vacancy reserved for female candidate which has been rightly observed by the learned Single Bench and thus, in absence of any material illegality and/or irregularity there cannot be any justification to disturb the finding of the learned Single Bench.

10. Learned Advocate appearing on behalf of the respondent State adopted the argument as advanced by Mr. Ray Mukherjee.
11. On careful perusal of the materials as placed before us and after hearing the learned Advocates for the contending parties, we at the very outset propose to look to the relevant guidelines as issued by the respondent authorities for the engagement of Additional Para-Teachers. On careful perusal of Clause A of the said guideline being the 'principle of allotment', we noticed that the very purpose of appointment/ engagement of the additional Para-Teachers is to maintain PTR in upper primary school, recognised Madrasah, Sr. Madrasahs, VI-VIII & High Madrasahs. Clause vii of the said Principle of Allotment further postulates that at least 50% of teachers engaged have to be woman teachers.
12. On careful perusal of the reasoned order dated 06.04.2023 we noticed that Principal Secretary of the relevant department duly considered the spirit of appointment of Additional Para-Teacher as envisaged in the said guidelines and thus rightly came to a finding that the ratio of male and female teacher to the extent 50:50 is to be maintained schoolwise and not in respect of the total vacancywise pursuant to the advertisement dated 10.06.2004. It further appears to us that the Principal Secretary of the relevant department also noticed that the vacancy in the post of Additional Para-Teacher in Dhoradaha Union High School occurred on account of the resignation of a female Para-Teacher namely; Smt. Susmita Mondal and thus, there is every justification to appoint the private respondent being a female in the said vacancy instead of the writ petitioner who is a male.

13. In our considered view, the appellant has miserably failed to substantiate by placing any cogent material that the vacancy as published by advertisement/ notification dated 10.06.2004 is Districtwise instead of schoolwise. It thus appears to us that the argument on behalf of the respondent no. 3 authority is found to be more logical than the argument of the learned Advocate for the writ petitioner inasmuch as the said guidelines dated 07.05.2004 for appointment of the Additional Para-Teachers clearly indicate the numbers of Additional Para-Teachers to be appointed in different schools are to be based on schoolwise enrolment namely;

- (i) If any of the classes or each of the classes (V to VIII) of a school has more than 100 students, then three additional para-teachers may be provided for that particular school.
- (ii) If any of the classes or each of the classes V to VIII) of a school has more than 200 students, six additional para-teachers will be provided for that particular school.
- (iii) No additional para-teachers to be provided for schools where enrolment in upper primary classes is equal to or less than 200.

14. We have also noticed that in the said guideline it has also been indicated that at least 50% of teachers engaged would have to be woman teachers. It further appears to us that in the event we accept the argument of the learned Advocate for the writ petitioner that the vacancy of the Additional Para-Teachers and the reservation thereof for the woman teachers to the extent of

50% is Districtwise that would frustrate the principle of allotment as mentioned in the said guideline dated 07.05.2004.

15. In view of the observation made hereinabove, we thus find no merit in the instant appeal and accordingly, the instant appeal is dismissed. Consequently, the pending interlocutory application being CAN 1 of 2025 is also dismissed.

16. Interim order, if there be any, stands hereby vacated.

17. Urgent photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(SUJOY PAUL, C.J.)

(PARTHA SARATHI SEN, J.)