

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

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 21202 of 2004

With

CAN 2 of 2022

Md. Jahangir Laskar

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Milan Bhattacharjee, ld. Sr. Adv.
: Mr. Ramdulal Manna
: Mr. Sayan Mukherjee
: Ms. Puja Naskar

For the school authority : Mr. Sabyaschi Mondal
: Ms. Payel Khanra

For the State respondent : Mr. Pinaki Dhole
: Ms. Indrani Nandi

Reserved on : **24.02.2026**

Judgment on : **18.03.2026**

Rai Chattopadhyay, J. :-

- 1.** This writ petition is to challenge the impugned inaction of the respondent authorities in not regularising the service of the petitioner in the school as an assistant teacher, from the date of his joining.
- 2.** At a remote area of Sundarban in South 24 Parganas District, the respondent school is situated. Vide Memo dated March 7, 1996, the

said school was upgraded as a higher secondary school, in the academic year 1996-'97, with a rider that the Institution shall not be allowed to introduce any subject for which it has got no qualified teacher on payroll. The subjects which could be introduced from the current session were Bengali, English, Political Science, History, Philosophy and Economics. For introduction of any other subject instead of those specified, it has been directed that the Council should be approached.

3. The school authority introduced subjects as above vide order dated March 7, 1996. Classes in Philosophy subject were introduced from the academic session 1996-'97 by initially appointing one teacher by the Managing Committee, namely Sri Subhas Mondal. Shri Mondal has subsequently left the school. Also, the number of students in Philosophy subject increased. Hence, the Managing Committee took a resolution on November 7, 1996, to appoint the present petitioner as a temporary teacher in Philosophy subject, with effect from November 8, 1996.
4. According to Mr. Milan Bhattacharjee learned Senior Counsel for the writ petitioner, the petitioner since then has been, uninterruptedly and continuously and to the fullest satisfaction of all concerned, serving in the said school, till today.
5. He has submitted that the petitioner has been provided with the class routine and taking regular classes in the subject similarly like the other approved permanent teachers in the school. That the petitioner's service was all alone necessary in view of the severe scarcity of the qualified teachers in a remote locality like where the said school is situated, whereas the petitioner has been a duly qualified teacher in the said post, completely eligible to impart education to the students in the subject of Philosophy. Also, that the

petitioner has maintained his service record unblemished for all these years and served unto the fullest satisfaction of all concerned.

6. Mr. Bhattacharjee, learned senior counsel has submitted that the petitioner has delivered his service throughout the period of about 30 years in a substantive nature of post and such substantive continuous service of the petitioner stands akin to permanent teachers. He submits that principles of equity, fairness and intent behind the employment regulations duly recognize the substantive and continuous nature of service. He says that the petitioner has been discharging duties as against a sanctioned post for a prolonged period. According to Mr. Bhattacharjee, by application of ratio of the decision of the Supreme Court the prolonged, uninterrupted, perennial nature of duties discharged by the petitioner gives him substantial right over the service and the post against which he has been working. Mr. Bhattacharjee, learned senior advocate has further submitted that, the ratio upheld in ***Umadevi's case [State of Karnataka & Others versus Umadevi & Others]***, reported in ***(2006) 4 SCC 1***] by the Supreme Court has been diluted subsequently, with time, in other judgments, where the Court has accepted engagement in perennial nature of post for prolonged period to be a good ground for approval of service of a person. In support of his contentions, Mr. Bhattacharjee, learned senior advocate has relied on the following judgments: -

i) ***Neelima Srivastava Vs. State of Uttar Pradesh & Ors.*** reported in ***(2021) 17 SCC 693***

ii) ***Vinod Kumar & Ors. Vs. Union of India & Ors.*** reported in ***(2024) 9 SCC 327***

iii) ***Dharam Singh Vs. State of U.P.*** reported in ***2025 SCC OnLine SC 1735***

7. Mr. Pinaki Dhole, learned advocate for the respondent State has put forth strong contest as to the contention and prayer of the writ petitioner. He says that the petitioner's appointment is not irregular but illegal. That, in his case approval of regularisation is barred as per ratio of the judgment of the Supreme Court in ***Umadevi's case [State of Karnataka & Others versus Umadevi & Others, reported in (2006) 4 SCC 1]***. He submits that in case of appointment of the writ petitioner, no rules or prescribed procedure have been followed. He has submitted that the appointment of the petitioner being not in conformity with the law, his service in the school for whichever period, cannot be given any recognition or approval. In this regard Mr. Dhole, learned advocate for the State has largely relied on the G.O. No. 1054-SE(S) dated December 1, 1995 [in short "No.1054"], of the School Education Department, Government of West Bengal. He submits that the procedure for appointment of a teacher has been exhaustively dealt in the said notification, which applies to the said school too. He says that admittedly there is no compliance with the procedure laid down therein. Hence, the appointment of the petitioner itself is not in conformity with the law due to non-performance of provisions under the prescribed rules; that the same is illegal and liable to be vitiated.
8. Mr. Dhole for the State has largely relied on the order dated March 7, 1996, of the Secretary, West Bengal Council of Higher Secondary Education to submit that as per the same the Institution was not permitted to introduce any new subject of teaching unless any duly qualified teacher was on the payroll. Therefore, introduction of Philosophy subject without a teacher on the payroll by the Institution was contrary to said the embargo issued and circulated in due course. So was the appointment of the petitioner, he says. He submits that the Constitutional principles of equality and equal treatment under the law has been demolished by the steps taken by

the school to appoint the petitioner as a single candidate without any vacancy and advertisement, and it is a glaring example of violation of the rules and procedure in case of a public appointment. Mr. Dhole learned advocate representing the State has insisted that the present writ petition may therefore be dismissed.

9. In support of his contention, Mr. Dhole, learned advocate for the State has relied on the Supreme Court judgment in ***Harminder Kaur and Ors. Vs. Union of India and Others*** reported in **(2009) 13 SCC 90** to further submit that, every appointment to public posts should be made in compliance with the equality clause enshrined in Article 16 of the Constitution, by open advertisement so as to enable all eligible persons to compete.
10. The present writ petition is being heard on remand. Vide order dated November 11, 2010 passed by an Hon'ble Judge of this Court the writ petition was allowed and the concerned District Inspector of Schools was directed to approve the appointment of the petitioner within a stipulated period. It was further directed that, once such appointment is approved, the writ petitioner shall be entitled to receive salary and other benefits regularly without any interruption. An appeal was preferred against the said order of the Hon'ble Single Judge dated November 11, 2010 being FMA No. 1671 of 2014. The Hon'ble Appeal Court vide an order dated May 01, 2018 has set aside the order of the Hon'ble Single Judge as above and directed the writ petition to be revived on the file of the Writ Court. Hence, this matter is being adjudicated afresh.
11. Since the matter is being heard on remand, it is necessary to duly be informed as to the grounds of remand by the Hon'ble Appeal Bench. For this the order dated May 01, 2018 in FMA 1671 of 2014, is perused. The Hon'ble Appeal Bench has held that the law declared in ***U.P. State Electricity Board Vs. Pooran Chandra***

Pandey & Ors. [(2007) 11 SCC 92], on which the Hon'ble Single Judge has placed his reliance, was no more a good law on the date of judgment of the Court – the same having been overruled by the Supreme Court in a subsequent judgment of **Official Liquidator Vs. Dayanand & Ors. [(2008) 10 SCC 1]**. The court has also noted the contention of the respondent that the appeal of the writ petitioner having been made in contravention of the statutory rules, question of approval of appointment did not and cannot arise. Thus, the Hon'ble Appeal Court, in the said order has set aside the impugned judgment of the Single Bench and remanded the writ petitioner for adjudication afresh.

12. In the judgment of **Pooran Chandra Pandey (Supra)**, the Court dismissed appeal by the Electricity Board. The writ petitioners who were daily wagers in the service of the Society were appointed in the Society before May 04, 1990 and their services were taken over by the Electricity Board *"in the same manner and position"*. This would mean that their services in the Society cannot be ignored for considering them for the benefit of the order dated November 28, 1996. The proceeding dated April 03, 1997 makes it clear that the employees of the Society should be deemed to be the employees of the Electricity Board with continuity of their service in the Society, and it is not that they would be treated as fresh appointees by the Electricity Board when their services were taken over by the Electricity Board. In this view of the matter, the writ petitioners (the respondents herein) are entitled to the benefit of the order of the Electricity Board dated November 28, 1996. The Court has further held that the decision in **Umadevi (3) case** is clearly distinguishable. It cannot be applied to a case where regularization has been sought for in pursuance of Article 14. The Court has held that regularization was justified in accordance with the principles under Article 14 of the Constitution.

13. In **Dayanand's case (supra)**, the larger Bench of Supreme Court has held about impermissibility to water down the binding effect of **Umadevi's (3) case (supra)** as, in its opinion, has been admitted by the two-judges Bench of the Court in **Pooran Chandra Pandey's case (supra)**. According to the Court in **Dayanand's case (supra)**, the ratio of the decision in **Umadevi (3) case (supra)** shall have binding effect with respect to any public employment, by virtue of provisions under Article 141 of the Constitution, on all Courts including the Supreme Court, till the same is overruled by a larger Bench. The attempt to dilute the *ratio decidendi* in **Umadevi (3)** in **Pooran Chandra Pandey's case (supra)**, has been held to be 'obiter' and also that the two-Judge Bench in **Pooran Chandra Pandey's case (supra)** had no occasion to make any adverse comment on the binding character of the Constitution Bench judgment in **Umadevi (3) case**. The Supreme Court in **Dayanand's case (supra)** has held that the comments and observations made by the two-Judge Bench in **Pooran Chandra Pandey's case (supra)** should be read as 'obiter' and should neither be treated as binding nor be relied upon or made the basis for bypassing the principles laid down in **Umadevi (3) case**. The Supreme Court has held that, judicial discipline is of cardinal importance and strongly emphasize the same as being within the purview of Articles 141 and 124 (6), 2019 and 144 of the Constitution.
14. Hence, in the said order dated May 01, 2018, the Hon'ble Appeal Court has accepted the ratio decided in **Umadevi (3) case** as a good law and declines to accept the ratio of **Pooran Chandra Pandey's case**, to be a good law any further, after the judgment in **Dayanand's case (supra)**. The supremacy and the binding effect of the ratio decided in **Umadevi (3) case**, has been held in specific terms, by the Supreme Court in **Dayanand's case (supra)**.

15. The ratio decidendi of the judgment in ***Secretary, State of Karnataka v. Umadevi (3), (2006) 4 SCC 1***, mandates adherence to the Constitutional scheme of public employment, requiring appointments through due and proper selection processes; it prohibits the Courts from routinely directing regularization or permanency for temporary, casual, daily-wage, ad-hoc, or contractual employees based solely on length of service, distinguishing between illegal appointments (which cannot be regularized) and irregular ones (which may qualify for a one-time measure if the employee has been in service for more than ten years, without the Court intervention as on the cut-off date of 10.04.2006, in sanctioned posts). This principle aims to prevent future irregular/illegal appointments while providing limited relief to past irregular appointees, but it must not be applied mechanically and depends on case-specific facts. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

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“Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.” [quoted in *Sumtibai and Others vs Paras Finance Co. Mankanwar W/o Parasmal Chordia (D) – (2007) 10 SCC 82*].

- 16.** The principal issue that arises for consideration is whether the petitioner, who has been serving as a teacher in the concerned school for more than three decades, ought to be denied approval of his service merely on account of certain procedural irregularities attending his initial engagement. Before entering into the more details of the present case, it is beneficial to refer to the ratio decided by the Supreme Court in the case of ***Bhola Nath versus State of Jharkhand [2026 INSC 99]***. The Court framed issues, one of which was “*II. Whether the action/inaction of the respondent State in not recognizing the appellants’ continuous service for the purpose of regularization is arbitrary and violative of Article 14 of the Constitution of India?*”
- 17.** The Supreme Court has criticized the impugned judgment that the same is due to mechanical application of precedents without engaging with the core constitutional issues involved, thereby reducing the dispute to one of acceptance of contractual terms, divorced from its larger constitutional context. The Court says that it has been consistently held that the State, being a model employer, is saddled with a heightened obligation in the discharge of its functions. A model employer is expected to act with high probity, fairness and candour, and bears a social responsibility to treat its employees in a manner that preserves their dignity. The State cannot be permitted to exploit its employees or to take advantage of their vulnerability, helplessness or unequal bargaining position. It has further been precisely held that it therefore follows that the State is required to exercise heightened caution in its role as an employer, the constitutional mandate casting upon it a strict obligation to act as a model employer, an obligation from which no exception can be countenanced.

- 18.** The Supreme Court has further held there that the consistent case of the appellants [there] has been that the respondent-State's refusal to grant regularization is arbitrary and therefore warrants judicial interference. Article 14 of the Constitution casts a negative obligation upon the State to treat all persons equally, and arbitrariness, being antithetical to the equality principle, is proscribed as violative of Article 14. With reference to the Constitution Bench in ***Basheshar Nath v. Comm. Income Tax [1958 SCC Online SC 7]***, it has been held that the Supreme Court has long ago clarified that fundamental rights guaranteed under the Constitution are incapable of waiver. Consequently, State-action if is violative of Article 14 of the Constitution, is not only amenable to judicial review of this Court but also is liable to be set aside. The Court has drawn analogy of apples and oranges to have served as a useful reminder that certain relationships are inherently incapable of being assessed on an equal plane. It says [in case of a contract] the State and an employee stands on a similar footing. The State, in such a relationship, assumes the role of a metaphorical lion, endowed with overwhelming authority, resources and bargaining strength, whereas the employee, who is yet an aspirant, is reduced to the position of a metaphorical lamb, possessing little real negotiating power. To suggest parity between the two, i.e. the lion and the lamb, would be to ignore the stark imbalance that defines the relationship.
- 19.** Therefore keeping in mind the vast edifice of the law as settled in this regard, let it be now stated at the outset, that it is not in dispute that the petitioner has been discharging duties as a teacher of the concerned subject for more than 30 years in the respondent school situated in a remote area where educational institutions are scarce. The materials placed on record indicate that the Managing Committee of the school had adopted a resolution engaging the

petitioner to teach the said subject in view of the necessity of imparting instruction to the students. It is also undisputed that the petitioner possesses the requisite educational qualifications for the post and has continuously discharged his duties since the date of his engagement.

20. The objection raised by the respondents pertains to the fact that at the time of the petitioner's initial engagement, prior permission of the District Inspector of Schools was not obtained, there was no procedure for selection as per law and the post had not yet been formally sanctioned. However, it is equally not in dispute that subsequently the concerned post has been duly sanctioned, and there exists a continuing requirement for a teacher in that subject having regard to the number of students enrolled in the institution.
21. In the opinion of this Court, the circumstances of the present case do not indicate any backdoor entry or clandestine appointment. The petitioner was engaged by a resolution of the Managing Committee of the school to meet an immediate academic requirement in a subject which the institution was obliged to teach for benefit of the local people which ultimately is the paramount object of any educational institution. The engagement was thus made in furtherance of the academic interest of the students rather than for the purpose of circumventing the statutory recruitment process. The petitioner has also been found to possess the necessary academic qualifications, which further negates the suggestion that his engagement was arbitrary or lacking in merit.
22. The distinction between an "irregular appointment" and an "illegal appointment" has been explained by the Supreme Court in Secretary, ***State of Karnataka v. Umadevi (3) (supra)***. While the Court cautioned against regularisation of appointments made in

clear violation of constitutional requirements, it also recognised that where an appointment is irregular but not illegal, and where the employee has served for a long period in a sanctioned post, the State ought to consider regularisation as a measure of fairness and equity.

23. This principle was further clarified in ***State of Karnataka v. M. L. Kesari* [(2010) 9 SCC 247]**, wherein it was held that employees who have worked for ten years or more in a duly sanctioned post and who possess the requisite qualifications should ordinarily be considered for regularisation, provided the initial engagement was not tainted by illegality.
24. Applying the aforesaid principles to the facts of the present case, it becomes evident that the petitioner's engagement, at worst, suffered from procedural irregularities such as absence of prior permission from the District Inspector of Schools and the fact that the formal sanction of the post followed the engagement. These circumstances cannot, however, obliterate the reality that the petitioner has served the institution continuously for three decades, during which period the authorities have derived the benefit of his services.
25. More importantly, the post in question now stands sanctioned and the requirement of a teacher in that subject continues to subsist in view of the number of students in the school. To deny approval to the petitioner at this stage would not only be inequitable but would also disrupt the academic functioning of an institution located in a remote area where qualified teachers are not easily available.
26. It is also a matter of significance that the petitioner has devoted more than thirty years of his professional life to teaching in the said institution. Fact remains that a sanctioned vacant post has also been approved in the institution, for the subject concerned. Therefore, over such an extended period, when there exists a

sanctioned vacant post, a legitimate expectation has arisen that his services, which have been continuously utilised by the authorities, would receive formal recognition. The Supreme Court in ***Amarkant Rai v. State of Bihar* [(2015) 8 SCC 265]** recognised that prolonged service coupled with the existence of a sanctioned post may justify regularisation or else, judicial intervention to prevent manifest injustice.

27. This Court cannot be oblivious to the peculiar realities of rural and remote educational institutions, where strict adherence to procedural formalities at the inception often gives way to the pressing need to ensure that students are not deprived of instruction in essential subjects. In such circumstances, the engagement of a qualified teacher by the Managing Committee to meet an immediate academic necessity cannot be characterised as a backdoor entry.
28. Having regard to the same, this Court is of the considered view that the denial of approval to the petitioner's service would amount to a hyper-technical application of procedural rules resulting in manifest injustice; in the form of not acknowledging the long and uninterrupted service of the petitioner for nearly thirty years; the fact that the petitioner possesses the requisite educational qualifications; the subsequent sanction of the post for the concerned subject; the continuing academic necessity in the school and the absence of any material indicating fraud, or backdoor entry.
29. The materials on record clearly indicate that the petitioner was engaged by the Managing Committee to meet a genuine academic requirement of the institution situated in a remote area where educational facilities are scarce. The engagement of the petitioner, therefore, cannot be characterised as a backdoor entry. At the highest, the initial engagement may be said to suffer from

certain procedural irregularities, namely the absence of prior permission from the District Inspector of Schools and the fact that the sanction of the post was accorded subsequently. Indeed, from the most distant location of the school, accessing the office of the District Inspector of Schools was neither convenient nor straightforward, especially during the petitioner's engagement in 1996, when the communication infrastructure was suboptimal. In due consideration thereof, such irregularities cannot, in the peculiar facts of the present case, be allowed to defeat the legitimate claim of the petitioner who has devoted the prime years of his life in the service of the institution and its students.

30. The principles laid down by the Hon'ble Supreme Court in Secretary, ***State of Karnataka v. Umadevi (3) (supra)***, as dealt with in ***State of Karnataka v. M. L. Kesari [(2010) 9 SCC 247]***, recognise that where an employee has served for a long period in a post which is sanctioned and where the appointment is irregular but not illegal, the authorities ought to take appropriate steps to regularise such service so as to avoid manifest injustice.
31. The Supreme Court in ***Bhola Nath's Case (supra)*** strengthens the doctrine of "*constitutional fairness in long public service*", that if the State knowingly accepts labour for decades in a continuing post though denies recognition, that may amount to arbitrary exploitation. In the background of the instant case, the State allows the petitioner to impart teaching for more than three decades and benefits from his services by catering severe need of local people. Later, it refuses approval of service of the petitioner. Therefore, such refusal becomes arbitrary State action under Article 14. Even for instance, where the Rules are violated, the State action cannot be arbitrary. Thus, refusal to approve service of the petitioner must pass scrutiny under Article 14 of the Constitution.

- 32.** It should further be stated here that, even though the post in which the petitioner was appointed and started imparting teaching has been approved at a later date, his approval therein is absolutely justified due to functional existence of the subject in substance in said school. The subject was already being taught in the school, the students were enrolled and the school required a teacher for the same, to meet an immediate academic requirement of the institution. It was institutionally necessary and, therefore, appointment of the petitioner by the Managing Committee of the school was never fictitious or fabricated.
- 33.** In the present case, the subsequent sanction of the post, the existence of adequate students in the concerned subject, and the long and continuous service of the petitioner spanning over three decades, clearly justify the exercise of the writ jurisdiction of this Court to ensure that the petitioner is not deprived of the benefit of approval on hyper-technical grounds.
- 34.** Accordingly, the petitioner's engagement deserves to be treated as an irregular appointment which has been subsequently validated by the sanction of the post and by the long utilisation of his services, and the respondents are therefore liable to accord approval to his appointment and absorb him against the sanctioned post.
- 35.** In view of the discussions and reasons recorded hereinabove, this Court is of the considered opinion that the continued refusal of the respondent authorities to accord approval to the petitioner's appointment, despite his uninterrupted service for more than thirty years, the existence of a sanctioned post and the petitioner possessing the requisite educational qualifications, cannot be sustained in law.
- 36.** The decisions of the Supreme Court in the judgment of ***Neelima Srivastava (supra)***, ***Dharam Singh (supra)*** and ***Vinod Kumar***

(supra), as referred to by Mr. Mukherjee, learned Senior Counsel for the writ petitioner, have facilitated similar view and support the petitioner's case here.

- 37.** Accordingly, the respondent authorities, particularly the District Inspector of Schools, are directed to accord approval to the appointment of the petitioner and absorb/regularise his service against the sanctioned post of teacher in Philosophy subject forthwith, notwithstanding the procedural irregularity in the initial engagement.
- 38.** The respondents shall issue the necessary order of approval and extend all consequential service benefits to the petitioner. The petitioner shall be entitled to continuity of service for all purposes from the date of his initial appointment. Financial benefits shall be released in accordance with the applicable rules, and in any event from the date of grant of approval, unless otherwise permissible under law.
- 39.** The entire exercise shall be completed by the respondent authorities within a period of eight weeks from the date of communication of this order.
- 40.** With the aforesaid directions, the writ petition stands allowed.
- 41.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)