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**FMA 691 of 2025**  
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IA No.: CAN 2 of 2022  
**Munshi Moseful Haque**  
- Versus -  
**State of West Bengal & Others**

Mr. Debanik Banerjee,  
Mr. Steven S.a Biswas,  
Ms. Huzaifa Shahid  
... for the Appellant.  
Mr. Gourav Das  
... for the State/Respondents.  
Mr. Sayan Sinha,  
Mr. Nilanjan Bhattacharya  
... for the Respondent no.6.

The affidavit-of-service as well as the affidavits exchanged by the parties, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 30<sup>th</sup> November, 2021 passed by the learned single Judge in the writ petition, being WPA 10333 of 2017. The said writ petition was preferred challenging, *inter alia*, an order dated 10<sup>th</sup> March, 2017 passed by the respondent no.3 herein refusing the appellant's claim for regularization.

Mr. Banerjee, learned advocate appearing for the writ petitioner/appellant submits that the appellant was appointed as a night guard at Mongolkote AKM High School (H.S.) [hereinafter referred to as the said school] on and from 1<sup>st</sup> January, 2002 and he was being paid a paltry amount for rendition of such

service. On the date of such appointment the appellant had the appropriate qualification for the said post. Such service of the appellant was extracted by the school authorities without initiating appropriate steps for regularization. Aggrieved thereby, the appellant was constrained to prefer a writ petition, being WP No.8884 (W) of 2015 which was disposed of by an order dated 15<sup>th</sup> October, 2026 directing the respondent no.3 to consider the appellant's claim for regularization and to pass a reasoned order. Pursuant to such direction, the respondent no.3 passed an order dated 10<sup>th</sup> March, 2017 rejecting the appellant's claim in a slipshod manner paraphrasing the contents of judgments delivered in the cases of *Manindra Nath Sinha Vs. State of West Bengal & Others*, reported in 2006 (2) CLJ (Cal) 489 and the *State of Karnataka Vs. Uma Devi and others*, reported in 2006 (4) SCC 1 and without any independent application of mind.

He argues that the impugned order was passed by the respondent no.3 being oblivious of the fact that to meet the exigencies and for proper administration of the said school, the appellant was appointed. Having thus extracted the service of the appellant for a substantial period of time, his claim could not have been denied on a mere assumption that such engagement was illegal. The said order

passed by the respondent no.3 is also not sustainable in view of the proposition of law laid down in the judgments delivered in the cases of *Nihal Singh and Others vs. State of Punjab and Others*, reported in (2013)14 SCC 65 and *Jaggo Vs. Union of India and Others*, reported in 2024 SCC Online SC 3826.

He strenuously argues that for the inaction on the part of the school authorities to take appropriate steps for regularization, the appellant cannot be made to suffer. The service of the appellant is being extracted till date and such sequence reveals that the appellant's service is integral to the school's functioning.

*Per contra*, Mr. Das, learned advocate appearing for the State/respondents submits that the appellant has failed to produce any letter of appointment issued by the competent authority. The appellant's entire case is based on a purported certificate issued by the Headmaster of the said school. Thus, the issue of continuous rendition of service, as alleged, involves disputed questions of fact which cannot be decided in a proceeding under Article 226 of the Constitution of India.

He argues that the appellant was not appointed against any sanctioned vacancy. He was engaged by the school authorities on temporary basis and

without conducting a regular selection process. As such, no right has accrued in favour of the appellant to claim regularization in the said group “D” post.

He submits that the post of a non- teaching staff is required to filled up in terms of the Recruitment Rules framed and under the said Rules there is no scope of regularization of a temporary staff. The school authorities at the appropriate juncture did not make any endeavour to seek any proper permission from the respondent no.3 for filling up the concerned post in which the appellant was allegedly appointed. Merely on the basis of uninterrupted service for a particular period, the appellant cannot claim regularization. In support of such contention reliance has been placed upon a judgment delivered in the case of *State of Karnataka Vs. Uma Devi (III)* reported in 2006 (4) SCC page 1.

Drawing our attention to a memo dated 2<sup>nd</sup> December, 2010, Mr. Das argues that the procedure to fill up the vacancy was adopted in terms of the provisions of the Rules framed under the West Bengal School Service Commission Act, 1997 pertaining to recruitment of non-teaching staff in vacancies including two Group – ‘D’ posts. In the said selection process the appellant did not participate and as such, the question of his regularization in the concerned post does not arise.

Mr. Sinha, learned advocate appearing for the respondent no.6, however, submits that the said school does not stand in the way towards regularization of the service of the appellant and appropriate directions may be issued to that effect.

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

It is well-settled that the direction for regularization or absorption or permanent continuance should not be granted by the Court in exercise of the power under Article 226 of the Constitution of India unless the employee claiming regularization has been appointed in accordance with the prevalent recruitment Rules against a sanctioned post. In the present case no material has been brought on record to establish that the appellant's engagement was against any sanctioned vacancy. No selection process whatsoever was conducted prior to engagement of the appellant. Mere continuance of service on *ad hoc* basis does not entitle the appellant to seek regularization moreso when such continuance in service involves disputed questions of fact. In the event such direction for regularization is passed, it would simply reinvigorate a class of claims which has been permanently shut out.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not the observations made in the facts of any particular case. In the case of *Nihal Singh and Others (supra)*, the Court was considering cases of Special Police Officers who were appointed resorting to the provisions of Section 17 of the Police Act, 1861 and in the backdrop of large-scale disturbance in the State of Punjab in the year 1980. In the case of *Jaggo (supra)*, the Court intervened as the respondents therein sought to terminate the appellants upon outsourcing the same task to private agencies and in the facts and circumstances of the said case the Court found that the appointments cannot be construed to be illegal. The said cases are, thus, distinguishable on facts and have no manner of application in the present case.

For the reasons discussed above, we do not find any infirmity in the order impugned. The learned single Judge upon dealing with the factual issues arrived at a specific findings and we do not find any error in the same warranting interference in appeal.

Accordingly, the appeal and the connected application are dismissed.

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

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

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