

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty

&

The Hon'ble Justice Partha Sarathi Chatterjee

FMA 1038 of 2023

Mudassar Rahaman

Versus

The State of West Bengal & Ors.

For the Appellant : Mr. Golam Mastafa,
Mr. T. S. Samanta.

For the State Respondents : Mr. Bhaskar Prasad Vaisya,
Mr. Suman Dey.

For the Respondent Nos. 4 & 5 : Mr. Kazi Asif Iqbal.

Hearing on : 25.03.2026

Judgment On : 25.03.2026

Partha Sarathi Chatterjee, J.

1. The present intra-court appeal arises out of an order dated 18.08.2023 passed by the learned Single Bench in WPA 21069 of 2017, whereby the writ petition preferred by the appellant, a non-teaching staff member of Salaidanga High School, District–Malda (hereinafter referred to as “the

school”), was dismissed. The said writ petition had been filed questioning the legality and validity of an order dated 5th July, 2017 issued by the District Inspector of Schools (SE), Malda, whereby the prayer of the writ petitioner/appellant for regularization in the said post was refused.

2. The facts necessary to be elucidated for the purpose of effective adjudication of the present appeal are that the school was initially recognized as two-class Junior High School in 1967. Over the years, the institution gradually developed its academic structure and infrastructure. In the year 2001, the school received recognition as a Class X High School from the West Bengal Board of Secondary Education. After receiving such recognition, the institution witnessed a substantial increase in student enrolment and academic activities. Subsequently, in 2014, the school was further upgraded to the Higher Secondary level, thereby increasing the administrative responsibilities and operational requirements of the institution.
3. Following the upgradation of the institution, the school authorities encountered serious administrative difficulties due to the absence of adequate non-teaching staff. Although sanctioned posts for non-teaching employees, including the posts of Clerk (Group-C) and Peon (Group-D) existed within the institutional framework, these posts remained vacant for a prolonged period of time. At the relevant time, only one staff member, namely a Metron, was available to carry out most of the auxiliary responsibilities of the school. This shortage of supporting staff created significant operational challenges and adversely affected the efficient functioning of the institution.

4. In view of the difficulties faced by the institution, the Managing Committee of the school, vide its letter dated 10.12.2001, sought prior permission from the District Inspector of Schools; however, the said letter remained unattended. After considering the prevailing circumstances and the pressing administrative needs of the institution, the Managing Committee decided to appoint a non-teaching staff.
5. The Managing Committee issued a notice inviting applications from intending and eligible candidates, and the said notice was displayed on the notice board of the local Gram Panchayat and the local Post Office.
6. However, only the writ petitioner/appellant (hereinafter referred to as “the appellant”) applied for the post in response to the said notice. In such circumstances, the Managing Committee convened a meeting on 21st June, 2003 to deliberate upon the urgent need to appoint a non-teaching staff member in order to ensure the smooth functioning of the school. Ultimately, the Managing Committee adopted a resolution deciding to appoint the appellant to the post of Peon (Group-D staff) on a temporary basis. Accordingly, the Secretary of the Managing Committee issued an appointment letter in favour of the appellant on 30th June, 2003. In terms of the said appointment letter, the appellant joined his duties on 2nd July, 2003 and started discharging the responsibilities attached to the post of Peon in the school.
7. Initially, the petitioner received a meagre amount of Rs. 350 per month as remuneration. Over time, the Managing Committee periodically increased

this amount through internal resolutions in recognition of his service. Presently, he receives only Rs. 8500/- p.m. as remuneration.

8. However, despite rendering continuous, uninterrupted and satisfactory service for several years, the appellant's service was neither regularized nor was his appointment approved by the District Inspector of Schools. In the circumstances, the appellant submitted a representation dated 28th January, 2016 to the District Inspector of Schools seeking approval of his service. However, despite receipt of the said representation, no effective step was taken by the District Inspector of Schools, which prompted the appellant to file a writ petition, being W.P. No. 3379 (W) of 2016. The said writ petition was disposed of by a learned Single Bench of this Court by an order dated 07.12.2016, directing the District Inspector of Schools to consider the representation of the appellant and to pass a reasoned order thereon.
9. Pursuant thereto, the District Inspector of Schools issued an order dated 5th July, 2017, bearing Memo No. 25/LS, rejecting the petitioner's prayer for approval and/or regularization of his service. In the said order, referring to Rule 28 of the *Rules for Management of Recognized Non-Government Institutions (Aided and Unaided)*, 1969, the District Inspector of Schools concluded that although there existed a sanctioned vacant post, the petitioner had not been appointed by following the due selection process as required under the rules prevailing at the material point of time. It was observed that prior permission from the District Inspector of Schools was required to be obtained and that the selection process was to be conducted either by requisitioning names from the Employment Exchange or by issuing an

advertisement in the newspaper before making any appointment to the said post.

10. Assailing the order dated July 5, 2017, another writ petition being WPA 21069 of 2017 was preferred; however, the said writ petition was dismissed by the order impugned in the present appeal.
11. Mr. Mostafa, learned advocate appearing for the appellant, submits that the appellant was appointed against a sanctioned vacant post and has been rendering uninterrupted, unblemished and satisfactory service for more than two decades, i.e., for about 23 years. He further submits that prior to the appointment of the appellant, the school authority had sought prior permission from the District Inspector of Schools; however, despite being aware of the serious difficulties faced by the institution in running the school, such permission was not granted.
12. He submits that, in view of the aforesaid circumstances, the school authorities were compelled to appoint the appellant, and such an appointment cannot be characterized as illegal. He, accordingly, prays for a direction upon the concerned respondents to either approve the appellant's appointment or to regularize his service in the said post. In support of his contention, he relies upon the decisions reported in AIR 2025 SC 296 (*Jaggo vs. Union of India & Ors.*) and AIR 2025 SC 3897 (*Dharam Singh & Ors. vs. State of UP & Ors.*). Relying on the principles laid down therein, he contends that long, continuous and dedicated service rendered by an employee in respect of duties which are perennial in nature and essential to the functioning of an establishment or institution cannot be lightly disregarded

merely by labelling the initial appointment as ad hoc, contractual or part-time. According to him, the continuation of such service over a considerable period of time transforms what may initially have been a temporary or ad hoc arrangement into a situation warranting fair consideration for regularization.

13. Mr. Dey, learned advocate appearing for the State, vehemently denies and disputes the contentions advanced on behalf of the appellant by Mr. Mostafa. He contends that the Managing Committee of the school does not possess the authority to appoint any non-teaching staff without first obtaining prior permission from the District Inspector of Schools and without following the prescribed selection procedure.
14. He submits that, in the present case, no requisition was ever sent to the concerned Employment Exchange seeking the names of eligible candidates for the said post, nor was any advertisement published in any newspaper inviting applications from intending and eligible candidates. According to him, the appointment is therefore illegal *per se*. He further contends that such an appointment cannot be directed either to be approved or to be regularized.
15. As noted earlier, the appellant's prayer was rejected by the District Inspector of Schools by an order dated 5th July, 2017, and the writ petition was subsequently dismissed by the learned Single Judge by the order impugned in the present appeal.
16. In the course of hearing, by an order dated 04.12.2025, we directed the District Inspector of Schools and the Headmaster of the school to submit a report in the form of an affidavit addressing the following issues, along with supporting documents:

“ 1. Whether any representation was received by the office of the respondent no. 3 from the school authorities seeking prior permission to fill up any sanctioned vacancy in Group-D post? If so, the copies of the representations shall be annexed to the report;

2. Whether prior to upgradation of the said school from IV class Junior High School to X class Junior High School, any District Level Inspection Team (hereinafter referred to as the DLIT) was constituted and as to whether such team conducted any inspection? If so, the copy of such DLIT report shall be annexed to the report;

3. Whether there was any organizing staff in the said school at the time of such DLIT inspection? If so, the names of such organizing staff shall be disclosed in the said report;

4. Whether any other proceeding claiming regularization has been preferred by any staff of the said school? If so, the orders passed in such proceeding shall be annexed to the said report.”

17. Pursuant to the said order, the District Inspector of Schools submitted a report, and the Teacher-in-Charge (for short, TIC) also placed a report on record through the Teacher-in-Charge. In his report, the District Inspector of Schools, while responding to Query No. 1, stated that ‘no such information or documents are available in the office of the District Inspector of Schools (SE), Malda’. In response to Query No. 2, he stated that prior to the upgradation of the school from a Class IV Junior High School to a Class X High School, the institution had been inspected by the DLIT on 16.08.2000, and a copy of the said DLIT report was annexed thereto. With regard to Query No. 3, he has stated that, as per the DLIT report dated 16.08.2000, there was no organizing staff continuously serving in the school up to the date of such inspection. In

response to Query No. 4, he submitted that, as per the available office records, no other proceeding seeking regularization had been initiated by any other staff member of the said school.

18. By the said order, we also directed the Headmaster of the school to submit a report in the form of an affidavit addressing those issues, along with supporting documents.

19. In the report filed by school authority through its Teacher-in-Charge (for short, TIC), as regards query no. 1, the TIC submitted that on 10.12.2001 the school authorities had sought prior permission to fill up the post of Peon in the school, which was received by the District Inspector of Schools on 13.12.2001. Thereafter, by a letter dated 12.04.2007, the school authorities made a similar request to the District Inspector of Schools, and by a further letter dated 22.08.2009, a reminder was issued seeking grant of such prior permission. Copies of all the aforesaid letters were appended to the said report. It was further stated that in the year 2010 the school authorities filed a writ petition, being W.P. No. 21907 (W) of 2010, seeking a direction upon the District Inspector of Schools to grant such permission.

20. In respect of query no. 2, the Teacher-in-Charge submitted that, from the available records, it appeared that prior to issuing the appointment letter to the appellant on 7th June, 2003, the Secretary of the school had issued a notice/advertisement inviting applications from eligible candidates (Copy annexed), and the said notice was displayed on the notice board of the local Gram Panchayat and the local Post Office. It was further stated that since the

date of his joining, the appellant has been continuously rendering service in the said post.

21. In respect of query no. 3, it was categorically stated on behalf of the school authorities in their report that, since his joining on 2.7.2003, the appellant has been rendering uninterrupted service in the school as a Group-D (Peon), and even to date, there is no peon in the school other than the appellant. The school has only one Matron.

22. Therefore, from the documents appended to the report submitted by the Teacher-in-Charge, it appears that in the year 2001 the school authorities had sought prior permission to fill up the post of Group-D staff in the school. Thereafter, a similar request was made in the year 2007 and, in 2009, a reminder was also issued; however, such prior permission was not granted to the school. In the year 2010, the school authorities also filed a writ petition seeking a direction upon the District Inspector of Schools to grant such permission. We have been informed that the said writ petition was not pursued thereafter by the school authorities.

23. In his order dated 5th July, 2017, the D.I. of Schools recorded that, at the material point of time, there were two sanctioned posts of Group-D staff. One vacancy arose due to the death-in-harness of Md. Basir on 16.12.1999, which, being the first post in the 100-point roster, was reserved for a Scheduled Caste candidate. The other vacancy arose as a consequence of the upgradation of the school to a Class X High School on 01.05.2000. The staff pattern prepared by the school authority, a copy whereof was annexed to the report submitted by the school authority, also indicates that in the year 2003 there were two

vacant sanctioned posts of non-teaching staff in the school. Therefore, it is evident that the petitioner was appointed against a vacant sanctioned post.

24. In the decision of *State of Karnataka & Ors. vs. Umadevi*, reported in (2006) 4 SCC 1, it was observed that the power of the employer to make a temporary appointment, if the exigencies of the situation so demand, cannot be disputed. The exercise of power however stands vitiated if it is found that the exercise undertaken (a) was not in the exigencies of administration; or (b) where the procedure adopted was violative of Articles 14 and 16 of the Constitution; and/or (c) where the recruitment process was overridden by the vice of nepotism, bias or mala fides.
25. In the present case, it cannot be held that the appointment was not in the exigencies of administration. The report of school authority reveals that, prior to the appointment of the appellant, a notice inviting applications from eligible candidates had been displayed on the notice boards of the local Gram Panchayat and the local Post Office, and it was the appellant alone who responded to the said notice and applied for the post. As such, the Managing Committee, by adopting a resolution, appointed the appellant on a remuneration of Rs. 350/- per month, which was periodically increased and, at present, he receives a remuneration of Rs. 8,500/- per month and there is no performance issue against the appellant and no materials have been brought on record to hold that the process undertaken to appoint the appellant was overridden by the vice of nepotism, bias or mala fides or procedure adopted by the school authority was violation of Articles 14 and 16 of the Constitution of India.

26. Therefore, it is apparent from the records that the appellant, having been appointed against a sanctioned vacant post, has been rendering uninterrupted, unblemished, and satisfactory service and has been discharging the responsibilities attached to the post of a Peon (Group-D/non-teaching staff) of the school for a period of nearly 23 years. His duties include assisting the teachers and other staff of the school in their day-to-day activities, carrying official documents and materials within the school premises, and performing other essential tasks necessary for the smooth functioning of the institution. Thus, the nature of the duties performed by the appellant is perennial in character and integral to the functioning of the school; moreover, such responsibilities are akin to those performed by regular Group-D employees of an educational institution.
27. In the case of Jaggo (supra), the Hon'ble Supreme Court, while considering the claim of the appellants whose initial engagements had been described as 'contractual, or temporary', took note of the fact that they had been rendering continuous service for a prolonged period spanning several decades. The Court further observed that the nature of the duties discharged by them was fundamental to the functioning of the concerned offices and was akin to the responsibilities ordinarily attached to sanctioned posts. Taking these aspects into consideration, the Hon'ble Supreme Court directed regularization of their services and held that undue emphasis should not be placed solely on the initial nature or label of the engagement while ignoring the substantive character of the long and continuous service rendered.

28. In case of Jaggo(supra), taking note of the fact that the High Court had placed undue emphasis on the initial label of engagement of the appellants therein, ruled that the Courts must look beyond the surface labels and consider the realities of employment: continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointment. Referring with approval to the proposition of law laid down in Vinod Kumar & Ors. v. Union of India & Ors., reported in (2024) 1 SCR 1230, the Hon'ble Supreme Court further held that procedural formalities cannot be used to deny regularisation of the service of an employee whose appointment was described as "temporary" but who has, for a considerable period, performed duties and responsibilities similar to those discharged by regular employees.
29. In the case of Dharam Singh (supra), it was held that the judgment in Secretary, State of Karnataka & Ors. vs. Umadevi, reported in AIR 2006 SC 1806, cannot be invoked as a shield to justify exploitation through long-term 'ad hoc' employment, and that the State, being a constitutional employer, cannot extract work of a perennial nature in any establishment over the years by resorting to indefinite 'temporary' employment practices and the claim for regularisation of an employee who has rendered service for decades, performing duties akin to those of a regular employee, cannot be lightly rejected and therefore, having regard to the long and undisputed service, the perennial nature of the duties performed, and the existence of a vacancy, a direction for regularization came to be issued.

30. In the present case, if one looks beyond the surface labels, it appears that upon the upgradation of the school in the year 2000, two vacancies in the post of Group-D staff arose. As noted earlier, the school authority approached the D.I. of Schools in the years 2001, 2007 and again in 2009 seeking prior permission to fill up the said posts. It further appears that in the year 2010, a writ petition was also filed seeking a direction upon the concerned respondent to grant such permission. However, no document has been placed on record by the respondents to demonstrate that the requests made by the school authority were ever considered or acted upon by the concerned authority, despite the fact that the school, which was upgraded up to Class X level in 2000 and thereafter up to Class XI in 2014, has been functioning without any regular Group-D staff.
31. Indisputably, after the upgradation of the school, there was a substantial increase in student enrolment, which naturally resulted in a corresponding rise in the administrative responsibilities and day-to-day operational requirements of the institution. At the same time, the school was facing a shortage of supporting staff, and this shortage created considerable practical difficulties in managing the routine affairs of the institution and adversely affected its efficient functioning. In such circumstances, the Managing Committee found it necessary to take a decision to appoint a Group-D staff member.
32. The appellant herein is not claiming approval of appointment as an organizing staff. He was not appointed by any organizing committee of the school. The appellant had admittedly worked for more than 10 years in duly

sanctioned post without the benefit or protection of the interim order of any court or tribunal and possessed minimum qualification stipulated for the appointment. In view thereof, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for approval. [See the judgment delivered in the case of State of Jammu and Kashmir vs. District Bar Association, Bandipora, reported in 2016 (8) Supreme 416].

33. Therefore, taking into account the compelling circumstances which necessitated the appointment of the appellant as a Group-D staff, as well as the long, uninterrupted, unblemished and satisfactory service rendered by him for a period spanning more than two decades, and bearing in mind the principles laid down in State of Uttar Pradesh v. Jaggo (*supra*) and State of Haryana v. Dharam Singh (*supra*), we are of the considered view that the omission to observe certain procedural formalities such as the absence of prior permission, failure to send requisition to the Employment Exchange for sponsoring the names of eligible candidates or failure to publish notice or advertisement in a newspaper cannot stand in the way of the regularisation of the appellant's service. The learned Single Bench, in our view, has failed to give due consideration to these aspects.

34. In view of the discussion in the foregoing paragraphs, the order impugned in the appeal is set aside, and the respondents are directed to approve the appellant's service in the Group-D post of the school with effect from the date of this

order. All consequential benefits shall be released from that date. The entire exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

35. With these observations and order, the appeal and its connected application, if any are disposed of. There shall be no order as to the costs.
36. Urgent certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)