

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

MAT 2258 of 2025
+
IA No. CAN 2 of 2026

District Inspector of School (Secondary Education),
North 24 Parganas,
(previously known as District Inspector of School
(Secondary Education), 24 Parganas)
- Versus -
Sri Chittaranjan Roy & Others

For the Appellant : *Mr. Pinaki Dhole,*
Mr. Avishek Prasad.

*For the respondent no.1/
Writ Petitioner* : *Mr. Bikash Goswami,*
Mr. Chittaranjan Panda,
Mr. Osman Gani Mallick,
Ms. Shewly Saha,
Ms. Shipra Santra.

For the W.B.B.S.E. : *Ms. Koyeli Bhattacharyya,*
Mr. Bibek Dutta.

Hearing is concluded on : *07th April, 2026.*

Judgment On : **17th April, 2026.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by a functionary of the State being the District Inspector of School (SE), North 24 Parganas challenging an order dated 11.03.2025 passed by the learned single Judge

in a writ petition being WPA 3871 of 1978 which was preferred by the appellant, namely, Chittaranjan Roy (in short, Chitta) primarily challenging a memo dated 11.05.1978 issued by the Secretary, West Bengal Board of Secondary Education (hereinafter referred to as the Board) towards reinstatement of one Sri Mani Krishna Bhakta (in short, Mani) to the post of Headmaster of the Mahanayak Nehru Colony Naba Bharati Siksha Niketan (Junior High School) (hereinafter referred to as the said school) and to treat his absence from school as qualifying service. By the order impugned the learned single Judge directed the Secretary of the Board and the functionaries of the State being the Director of School Education and the appellant herein *‘to treat the period of absence of the writ petitioner from his duty i.e. from February, 1985 to the date of his superannuation as spent on duty’* giving the benefit of revision of scale of pay. The said respondents were further directed *‘to calculate the entire arrears towards salary of the writ petitioner that is from February, 1985 to his actual date of superannuation forthwith’* and to disburse the entire admissible arrears towards salary in four equal monthly instalments. The respondents were also directed to disburse admissible pension and in the event for any reason whatsoever the pension cannot be disbursed, the writ petitioner shall be paid provisional pension positively from the month of May, 2025.

2. For adjudication of the dispute the following dates would be necessary:

- i) 22.06.1975 - resignation letter of Mani from the post of Headmaster of the said school;

- ii) 25.06.1975 - the resolution of the Managing Committee of the said school appointing one Panchanan Majumder (hereinafter referred to as Panchanan) as the Headmaster of the said School;
- iii) 22.09.1976 – Panchanan’s suit being Title Suit no.549/1975 filed against Mani for permanent injunction restraining him from interfering Panchanan’s functioning as Headmaster was disposed of on a decree by compromise recording that neither Panchanan nor Mani would claim the Headmaster of the said school and the Managing Committee would be free to appoint any other person as Headmaster;
- iv) 20.12.1976 - Chitta was appointed provisionally as Headmaster of the said school;
- v) 09.05.1977 -memo issued by the appellant approving Chitta’s appointment as Headmaster in place of Mani with effect from 20.12.1976;
- vi) 11.05.1978 - order of reinstatement issued in favour of Mani;
- vii) 18.06.1978 - demand notice issued by Chitta claiming cancellation of the memo dated 11.05.1978;
- viii) 16.06.1978 - Chitta affirmed the writ petition being WP 3871 (W) of 1978;
- ix) 10.04.1981 - supplementary affidavit affirmed by Chitta;
- x) 19.09.2000 - writ petition dismissed for default and about five years thereafter an appeal against the said order was preferred MAT 3729/2004;
- xi) 31.05.2004 – Chitta attained the age of superannuation;

- xii) 19.09.2005 - the appeal was disposed of condoning the delay with a direction upon the learned single Judge to hear the writ petition on merits;
- xiii) 06. 01. 2025 - in compliance of an order dated 20.12.2024, a report in the form of an affidavit was filed on behalf the Board;
- xiv) 24.02.2025 - the appellant filed a report;
- xv) 07.03.2025 - Chitta used exceptions to the said reports of the Board and the appellant;
- xvi) 25.02.2005 - leave was granted by the learned single Judge in the writ petition to amend the prayer;
- xvii) 11.03. 2025 – writ petition was disposed of;
- xviii) 30.04.2025 – after filing of a contempt application, the order was partly complied with by the Board directing that *‘leave of absence from duty is granted as Spent on duty to Sri Chittaranjan Roy, Headmaster of Mahanayak Nehru Colony Nababharati Sikshaniketan (Junior High School), North 24 Parganas from February 1985 until superannuation with full pay in his favour’*.

3. Mr. Prasad learned advocate appearing for the appellant submits that the writ petition was filed in the year 1978 and was disposed of about 47 years thereafter by the order impugned in the present appeal. It would appear from the records that Chitta received salaries from the date of his appointment to the post of Headmaster with effect 20.12.1976 till the month of January, 1985 and that he did not render any service in the said school after January, 1985 till he attained the age of superannuation on 31.05.2004. Though the writ petition was pending, proper steps were not

taken by Chitta to apprise the Court that he was being forcibly restrained from entering the school. Upon such cessation of employer employee relationship and with the efflux of time, the writ petition, in fact, became infructuous. However, surprisingly, when the writ petition came up for hearing about twenty-one years thereafter on 25.02.2025, life was infused into an infructuous writ petition granting liberty to Chitta to amend the prayer of the writ petition and pursuant to such direction Chitta incorporated prayers to the effect that the period from the month of February, 1985 till his superannuation should be treated as spent on duty and the back wages should be disbursed to him pertaining to the said period. The scope of the said writ petition could not have been enhanced on the basis of an order granting leave to Chitta for amending the prayers.

4. According to Mr. Prasad the learned single Judge erroneously issued directions towards payment of full back wages on and from the month of February, 1985 till 31.05.2004 in the absence of any pleading that he had been forcibly restrained from joining his duties and his salary was stopped from the month of February, 1985. In the supplementary affidavit and the exceptions used Chitta did not disclose the fact that he was enrolled in the Bar Council of West Bengal on 10.05.1988 and that he started practicing as an advocate thereafter.

5. Placing reliance upon a report of the appellant filed before this Court, Mr. Prasad contends that Mani got the salary as Headmaster of the said school for the period from 19.06.1978 till he died in harness on 10.04.1993 on the basis of an order dated 5th July, 1989 passed by the Court in a writ petition filed by Mani being C.O 1304 (W) of 1988 impleading

Chitta. Had such fact being brought to the notice of the learned single Judge the order would have been otherwise. In view of the order impugned, the State authorities have to pay the salary of Headmaster to two different incumbents at least for the period from the month of February, 1985 till 10.04.1993. Let the report of the appellant be kept on record.

6. Mr. Goswami learned advocate appearing for Chitta denies and disputes the contention of Mr. Prasad and submits that no disciplinary proceeding was ever initiated against Chitta nor any order of suspension was passed, however, his salary was illegally stopped on and from the month of February, 1985 and he was forcibly restrained from joining the said post. Such fact was reported to the appellant by a representation dated 13.03.1986 and police complaints were also lodged but in vain. In the said conspectus, the learned single Judge had rightly directed payment of back wages and there is no infirmity in the order of impugned. For the wrongful action on the part of the respondents, Chitta cannot be made to suffer. The wrong doer was the employer and the sufferer was Chitta and there is no justification to give premium to the employer of its wrong doing by relieving it of the burden to pay to the employee his dues in the form of full back wages moreso when, Chitta was willing to work but was illegally and unlawfully prevented from working. Reliance has been placed upon the judgment delivered in the case of *Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others*, reported in (2013) 10 SCC 324.

7. Mr. Goswami further argues that learned single Judge prior to disposal of the writ petition called for reports from the appellant. In

response thereto, the appellant filed a report on 24.02.2025 admitting the appointment and approval of Chitta to the post of Headmaster of the said school. The writ petition was contested by the State authorities but they did not assail the order dated 25.02.2025 granting leave to Chitta to amend the prayers of the writ petition and in view thereof, it cannot be urged that the scope and ambit of the writ petition was extended through incorporation of new prayers.

8. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

9. Indisputably, the writ petition being WPA 3871 of 1978 was affirmed on 16.06.1978 primarily praying for issuance of necessary direction upon the respondents from giving effect or further effect to the memo dated 11.05.1978 directing reinstatement of Mani. The representation made to the appellant on 13.03.1986 and the complaints lodged in the years 1983 and 1984 were for the first time disclosed in the exception filed on 07.03.2025 to the report of the Board.

10. A writ petition, pending for about 47 years, was disposed of without seeking any explanation from Chitta as to why he did not take proper steps earlier for expeditious disposal of the writ petition. The learned single Judge appears to have proceeded being oblivious of the facts that the writ petition was dismissed for default sometimes in the year 2000, the restoration application was also dismissed and thereafter Chitta preferred an appeal along with an application for condonation of delay of about 1828

days which was ultimately disposed of by an order dated 19.09.2005 and the writ petition was restored. About twenty years thereafter leave was granted on 25.02.2025 to amend the prayer of the writ petition. Such amendment was executed on 28.02.2025 and the writ petition was disposed of about 13 days thereafter on 11.03.2025.

11. It was also not brought to the notice of the Court by Chitta that during pendency of the writ petition, he enrolled himself as an advocate in the year 1988 and was thereafter practicing in the Hon'ble High Court. Had such facts been brought to the notice of the Court, the order would have been otherwise. It is well settled position of law that the relief under Article 226 is discretionary. A remedy is called discretionary when it is not available as a matter of right and may be refused by the Court when the conduct of a person is such that he does not deserve the discretionary relief. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path for extinction with the passage of time.

12. The impugned order would have the effect of double payment from the State exchequer pertaining to the post of the Headmaster in the said school for the period from 19.06.1978 to 10.04.1993. Chitta claimed back wages upon having been granted leave to insert the prayer to that effect by an order dated 25.02.2025. Such prayer is not supported with appropriate pleadings. In the absence thereof, the direction towards payment of back wages for the period from February, 1985 till date of his retirement on 31.05.2004, is not sustainable in law, moreso when there was no pleading that Chitta *'was willing to work but was illegally and unlawfully prevented*

from working'. It is no longer *res-integra* that direction towards payment of back wages is a discretionary power which has to be exercised by a Court keeping in mind the facts in its entirety.

13. It cannot be urged that Chitta was not in any manner responsible for the delay in the disposal of the writ petition. There is no material on record to suggest that Chitta took any steps for disposal of the writ petition prior to the date of his superannuation on 31.05.2004. In the said conspectus, the argument on behalf of the appellant that Chitta lost interest in the matter as he had joined the profession thereafter having obtained enrolment in the year 1988 cannot be brushed aside. However, it is also a fact that without any initiation of any disciplinary proceeding and any order, Chitta was kept out his service without any convincing reason. The Court also cannot shrug off its responsibility towards the delay in disposal of the writ petition for more than four decades. In such circumstances, we are of the opinion, that the equities need to be balanced among the parties.

14. Accordingly, the Court directs that Chitta's entire tenure of service shall be treated for the period from 26.12.1976 till the date of his superannuation on 31.05.2004. The direction towards payment of back wages for the period from February, 1985 till the date of his superannuation on 31.05.2004 shall stand quashed and only notional benefits including the benefits of revision of scale of pay shall be granted for the said period from February, 1985 to 31.05.2004. The direction that *'in the event for any reason whatsoever the pension cannot be disbursed, the writ petitioner shall have to be paid provisional pension positively from the May, 2025'* is also set aside. It is made clear that the appellant and all other functionaries of the State shall

ensure that full pensionary benefits along with all arrears are disbursed in favour of Chitta positively within a period of 8 weeks from the date of communication of this order, subject to compliance of necessary formalities by Chitta. The school authorities shall also extend all assistance for disbursement of the said benefits. The order impugned in the present appeal is modified to the above effect.

15. With the above observations and directions, the appeal and the connected application are, accordingly, disposed of.

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

17. All parties shall act on the server copies of this judgment duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)