
(2019) 04 CAL CK 0073

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 36969 (W) Of 2013

Alok Kumar Layek

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 24-04-2019

Acts Referred:

West Bengal Board Of Secondary Education Act, 1963 — Section 45

Citation : (2019) 04 CAL CK 0073

Hon'ble Judges : Shampa Sarkar, J

Bench : Single Bench

Advocate : Piush Chaturvedi, Amit Kr, Amitesh Banerjee, Mummun Tewari

Final Decision : Dismissed

Judgement

Shampa Sarkar, J

Aggrieved by and dissatisfied with the order dated October 1, 2013 passed by the District Inspector of Schools (Secondary Education), Purulia, this writ petition has been filed. By the order impugned, the claim of the petitioner for absorption and regularization of his service in the post of an Assistant Teacher in one Tulin Tapoban Junior High School (hereinafter referred to as the said school) was rejected.

2. The facts of the case as pleaded in the writ petition are that the said school, which was established sometime in the year 1956 was initially a senior basic school. Sometime in the year 1969 the said school was converted into a 3 class (Class VI-VIII) Junior High School. On or about January 22, 1992 the respondent no.4 that is, the District Inspector of School (Secondary Education) Purulia, made an inspection in the said school for opening class-V and conversion of the said school to a 4 class (Class V-VIII) Junior High School. Anticipating, that recommendation for opening Class-V, would be given, the school authorities started admitting students in Class V and to meet the requirement of teaching staff in the newly opened Class V, the authorities of the said school, adopted a

resolution in the meeting of its Managing Committee held on April 2, 1994 for appointment of the petitioner as an Assistant Teacher on provisional basis with effect from April 6, 1994 as an organizing staff of the newly opened Class -V in the said school. By a Memo No.65 (2)/Law dated July 7, 1998 the said school was recognized as a 4 Class Junior High School with effect from sometime in the year 2000. At the time of grant of such recommendation, the petitioner was already rendering continuous service in the said school and continued to render such service uninterruptedly. He possessed the academic qualification of M.A in Bengali. He was registered with the Employment Exchange since 1991 and was otherwise fit and eligible to be appointed as an Assistant Teacher.

3. It has been further averred that the petitioner was assured by the school authorities that upon approval of the said school as a 4 class Junior High School his case would be considered for formal approval as an Assistant Teacher in accordance with the existing rules and upon such assurance, the petitioner continued to render his services with utmost sincerity and dedication. Thereafter, two temporarily appointed teachers namely Sri Narayan Chandra Kundu and Sri Pashupati Mahato who were also provisionally appointed in the year 1996 were being considered for regularization. The petitioner made a representation, before the respondent authorities asserting his claim for grant of approval upon regularization. His claim was based on Memo no. 117-SP(S)/4A-50/93 dated February 24, 1995 issued by the respondent authorities which provided for approval of appointment of organizing teaching and non-teaching staffs in schools newly recognized as 4 Class Junior High School, in order of seniority provided that the names of such teaching and non-teaching staffs figured in the final inspection report leading to such recognition/up gradation and they had the minimum prescribed qualification on the date of initial appointment. The inaction of the respondents in granting approval to the petitioner gave rise to filing of W.P. 12661 (W) of 2000 before this Court. The said writ petition was heard by a learned Single Judge of this court and by an order dated February 15, 2012, the learned Single Judge directed the respondent authorities to accord approval to the petitioner as an Assistant Teacher within 3 weeks from the date of communication of the order. The state respondents preferred an appeal being MAT 1433 of 2012 assailing the aforesaid order before the Hon'ble Division Bench and the said appeal was disposed of by the Hon'ble Division Bench on June 19, 2013, inter alia, with a liberty to the petitioner to make a representation, within 3 weeks from the date of the said order, to the respondent no.4 with a further direction upon the said respondent to dispose of the said representation by passing a reasoned order in accordance with law within 3 months upon hearing all concerned. A hearing was scheduled to be held on September 6, 2013 at 12:30 P.M in the office of the respondent no.4. The petitioner was asked to attend the said hearing along with necessary papers and documents in support of his claim. The petitioner, produced photo copies of his initial appointment letter issued by the Headmaster/Secretary, Managing Committee of the said school and the attendance register in support of his claim and as evidence that he had been

rendering uninterrupted and continuous services in the said school since thereafter.

4. By the order impugned to this application, the representation of the petitioner was rejected and his claim for absorption and approval/regularization was denied by the respondent no.4 who arrived at a finding that there was no evidence on record to show that the petitioner was working in the said school. He recorded that although, it was found from the records that the other two teachers namely Narayan Chandra Kundu and Pashupati Mahato had been appointed but, from the attendance register, kept in the school, the respondent no.4 did not find the name of the petitioner among the teaching staff. The contention of the petitioner with regard to his appointment and taking classes in class V, on provisional basis, was disbelieved by the District Inspector of Schools (SE), Purulia, on the ground that the original attendance register and copy of the appointment letter of the petitioner for the relevant period could not be produced by the school authorities. Further, the claim of the petitioner was rejected also on the ground that there were already five teachers working in the said school with the post of the Headmaster lying vacant and the existing staff pattern of six sanctioned teaching post did not permit appointment beyond the sanctioned strength.

5. Mr Piush Chaturvedi learned advocate appearing on the behalf of the petitioner submitted that the order impugned to this writ petition was perverse, as the authority had mechanically held that there was no evidence on record to show that the petitioner was working in the said school although, the petitioner had produced photo copies of the attendance register and also the appointment letter issued to him. According to Mr. Chaturvedi, the report of the District Level Inspection Team (in short DLIT) dated December 15, 1992 would not contain the name of the petitioner, inasmuch as, the said inspection was made prior to approval of the authorities for opening class V and it was the specific case of the petitioner that only after the said inspection, the managing committee of the school opened class V and the petitioner was appointed to take classes in anticipation that the recognition of the said school as a 4 class Junior High School, would be received. The petitioner was appointed before the approval of the school as a 4 class Junior High School and after the inspection of the DLIT. It was further contended by Mr. Chaturvedi that the two teachers who were approved pursuant to an order of this court dated January 12, 2006 passed in W.P No. 18562 (W) of 2003 namely Narayan Chandra Kundu and Pashupati Mahato were provisionally appointed after the petitioner, that is, in 1996, although, the petitioner was appointed by the managing committee of the school on April 4, 1994. He placed reliance on the memorandum no.117-SE(S)/4A-50/93 dated February 24, 1995 in order to emphasize that the teaching staff having minimum qualification on the date of initial appointment of a newly recognized 4 class Junior High School should be approved on the basis of their seniority. He further relied on the aforementioned memorandum to contend that the appointment of the other two teachers namely Narayan Chandra Kundu and Pashupati Mahato could not be given as the petitioner was appointed before

them.

6. Mr. Chaturvedi relied on the decisions in *Amarkant Rai vs. State of Bihar and Others* reported in (2015) 8 SCC 265, *Prasanta Kumar Das vs. State of West Bengal* reported in 2018(2) CHN (CAL) 534, *Dhananjoy Karmakar vs. State of West Bengal and Others* reported in (2015) 17 SCC 504, *Narendra Kumar Tiwari vs. State of Jharkhand* reported in 2018 SCC Online SC 771, *Phani Bhusan Mondal & Ors vs. The State of West Bengal & Ors* reported in (2010) 2 CAL LT 620 (HC) and *Sheo Narain Nagar and Others vs. State of Uttar Pradesh and others* reported in AIR 2018 SC 233.

7. Mr. Amitesh Banerjee learned Senior Standing Counsel Government of West Bengal submitted that the school authorities in their meeting dated October 14, 1996 introduced class V from the academic sessions 1997-98 and not from 1994 as contended by the petitioner. Due to dearth of teachers Narayan Chandra Kundu and Pasupati Mahato were appointed on provisional basis. He denied the claim of the petitioner and submitted that the said school became a 4 class Junior High School in May 2000 and the sanctioned teaching posts were filled up according to the staff pattern. He further stated that the records of attendance of Narayan Chandra Kundu and Pashupati Mahato on from October 15, 1996 were available in the school although, no such records of attendance of the petitioner were found by the District Inspector of School when he made the inspection sometime in September, 2013. Mr. Banerjee, submitted that the said school was not an organized school, and the school did not have any record to show that the petitioner was either appointed or was working at any point of time. The other two provisionally appointed teachers filed a writ petition being W.P No. 14639 (W) of 1998 for a direction upon the school authorities for issuance of appointment letters as the school was utilizing their services for teaching in the newly opened class V. On the basis of the order dated August 28, 1998 passed in the said writ petition those teachers Narayan Chandra Kundu and Pashupati Mahato were given appointment letters. The petitioner was not mentioned in the said proceedings. Even on the date of inspection, that is, September 4, 2013 by the respondent No.4 the petitioner was not found in the school. Mr. Banerjee submitted that as per Memo.No.670 EDN(S) dated September 4, 1989 number of teaching staff of a 4 class Junior High School was six. There were five approved teachers including the above-named two teachers who were approved against two vacant sanctioned posts by the direction of this court in W.P 18562 (w) of 2003 dated January 12, 2006 and the post of Headmaster was lying vacant. According to him, the law did not permit appointment of any staff beyond the sanctioned strength of any school. The claim for absorption and regularization of the petitioner as an Assistant Teacher in the said school was rightly rejected by the authority.

8. The order impugned to this writ petition is quoted below:-

"In the backdrop of the evidences, reporting of the petitioner, Secretary and the Teacher-in-Charge and inspection of the school on 04.09.2013, I come into the

decision that,

i) Tulin Tapoban Junior High School, P.O-Tulin, Dist.-Purulia was never an organized school. Secretary of the school affirm the same vide a letter No.263 dt. 05.08.2013.

ii) During my inspection at Tulin Tapoban Junior High School dt. 04.09.2013 no such contemporary evidence/records has been found by which working of the petitioner at any time at the said school can be proved undoubtedly. As per order of the Hon'ble High Court, Calcutta, dated 28.08.1998, two teachers have been appointed with the sanctioned strength of the school. A separate attendance register starts on 1993 has been seen by the undersigned in which attendance of Narayan Ch. Kandu & Pashupati Mahato has been registered. No attendance register showing the attendance of the petitioner and original appointment letter has been found in the school during the inspection. A Xerox-copy of attendance sheet has been shown by the petitioner during hearing, but neither the petitioner nor the School authority is able to submit the original one. And on that day of Inspection no other teacher except the approved teaching and non-teaching staff has been found in the school.

i) As per G.O.No.670-EDN(S) dt. 04.09..1989 number of teaching posts admissible to a 4-class Junior High School shall be six and at present five approved teachers working at the school and the post of Head Master is lying vacant.

ii) Hon'ble Justice Pratap Kumar Roy ordered in an identical case vide W.P.No.4072 (W) of 2003, Mr. Arjaul Haque-Vs-The State of West Bengal and Others that the managing Committee had no power to appoint any teacher without processing through the selection procedure as laid down thereto and without approval of the panel by the D.I.S. concerned & to follow the recruitment rules vide G.O.No.1049/1(19) GA dated 20th May, 1993.

At this juncture, I am of the opinion that, since there is no such provision laid down in the existing Government order to appoint or to approve any staff beyond sanctioned staff strength of any school, the claim of the petitioner for regularization of service and absorption as an Assistant Teacher is hereby rejected."

9. I have heard the learned advocates for the respective parties. The memorandum no.117-SE(S)/44-50/93 dated February 24, 1995 deals with approval of organizer teaching/non-teaching staff of the secondary schools newly recognized as 4 class Junior High School and newly upgraded to a high school by the West Bengal Board of Secondary Education. The relevant portion is quoted below:-

"2. Upon first recognition of unrecognized four-class Jr. High Schools and up gradation of recognized Four-Class Jr. High Schools to High Schools the teaching and non-teaching staff as have been appointed by such schools in conformity

with the following conditions for running of the un-recognised classes may be considered as organizing staff for approval of their appointments subject to the following conditions:-

(i) The appointments of organizer teachers and non-teaching staff of a newly recognized four-class Jr. High School shall be approved provided such school had duly applied with the prescribed fees to the West Bengal Board of Secondary Education for its recognition. Evidence to the effect that such application alongwith the prescribed fees was received by the Board has to be furnished by the concerned school authorities.

(ii) The appointments of only those organizer teachers and non-teaching staff of a newly upgraded High School which was previously already permitted by the West Bengal Board of Secondary Education to send up examinees for the Madhyamik Examination (and now upgraded from 4-class Jr. High level to Class-X) shall be approved who were serving at the school for the un-recognised units of classes IX & X at the time of dissolution of those units by the West Bengal Board of Secondary Education's circular No.1/78 dt. 31.1.1978 and have been continuously serving at the school.

(iii) The name(s) of such teacher(s) and non-teaching staff are recorded in the final inspection report leading to such recognition/upgradation.

(iv) Such staff possessed the prescribed minimum qualification for their respective posts on the date of initial appointment as was existing on the date.

(v) Such staff were within the prescribed age-limit on the date of initial appointment as was existing on the date.

(vi) Such teaching and non-teaching staff shall be approved in order of seniority (as recorded in the inspection report strictly conforming to the existing approved staff pattern."

10. Admittedly, the name of the petitioner as a teaching staff did not appear in the final inspection report leading to recognition of the said school as 4 a class Junior High School. Although it was argued on behalf of the petitioner, that he was appointed after such inspection, this court cannot lose site of the fact that, had the petitioner been working since 1994 the appointment letter of the petitioner and the attendance register would be available in the school records when the inspection was made by the District Inspector of Schools on September 4, 2013. The school authorities failed to produce any document in support of the claim of the petitioner although, evidence showing the service of Narayan Chandra Kundu and Pashupati Mahato were available in the school records. Moreover, in case of Narayan Chandra Kundu and Pashupati Mahato an order was passed by this court dated August 28, 1998 in W.P. No.14639 (W) of 1998 by which the school authorities were called upon to take a decision with regard to issuance of a formal letter of appointment to them. Pursuant to the said order, letters of appointment were issued to those two teachers. By another subsequent

order dated January 12, 2006 passed in W.P.No.18562 (W) of 2003, the respondents were directed to approve the said two teachers against the sanctioned posts subsequent to recognition of the school as a 4 class Junior High School. In the said order it had been recorded that the school authorities did not dispute the fact that class V was opened by the managing committee of the school in 1996 and that Narayan Chandra Kundu and Pashupati Mahato were also appointed in the said school in 1996 and they continued to render service for more than nine years. With regard to the appointment of the petitioner, the teacher-in-charge of the school submitted before the District Inspector of Schools that the school was not an organized school and there were no records in his possession showing the appointment of the petitioner or the continuation of the service of the petitioner. The secretary of the said school also agreed with the contentions of the teacher-in-charge. The secretary of the school requested the respondent no.4 to consider the case of the petitioner sympathetically although admittedly there was no evidence in support of such claim. The District Inspector of Schools held an inspection on September 4, 2013 but did not find any evidence or record in support of the claim of the petitioner although, the attendance register showed that Narayan Chandra and Pashupati Mahato were available in the school.

11. The claim of the petitioner in my view was rightly rejected in the absence of any record or evidence in the original files of the school authorities. Moreover, the court cannot direct the District Inspector of Schools to appoint teachers beyond the sanctioned strength. It is not clear from the records from when the petitioner had discontinued his service inasmuch as, on the September 4, 2013 when the respondent no.4 held an inspection the petitioner was not present in the school.

12. The other two teachers were given formal letters of appointment pursuant to a direction of this court and they were directed to be approved and regularized by this court when the school was recognized as a 4 class junior high school against the two teaching posts which were sanctioned and lying vacant. As such, the legality or propriety of their appointment cannot be dealt with in this writ petition and the orders of this court have attained a finality and are binding between the parties.

13. This court finds from the records that the school was not an organized school. Class V was opened in anticipation of recognition of the school as a 4 class Junior High School. As such, the Managing Committee could not have appointed the petitioner in 1994 beyond the sanctioned strength when there was no existing vacancy and the recognition of the school as a 4 class Junior High School had not been given.

14. In this connection reference is made to the decision of the Hon'ble Division Bench of this court in the matter of Manindra Nath Sinha & Ors. vs. State of West Bengal & Ors. reported in 2006 (4) CHN 513. The relevant paragraph is quoted below:-

"13. Therefore, the questions before us are whether the writ petitioners were appointed by the then Organising Managing Committee of the school as organizer-staff and if appointed, whether such appointment can be directed to be approved in accordance with the existing statutory provisions.

14. To appreciate the aforesaid questions. Rule 28 of the Management Rules providing power of the Managing Committee of a school may be referred to. At this stage, it may be mentioned here that the Parent Act in this case is the West Bengal Board of Secondary Education Act, 1963 and according to section 45 of such Act, the State Government may after previous publication make rules for carrying out the purpose of the said Act and by virtue of such power conferred under section 45 of the said Act, the Management Rules were enacted. The provision of the Rule 28 as it stood prior to coming into operation of West Bengal school Service Commission Act, 1997, is quoted below:

"Power of the Committee.- (1) In an aided institution the Committee shall, subject to the provisions of any Grant-in-aid Scheme or Pay Revision Scheme or any order or direction or guidelines issued by the State Government or the Director in connection therewith and in force for the time being, have the power-

(i) to appoint teachers and other employees on permanent basis against permanent vacancies, if available, within the sanctioned strength of teachers and other employees, approval for such appointment being thereafter sought for from the Director or any other officer authorised by him, ordinarily within a fortnight from the date of decision of the committee;

(ii) to appoint teachers and other employees on temporary basis against permanent or temporary vacancies, if available, within the sanctioned strength of teachers and other employees, approval for such appointment being thereafter sought for from the Director or any other officer authorised by him, ordinarily within a week from the date of decision of the committee."

15. According to the aforesaid provision, the Managing Committee of a school was vested with the power subject to the provision of any Grant-in-aid scheme or pay-revision scheme or any order or direction or guidelines issued by the State Government or Director and in force for the time being to appoint teachers and other employees on permanent basis against permanent vacancies if available within the sanctioned strength of teachers and other employees and approval of such appointment should be thereafter sought for from the Director or any other officer authorized by him within a specified period. Similarly, such Managing Committee had also power to appoint teachers and other employees on temporary basis against permanent or temporary vacancies within the sanctioned strength of teachers and other employees in the similar manner but in the rules no power has been given to the Managing Committee of a school to appoint any teacher or non-teaching staff beyond the sanctioned strength of teachers and other employees. In the case before us, the petitioners are claiming that before approval of the school, they were appointed by the Organizing Managing

Committee of the school and as such, their appointments should be regularised after the recognition of the school. Therefore, the appointment of the petitioners, according to their own case, as so-called organizer-teacher was not in conformity with the Parent Act or the rules because they were not appointed by any Managing Committee constituted in accordance with the Act or the rules framed thereunder but by a purported. Organizing Managing Committee. Although, there are several notifications issued by the Government giving instruction for approval of organizer-teachers in a school, the term "organizer-teacher" is unknown in the Parent Act or the rules. Moreover, even no instruction has been given by the Government permitting any purported Organizing Managing Committee to appoint teaching or non-teaching staff as "organizer-teachers" before a school is formally recognized. Therefore, it is apparent that the appointment of the petitioners by the Organizing Managing Committee, even if the same is true, was without any authority of law.

16. In our view, in the Parent Act, namely, the West Bengal Board of Secondary Education Act, 1963 and rules framed thereunder to achieve the object of the said Act, there is no provision for appointment of any Organizing Managing Committee or organizer-teacher nor is there any authority conferred upon such Organizing Managing Committee to appoint any teacher or employee before the recognition of the school and conferment of the prescribed sanction strength under the Act and the Joint Secretary of the Education Department by issuing certain circulars cannot lay down the guidelines for approval of any teacher or employee illegally appointed by the so-called Organizing Managing Committee. If the initial appointment is illegal according to the Parent Act and the rules, the Government by issuing notification through its Joint Secretary cannot approve or regularize such illegal appointments."

15. This decision was carried in appeal before the Hon'ble Apex Court in Civil Appeal No.7897 of 2010. The civil appeal was dismissed by a Bench of the Apex Court comprising of three Hon'ble Judges. In a judgment passed by a Hon'ble Division Bench of this court in the matter of The District Inspector of Schools (Secondary Education) Burdwan & Ors. Vs. Abdul Barik Shaikh & Ors (in-Re M.A.T. 1626 of 2017, C.A.N 9381 of 2017). It was held as follows:-

"19. Applying the law laid down here, we hold that Manindra Nath Sinha (supra) having been affirmed by the Supreme Court, all Benches of this Court in cases involving similar fact situation are bound to follow the same as a binding precedent and any decision of a learned Judge or Judges, which runs counter to the dicta in Manindra Nath Sinha (supra), Smritikana Maity (supra), Gita Banik and Gopal Singh (supra), is not good law."

16. The decision of Amarkant Rai (Supra) does not help the petitioner in view of the factual distinctions. The Hon'ble Supreme Court directed regularization in view of the fact that the appellant therein was appointed on a temporary basis and the principal of the college had supported his case for absorption and had recommended the same to the university to which, the university did not raise

any objection in view of the existing policy for absorption of services of persons appointed on daily wages.

17. The decision of Narendra Kumar Tiwari (supra) also does not help the petitioner inasmuch as, in the said decision the Hon'ble Apex Court deprecated the practice of the State of Jharkhand in continuously making irregular appointments for almost a decade. In the said case, the appellants were denied regularization in view of the provision of the Jharkhand Sarkar e Adhinasth Aniyamit Rup se Niyukt Ewam Karyarat Karmiyo ki Sewa Niyamawali, 2015. The Apex Court allowed the appeal and held that the State of Jharkhand had been newly created and all persons who had rendered 10 years of service before the promulgation of the said Rules mentioned herein above should be given the benefit of paragraph 53 of the judgment of the Apex Court in Umadevi (3) (supra) as a onetime measure. It is important to mention that the decision of Umadevi (3)(supra) clarified in paragraph 53 thereof, that only those persons who were working against sanctioned vacant posts would be regularized. In this case, there was no sanctioned vacant teaching post against which the petitioner was appointed. In the orders passed in the writ petitions filed by Narayan Chandra Kundu and Pashupati Mahata there was no mention about the appointment of the petitioner prior to those two teachers and there were no records in the school to substantiate such claim of the petitioner. The school authorities also denied the claim of the petitioner.

18. The decision of Dhananjay Karmakar (supra) also does not apply in case of the petitioner inasmuch as, the Hon'ble Apex Court directed the appellant before it to be regularized along with similarly situated teachers who had already been regularized by the authorities. The facts are clearly distinguishable. The petitioner, Narayan Chandra Kundu and Pashupati Mahato are not similarly situated inasmuch as, the authorities have not accepted that the petitioner had been appointed and no records were also available with the school with regard to the appointment of the petitioner.

19. The facts in Phani Bhusan Mondal & Ors. (supra) is also distinguishable. The learned Single Judge in that case found from the records that the writ petitioner had been appointed to teach in the unrecognized part of the school which was undergoing recognition by stages whereas, in the instant case the school was initially a senior basic school and later 3 class Junior High School and after opening Class V in the year 2000 it became a 4 Class Junior High School on and from 2000. Those teachers who were appointed after opening of Class V before the recognition have already been regularized against the two sanctioned vacant posts by an orders of this court which had become binding on the parties to the said proceeding. There was no further post available for absorption of any other teacher.

20. The decision in Prasanta Kumar Das (supra), does not help the petitioner inasmuch as, in that case recognition was directed on the ground that the appointments were made due to some exigency and the appointees were

directed to be regularized as there were no recruitment rules with regard to their appointment in that educational institution which was run by the municipality. On the contrary, in the instant case there are specific Rules governing such appointments.

21. The decision of Swami Narayan (supra) also does not help the petitioner inasmuch as, the petitioner before their Lordships was appointed on contractual basis as there were no rules governing those appointments.

According to the Hon'ble Apex Court those were not illegal appointments and regularization was directed in view of the fact that the appellants had rendered ten years of regular service.

22. The decision in Sheo Narain (supra) also does not help the petitioner inasmuch as, the appellants before the Apex Court were directed to be regularized as the appointments were made on contractual basis and the Apex Court had come to a specific finding that those appointments were not 'back door entry' and the appointments did not contravene any recruitment rule.

23. Coming back to the facts of this case, admittedly there was no evidence in the records of the school to show that the petitioner had been appointed in 1994 to teach in class V by the managing committee of the school. The case of the petitioner was not supported by the school authorities. The petitioner was not found present in the school when the respondent no.4 inspected the school on September 4, 2013. Although, records revealed that Narayan Chandra Kundu and Pashupati Mahato had signed the attendance register, the signature of the petitioner was not found. Finally, the case of Narayan Chandra Kundu and Pashupati Mahato was supported by the school authorities and the school also issued formal appointment letters to them in 1998, pursuant to the direction of this court. In another writ petition filed by the said two teachers an order had been passed directing the authorities to appoint them against two vacant sanctioned posts upon recognition of the school as a 4 class Junior High School. The sanctioned strength of a 4 Class Junior High School for teaching staff is six, five teachers had already been appointed and the post of the Headmaster was lying vacant at the time of consideration. The decision of the District Inspector of Schools does not suffer from any illegality or error apparent on the face of record. If the rules do not permit appointment beyond the sanctioned strength, this court, cannot direct creation of a post for absorption and regularization of the petitioner. In the cases relied upon by the petitioner, regularization was directed to be given either when there were no existing recruitments rules or when the persons were appointed on temporary or contractual basis against sanctioned or vacant posts and had continuously rendered service in the organization for more than ten years. Such is not the situation in the case in hand.

24. The writ petition is dismissed. There shall be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for be given to the

parties on priority basis.