
(2001) 06 CAL CK 0047

In the Calcutta High Court

Case No : Writ Petition No. 10619 (W) of 1999

Anarul Haque and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 25-06-2001

Acts Referred:

Bengal (Rural) Primary Education Act, 1930 — Section 55, 55(1), 55(2), 55(3)
Bengal (Rural) Primary Education Rules, 1930 — Rule 3D
Constitution of India, 1950 — Article 14, 16, 19, 21, 226

Citation : (2001) 3 CALLT 259

Hon'ble Judges : Pratap Kumar Roy, J

Bench : Single Bench

Advocate : Balai Lal Sahoo, Abdulla Rahamani, Hasanuz Zaman and Sankha Prosad Roy, for the Appellant; Debaprasad Mukherjee and Bhagabat Chowdhury, for the Respondent

Judgement

P.K. Ray, J.—In this writ application, writ petitioners claiming themselves as Organizing Teacher of Aimapara Primary School has challenged the decision of Chairman, Ad hoc Committee, District Primary School Council, Burdwan passed under Memo No. 982/5 dated Burdwan 16th April 1999 whereby and whereunder rejecting their such claim as organized staff of Aimapara Free Primary School as recognized sometimes in between 8th September, 1980 to 19th September, 1982 the relief by regularisation of such appointment was rejected. Writ petitioners have prayed the following reliefs:

(a) A writ of Mandamus or a writ in the nature thereof commanding the respondent No. 3 particularly the Chairman, Ad-hoc Committee, District Primary School Council, Burdwan to cancel/withdraw/ rescind the impugned order issued in Memo No. 982/5 dated 6.4.99 and upon so doing direct the state respondent No. 3 to issue the appointment letter in favour of the petitioners within a time as specified by this Hon"ble Court.

(b) A writ of Certiorari or a writ in the nature thereof directing the respondent

No. 3 to produce the records of the instant case and upon so doing quashed the present impugned order dated 16.4.99 issued in memo No. 982/5 by the Secretary, Ad-hoc Committee, District Primary School Council, Burdwan.

(c) An appropriate writ/order/direction requiring the respondents from giving any effect and/or further effect to the impugned order dated 16.4.99 issued in memo No. 982/5 issued by the Chairman, Ad-hoc Committee, District Primary School Council, Burdwan and further forbearing from filling up of the present vacant posts of assistant teacher in Primary School till the disposal of the writ application.

(d) Rule Nisi in terms of prayer (a), (b) and (c) above;

(e) Rule absolute in the event of failure by the respondents or any of them to make an adequate and/or timely return.

(f) Costs;

(g) Ad-Interim order of injunction restraining the respondents from giving any effect and/or further effect to the order dated 16.4.99 issued in memo No. 982/5 issued by the Chairman, Ad-hoc Committee, District Primary School Council, Burdwan and further restrained the respondent from filling up of the post of assistant teacher pending under his disposal and/or until disposal of the writ application; and Your petitioners further pray for an interim order of injunction restraining the respondent No. 3 to keep the considerable post vacant in favour of the petitioner till the disposal of the writ application;

(h) Any other or further other order or orders, direction or directions as to Your Lordships may seem fit and proper.

2. The writ petitioners they are three in numbers submitted that they are organized staff of Aimapara Primary School as established in the year 1975 being duly appointed by the Secretary by the Organizing Committee in terms of the resolution of the Managing Committee dated 25th December, 1975. The School was unofficially inspected by Sub-Inspector of School, Bhatar, West Circle, Burdwan, on 10th March, 1978 and 3rd January, 1979 and from the report of said inspector of Schools, the names of present writ petitioners as Working Organized Staff would be revealed. It is further submitted that present Headmaster of said School also has issued a certificate dated 16th February, 2001 contending inter alia that the School, which is now running in Plot No 596 of Mouza Gramdihi being a Government Primary School, in that plot, there was an earlier organized School wherein the writ petitioners were the teaching staff and the present school has been recognized by the Memo dated 8th September, 1980 issued by Burdwan District Primary School Board. Petitioner further relied a letter of Proddhan, Sahebganj-2 Gram Panchayat being the letter dated 22nd April, 1999 to satisfy this Court that the present writ petitioners practically functioned as organized staff since the year 1976 to the year 1980 and thereafter School got recognition by the District Primary School Council, upon

setting up their own teachers.

3. It is submitted by the petitioners that school got the recognition prior to deletion of Rule 3D of Rule framed under the Bengal (Rural) Primary Education Act. 1930 that is prior to 11th September, 1980, hence the writ petitioners accrued valuable right to be appointed with the prior approval of Director of Public Instruction, West Bengal. On that score, the writ petitioners had relied the judgment of this Court passed in the case West Bengal Board of Secondary Education and Ors. v. State of West Bengal and Ors., reported in 1997(1) CLJ 165 in respect of their right to be appointed in the School in question.

4. The writ application has been strongly opposed by the respondent No. 3 that is the District Primary School Council. Burdwan upon filing Affidavit- in Opposition and on annexing various documents relating to the recognition of the present School, its character and status. It is contended by the learned Advocate of the respondent No. 3. Burdwan District Primary School Council hereinafter refer to for brevity as District Primary School Council, that school which was recognized is not at all the same school as was organized by the writ petitioner as alleged. The District Primary School Council has produced the records of this case upon giving proper inspection of the same by the learned Advocate of the petitioners. It is submitted from the records as well as from the opposition that in terms of Education Department, Primary-Branch, Memo No. 1580 Edn. (p) dated 14th December. 1979, Government of West Bengal decided to establish 1200 new Primary Schools in the State during the year 1979-80 from the month of January, 1980 and out of this, 1000 schools was allowed to be established in the rural areas. It is further contended that in terms of Clause 3 of the said Circular Letter sites and location at the villages where such Primary Schools would be established were required to be selected and approved by the District School Board in the rural areas.

5. Under Clause 7 of the said Circular Letter, Primary School teachers should be appointed from panels to be approved by the Director of Primary Education, West Bengal in such type of schools. It is contended that a quota of Primary Schools for 1979-80 was sanctioned by G.O. No. 1580-Ed. (P) dated 14th December, 1980 and from the annexure 1 of the said Memo, District Burdwan got 38 such schools as were set up in rural areas and 28 schools in urban areas. In pursuance of the said Government Order being G.O. No. 1580-Edn.(P) dated 14th December, 1979, District School Board, Burdwan in its meeting held on 6th August, 1980 had selected Aimapara Post Office Gramdihi) under circle Bhatar, District Burdwan as a new site for establishment of a Free Primary School.

6. In pursuance thereof, two teachers namely Habul Kisku and Dipti Mukherjee were appointed by Ad-hoc Committee, District School Board, Burdwan to organize the new Primary School. Thereafter in terms of Memo No. 3737(4) dated 19th December, 1980 School got recognition with effect from the date of the joining of those two teacher, Subsequently, Plot No. 596 of Mouza Gramdihi of Aimapara Village was donated by Sk. Ebadat in favour of Sabhapati, District

Ad-hoc Committee of District School Board, Burdwan by registered deed of gift date 18th January, 1985 for the purpose of construction of permanent school building and in that land, the present School is now situated by construction of building on Government fund. It is contended by the respondents, District Primary School Council that the present school as got recognition as a Government Free Primary School is a newly set up school as per decision of the Ad-hoc Committee, District School Board, Burdwan and it has no connection with the alleged School of the writ petitioners and accordingly even on application of old Rule 3D as referred to above, the writ petitioners are not entitled to the appointed in the school in question as organized staff.

7. Furthermore, it is contended that from the letter of appointment as annexed in the writ application, it is revealed that by using the word "Gata" in Bengali, the resolution of the year 1975 had been taken with the decision that the writ petitioners were appointed in the last year 1976 and that was quite impossible. So far as the certificate of the present Headmaster certifying that writ petitioners were organized staff of this School as was earlier situated in the same self plot, it is contended that the said certificate is without any date and furthermore when the Headmaster joined in the year December, 1989, naturally the Headmaster had no personal knowledge to certify that the writ petitioners had worked as organized staff since the year 1976 to 1980 as alleged. In reply to such in paragraph 16 of the Affidavit-in-reply, there is no challenge about the fact situation that the Headmaster of the School denied the signature in the said certificate as mentioned in paragraph 4G in the Opposition by the District Primary School.

8. On the basis of the records it is contended that the impugned decision of this writ application was justified on its factual matrix as the writ petitioners never was organized staff of this School as the present was set up as Government Orders and Circular by appointment of two teachers and upon selection of such site in the meeting of the Ad-hoc Committee of the District School Board, Since the present school is completely a new school and it was not the said school as was allegedly organized by the writ petitioner, there is no question of granting any relief even on application of old Rule 3D and the judgment of this Court as relied upon being the judgment of the case as reported in 1997(1) CLJ 165 (supra).

9. Considering the rival contention of the parties, the only point for decision in this writ application is as to whether the Primary School as was organized by the writ petitioners is the same self School, which has been recognized in the year 1980. If the answer goes that it is the school, which was organized by the writ petitioners surely writ petitioners will get the benefit under Rule 3D of Old Rules issued under Bengal (Rural) Primary Education Act, 1930 hereinafter refer to as Act of 1930 and by application of Division Bench judgment of this Court being West Bengal Board of Secondary Education (supra). Though the writ Court normally will not travel to the factual matrix of the matter but since all the

records has been placed before this Court upon annexing the relevant documents, this Court can exercise the power on scrutiny of the relevant papers about the justification of the claim of the writ petitioners.

10. The onus upon the writ petitioners lies to prove that the present School is the same self school as organized by them. From the writ application it appears that one Sk. Ebadat, Secretary of Organizing Committee of Aimapara Primary School had issued appointment letter to the writ petitioners with effect from 2nd January, 1976, 2nd February, 1976 and 3rd January, 1977 respectively in respect of writ petitioner Anarul Haque, Sk. Saidur Rahman and Sk. Sobehan. In this document, nowhere it is mentioned that the School was established in the Plot No. 596 of Mouza Gramdihi. From the resolutions dated 21st November, 1975 as annexed in the written argument, though it was resolved that School would be established from January, 1976 in the Village Aimapara but nothing has been mentioned about the site of the School and the plot wherein such School would be set up. In the Resolution dated 25th December, 1975 also there is no mentioning about the place and site and the Plot No. of such school. Furthermore, even in the resolution dated 15th January, 1976 there is no such mentioning of any Plot No. where the school was running. In the report of Sub-Inspector of Schools, Bhatar, West Circle, Burdwan being report dated 10th March, 1978 and 3rd January, 1979 nowhere it is established about the place, site, plot No. of the said school as allegedly organized by the writ petitioners.

11. u/s 55 of the said Act, 1930 a privately managed Primary School can be granted recognition for aid but the same would be in the prescribed format and application seeking such must be filed by Managing Authority of such School. It is provided further thereto that an appeal would lie in the event of any adverse order in recognizing a school. Section 55 is relevant, which reads as follows:-

"Section 55. Grants.--(1) If the Managing Authority of any primary school under private management desires that such school be granted aid, it shall submit an application in the prescribed form to the Board.

(2) The Board may, subject to the prescribed conditions, by an order in writing, grant such application, conditionally or unconditionally, or refuse or defer the grant of aid.

(3) An appeal shall lie in respect of any order passed under Sub-section (2) to the Director of School Education or to any officer subordinate to him being above the rank of District Inspector of Schools, to whom he may delegate his powers in this behalf in writing."

12. Admittedly in the writ application nowhere it is mentioned that Managing Authority of the alleged organized School of the petitioners applied for its recognition to avail Government aid in the prescribed format to the District School Board at any point of time. Furthermore, there is no such foundations in the writ application, hence, the conditions precedent for the grant of aid of privately managed school namely filling of the application in the prescribed form

to the District School Board by the Managing Authority is absent in terms of Section 55(1) of said Act, 1930. In terms of Section 55, it is the Managing Authority of a privately managed primary school who has only the locus-standi to file an application for recognition of a school and in the event of any diverse order in terms of Section 55(2) of the said Act, said Managing Authority had the power to prefer an appeal to the Director of School Education in terms of Section 55(3) of the said Act. Hence, under the said Act of 1930, the organizing teachers have not given any locus-standi to pray for recognition of the School.

13. Admittedly in the writ application, the Managing Authority has not come up with such prayer of recognition of the School and absorption of the organizing staff thereto and admittedly no such application has been filed for recognition of School. There is no whisper to that effect that in terms of Section 55(1) of the said Act, the Managing Authority had not applied to the District School Board for grant of aid to the School. In absence of such, there is no question of recognition of any school and to that effect the contention of the writ petitioners that their school has been recognized, falls. From the record and pleadings of the writ application, it is clear that school as was allegedly set up in the year 1975 never had applied to the District School Board for recognition of such School and no steps were taken accordingly to that effect. Hence, when there is no order u/s 55 and no application under such Act, it cannot be trusted that the present school of the petitioner got its recognition. Writ petitioners submitted that in respect of their claim that in a particular plot where the present school is situated, they organized the School. From the deed of gift of Sk. Ebadat relating to said land as relied upon in the Supplementary Affidavit by the writ petitioner, it reveals that the said deed of gift Was executed and registered in favour of Sabhapati, Ad-hoc Committee, District School Board on 18th January. 1985 and from the schedule of the land and/or from the recitals of the deed nowhere it appears that there was an existing structure wherein any school was earlier established by the Organizing Staff. The deed of gift clearly speaks of a vacant plot being Plot No. 596 without any structure thereto. On the contrary in the deed it is categorically stated that the land would be used for the purpose of construction of School Building of Government free primary school, as was already set up by the Government.

14. Furthermore, from the document of the writ petitioners as relied upon in the writ application at page 36, it is revealed that the writ petitioners got appointment in the year 1980 in the post of Teacher in non-formal education center and continued to such post till the year 1989. Though it is contended that they were assured to be provided that permanent job as Assistant Teacher in Free Primary School by the Authority of District School Board but no such communication has been annexed in the writ application. Be that as it may the petitioners have liberty to agitate that matter under the law if it is permissible to claim a job as Assistant Teacher in view of the alleged assurance subject to prove of that by them in the appropriate proceeding.

15. From the records of the Ad-hoc Committee, District School Board now Primary School Council, it is revealed that the village Aimapara was chosen as a site for setting up of a new Primary School in terms of G.O. No. 1580-Edn.(p) dated 14th December, 1980 in the meeting dated 6th August, 1980 of District School Board, Burdwan. 56 such sites were selected and amongst them the present site at Serial No. 9. The selection of new site and the recognition of such school in the new site have been mentioned in details in Circular Letter No. 1580-Edn. (p) dated 14th December, 1979. The relevant portion of which are set out hereinbelow for appreciation of the entire matter:-

GOVERNMENT OF WEST BENGAL

EDUCATION DEPARTMENT : PRIMARY BRANCH

No 158Q-Edn(P) Dated Calcutta, the 14th December, 1979 3P-47/79 From :
Sri M.M. Sinha Roy, WBCS,

Deputy Secretary to the Government of West Bengal.

To : The Director of Primary Education, West Bengal,

New Secretariat Building. Calcutta.

Sub : Setting up of new Primary Schools and appointment of Primary School Teachers during the year 1979-80.

The undersigned is directed, by order of the Governor, to say that the Government have felt it necessary to augment the number of primary schools in the State as a whole, both in rural and urban areas, to meet the requirement of the children of the age-group 6-11 years with a view to universalisation of free primary education. It has therefore, been decided to open 1,200 new primary schools in this State during the year 1979-80 from the month of January, 1980. Out of these 1,200 primary schools, 1000 schools will be establish in rural areas while 200 schools are to be set-up in urban areas.

(2) The Governor is accordingly pleased to sanction the establishment of 1200 new primary schools throughout the State (1000 schools in rural areas and 200 schools in urban areas) during the current financial year. Out of these 1000 primary schools in rural areas, 300 new primary schools should be kept reserved for villages predominantly inhabited by the people belonging to Scheduled Castes, 118 Primary Schools for villages located in Tribal (ITDP) areas, 25 schools for villages located in Tribal (other than ITDP) areas and 73 schools for special (other backward) areas in consideration of the comparative lower enrolment of students of the age-group 6-11 years in these areas. The district wise break up of all these 1200 primary schools is shown in annexure I. The Municipality wise break up of 200 urban schools will be the same as per G.O. No. 908-Edn (P) dated the 22nd June, 1979.

(3) Sites/locations/villages where new primary schools will be set up shall be selected and finally approved by the District School Boards in the rural areas and

by the District Inspectors of Schools (PE) in consultation with the urban Advisory Committee in the urban areas. All the schools to be set up in rural areas are to be located in school-less villages only and in school-less wards/"Mohallas of urban areas. The Ad-hoc Committee of the District School Board will also select sites/villages for setting up new primary schools in the Scheduled Caste and Scheduled Tribe villages (School-less villages). The list of such villages so selected shall be sent to the District Welfare Committee for Scheduled Caste & Scheduled Tribe for approval. But final decision regarding selection of sites will rest with the Board; in the rural areas, the District School Boards shall establish primary schools and grant recognition to the, while in urban areas, the Director of Public instruction/Director of Primary Education is competent authority to set up new schools.

(4)

(5) Sanction of the Governor is also accorded to the appointment of 3,800 primary school teachers in the whole of the State with effect from January 1980 or any subsequent date. Out of these 3,800 teachers, 2400 teachers are meant for new primary schools in rural areas and 600 teachers for 200 new urban primary schools. Sanction is further accorded to the appointment of additional 800 primary school teachers in the existing schools situated in urban and rural areas with effect from the date on which these are filled up. District-wise distribution of teachers (in new and existing schools) is shown in Annexure-II.

(6) Teachers should fulfil the minimum educational qualifications as prescribed by Government, Notification No. 975-Edn.(P) dated 26.10.71. Two teachers should normally be appointed in a new rural primary school, while in urban areas, not more than 3 teachers may be appointed in a school set up for the first time subject to fulfillment of teacher-pupil ratio of 1:40. Women teachers including school mothers may be appointed in the schools in sufficient number. Additional teachers may be allowed in such a way that one teacher schools or two teacher schools get preference.

(7) All primary schools teachers should be appointed from panels to be approved by the Director of Primary Education, West Bengal except wards of teachers dying in harness (after 1.4.76). In new schools, the trained and the untrained candidates are to be appointed on 60 : 40 while as stipulated in G.O. No. 421-Edn(P) dated 27.3.78. All the additional posts in existing schools are to be filled up by trained candidates only subject to availability of adequate number of trained teachers. School Mothers may be appointed in lieu of teachers and they may be included in the panel meant for candidates other than trained matriculates as already ordered in this Department Memo No. 1455-Edn.(P) dated 1.10.74. The teachers including school Mothers shall draw pay in the approved pay scales plus Dearness Allowance as sanctioned from time to time, Attempts should be made to appoint as many teachers as possible in the 118 schools in ITDP areas and 25 schools in tribal (other than ITDP) areas from amongst the members of Scheduled Tribes (If necessary by allowing them the

relaxation about qualifications as permitted under the rules). Similarly, as many teachers as possible in 300 schools in Schedule Castes areas may be appointed from amongst the members of Scheduled Castes keeping in view the above relaxations regarding qualifications as is admissible under the rules. In any case, while appointing teachers, provisions of the West Bengal Scheduled Castes and Scheduled Tribes (Reservation of vacancies in services, and posts) Act, 1976 should be strictly observed as already instructed in this Department memo No. 1032-Edn (P) dated 8.9.76 and No. 197-Edn-(a) dated 7.2.79. In rural areas the District School Boards will appoint teachers while in urban areas (a) District Inspectors of Schools (PE) will appoint teachers in cases of newly set up schools, from the panels, (b) Managing Committees will appoint teachers from the panels, in vacancies of additional posts in cases of aided schools and (c) Municipalities will appoint teachers in cases of schools set up and run by them under the West Bengal Urban Primary Education, Act 1963.

(8)

(9)

(10) The Governor is further pleased to sanction a total non-recurring expenditure of Rs. 3,60,000/- (Rupees three lakhs sixty thousand) only as shown below during the current financial year.

Grant @ Rs. 300/- per school for 1,200 new primary Schools to wards purchase of furniture and equipment As per list enclosed ... Rs. 3,60,000
_____ Total : 3,60,000

The furniture grant is meant for all the 1,200 schools to be set up.

(11)

(12)

(13) This order issues with the concurrence of the Finance Department vide their U.O. No. Group-B 2082 dated 11th September, 1979.

(14) This Accountant General, West Bengal and the Pay & Accounts officer, Calcutta have been informed.

M.M. SINHA ROY

Deputy Secretary.

16. Further, in terms of the quota of primary schools for 1979-80 as sanctioned by G.O. No. 1580-Edn. (p) dated 14th December, 1980, the position of Burdwan district has been shown as follows:-

ANNEXURE-1

Quota of primary Schools for 1979-80 sanctioned in P.O. No. 1580-Edn(P) dated the 14th December, 1980.

District

Rural Areas

Urban Areas

S/C S/T Area

Area Special (other General

ITDP Non ITDP back ward) Area

I.....

10. Burdwan

20

4

1

13

17

11

(Kanksa, Ausgram Budbud Areas).

M.M. SINHA ROY

Deputy Secretary,

Education Department Government of West Bengal

17. List of sites for new primary schools under said G.O. dated 14th December, 1979 was approved by District School Board, Durdwan, in its meeting held on 6th August, 1980 the relevant portion reads as follows-

LIST OF THE SITES FOR NEW PRIMARY SCHOOLS TO BE SET UP VIDE G.O. NO. 1580 Edn. (P) DATED 14.12.79 PLACESINTHE DISTRICT SCHOOL BOARD, BURDWAN MEETING HELD ON 6TH AUGUST, 1980

Sl. NO. NAME OF SITES ADDRESS P.O. CIRCLE

1.. ..

9. Ayamapara (STT) P.O. Gramdihi Bhatar (W)

S/d. R.N. Goswami

President

Ad-hoc Committee,

District School Board, Burdwan

18. In pursuance of such by Office Memorandum dated 6.9.1980 issued by Vice President, Ad-hoc Committee, District School Board, Burdwan, two teachers namely Habul Kisku and Dipti Mukherjee were appointed in such newly set up school at Aimapara, and they were directed to organize and set up the new primary school. The relevant Office Memorandum as follows:-

OFFICE OF THE DISTRICT SCHOOL BOARD

BURDWAN

OFFICE MEMORANDUM

Being directed by President, Dist. School Board, Burdwan, Sri/Sm. Habul Kisku, C/O. Bipin Kisku of Village Nababnagar P.O. Debpur Dist. Burdwan is hereby provisionally appointed against permanent/ New School/Normal/Additional Vacancy as an Asstt. Teacher of Aimapara site to set up a new Primary School/ free Primary School of Bharat West Circle under this Board on pay and allowances as admissible under the rules in force from time to time.

He/She is liable to be transferred to any Primary/Junior Basic School under this board within this district. The appointment is subject to the result of the Rule pending in the Hon''ble High Court, Calcutta & joins his/her post within 30 days from the date of issue of this letter if not otherwise extended by appointing authority.

(K.N. Banerjee)

(Vice-President)

Ad-hoc Committee

DISTRICT SCHOOL BOARD,

BURDWAN.

Memo No.2337(4) Dated, Burdwan the 8.9.1980 OFFICE OF THE DISTRICT SCHOOL BOARD

BURDWAN

OFFICE MEMORANDUM.

Being directed by President, Dist. School Board, Burdwan, Sri/ Sm. Dipti Mukherjee, C/O. N. Mukherjee of Village Rampur P.O. Aruar Dist. Burdwan is hereby provisionally appointed against permanent/New School/Normal/Additional vacancy as an Asstt. Teacher of Aimapara site to set up a new Primary School/ free Primary School of Bhatar West Circle under this Board on pay and allowances as admissible under the rules in force from time to time.

He/She is liable to be transferred to any Primary/Junior Basic School under this Board within this district. The appointment is subject to the result of the Rule pending in the Hon''ble High Court, Calcutta & joins his/her post within 30 days

from the date of this letter if not otherwise extended by appointing authority.

(K.N. Banerjee)

(Vice-President)

Ad-hoc Committee

DISTRICT SCHOOL BOARD.

BURDWAN.

Memo No.2337(4) Dated, Burdwan the 8.9.1980

19. In pursuance thereof, the school was set up and got its recognition by the decision dated 9th December. 1980 as issued Office Memo of Vice President. Adhoc Committee, District School Board, the relevant portions are set out as follows:-

OFFICE OF THE DISTRICT SCHOOL BOARD,

BURDWAN

OFFICE MEMORANDUM

Whereas, against the G.O. No. 1580-Edn(p) dt. 14.12.79 site for Free Primary School were selected and approved by the competent authority.

Whereas it transpires from the enquiry report that at the site as selected a Free Primary School under the name and style Aimapara have already been set up, it is now necessary and expedient in the interest of administration of the said school to consider the case of recognition thereof by the Board.

In terms of the Board's resolution No.5 dt. 6.8.80 provisional recognition is hereby accorded to the Primary School at the above site with effect from the date the Head teacher/Asstt. Teacher from the approved panel joined/Joins and started to organize the school, subject to fulfillment of the following terms and conditions:-

1

10. Rules and orders issued by the District School Board, Burdwan from time to time should be strictly followed.

Recognition of the school should be withdrawn at any time if any if any of the above conditions are not strictly adheres to the local School Authority.

Sd/

R.N. Goswami

(President)

(Ad-hoc Committee)

Dist School Board, Burdwan.

20. In the land as donated by one villager Sk. Ebadat, School Building was constructed herein and that school is functioning. Hence, from the documents it is clear that a new school was set up in the year 1980 and that school got recognition and such set up of the new school was done by the District School Board, Burdwan in terms of the Government Memorandum as referred to above. May be writ petitioners were organizing a school in that Village but that school was not touched and they had the option to continue that school as a privately managed school but they cannot claim the right to be appointed in terms of Old Rule 3D as was existing till 10th September, 1980 as it was substituted by a new Rule 3D with effect from 11.9.1980 abolishing such right of the organizing staff. Said Old Rule 3D reads as follows:-

"3D. Notwithstanding anything contained in Rule 3, Rule 3A or Rule 3B, but subject to the provisions of Rule 3C, a ward of a primary teacher who dies in harness may be appointed, with the approval of the Director of Public instruction, West Bengal as an assistant teacher /school mother against regular vacancy irrespective of whether the available vacancy is to be reserved for trained or untrained candidates, provided that he/she fulfils the minimum qualifications for such appointment"

21. Under the Old Rule 3D, the organizing teachers of a Primary School is entitled to be appointed when such school would be recognized. In the instant case though it is found that the writ petitioners organized a primary school at village Aimapara but such school was not recognized as there was no scope even for such since in terms of Section 55 of the Act, 1930, no such application in prescribed format was filed and no proceeding was initiated to that effect. Furthermore, the Managing Authority of the said school never approached the District School Board for recognition nor they came in the writ Court claiming their right that the school as set up by them should be recognized and no new school would be set up by the Government through District School Board until and unless such school was recognized.

22. The writ petitioners and the Managing Authority of the organizing school has every right to come in this writ Court earlier in the year 1980 when without considering their case, the District School Board, Burdwan had set up a new school in that village. On the contrary without making any grievance of such setting up of a new school through the District School Board and by the appointee of teachers by such School Board, the writ petitioner themselves had waived their right by accepting another job given by such District School Board in the post of teacher of non-formal education center. Such fact is admitted by them in their representation dated 18th August, 1997 as appearing at page 36 of the writ application. Hence, it is clear that writ petitioner waived their right to be appointed as organized staff upon claiming such right through the Managing Committee of organizing school praying necessary relief of recognition of such school in the year 1980 when the new school was established by the District

School Board, Burdwan.

23. Hence, in such circumstances, it is clear that there is no substance and materials in the writ application to grant any relief to the petitioners in terms of Old Rule 3D and in pursuance of the judgment of the Division Bench as relied upon being West Bengal Board of Secondary Education (supra). The judgment of the Hon'ble Division Bench directed that in terms of Old Rule 3D appointment to the organizing staff whose school was recognized would be given. In the instant case factually it has been proved by the District School Board now renamed as District Primary School Council that in terms of the Government decision and orders, the present school was newly established and that too by the duly appointed teachers of the District School Board initially and thereafter the school was recognized. Furthermore, from the deed as relied upon by the petitioners being the gift deed of Sk. Ebadat, it is clearly proved that the concerned plot was lying vacant and that was donated to the District School Board for construction of the Government Primary School as set up and established in the year 1980.

Hence, in view of such factual matrix of the matter, I am not inclined to interfere with the impugned decision passed by the Ad-hoc Committee, District Primary School Board. Burdwan being annexure H at page 41 of writ application. Accordingly the writ application fails but on the facts and circumstances of this case there will be no order as to costs.

24. Application fails