
(2009) 09 CAL CK 0039
In the Calcutta High Court
Case No : Writ Petition No. 12387 (W) of 2007

Sazzad Hossain

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Citation : (2009) 09 CAL CK 0039

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Subir Sanyal and Juin Chakraborty, for the Appellant; Kanailal Samanta, Nabanita Pal, for the respondent Nos. 5 and 6, Kamallesh Bhattacharyya, Yamin Ali, for the respondent No. 7, Sufi Kamal, for the respondent Nos. 8 and 9, Ekramul Bari and Shamimul Bari and Tapabrata Chakraborty, for the respondent No. 12, for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—Propriety and/or legality of an order passed by the Director of School Education, West Bengal (hereafter the Director, contained in Memo dated 25.5.2007, has been questioned in the present petition by the petitioner Sazzad Hossain (hereafter Sazzad). The Director passed the impugned order in purported compliance with an order dated 16.6.2005 of the Division Bench of this Court in FMA No. 122/2005, since modified on review by order dated 8.8.2005.

2. By the impugned order, the Director held that respondent No. 7 herein, Ms. Sahana Begum (hereafter Sahana), is an organiser teacher of Ankipur Andulpota Junior High School (hereafter the school) deserving approval of appointment in place of Sazzad who is not an organiser teacher of the school, - his appointment having been made by way of manipulation. Accordingly, the District Inspector of Schools (S.E.), North 24-Parganas (hereafter the District Inspector) was directed to withdraw approval of appointment of Sazzad and to accord approval in favour of Sahana in his place with immediate effect. By an order contained in Memo dated 19.6.2007 addressed to the Secretary/Administrator of the School, the

District Inspector informed that approval of appointment issued in favour of Sazzad vide Memo dated 4.8.1999 stands withdrawn in terms of the order of the Director dated 25.5.2007. A request was made to submit necessary papers for according approval of appointment in favour of Sahana in place of Sazzad at an early date.

3. This petition was presented on 18.6.2007 and, therefore, Memo dated 19.6.2007 is not a part thereof. However, by filing a supplementary affidavit dated 25.6.2007, Sazzad has brought the same on record. While admitting this writ petition on 10.7.2007, a learned Judge of this Court observed that if Memo dated 19.6.2007 issued by the District Inspector is given effect the same shall abide by the result of the writ petition. An interim order was also passed in terms of prayer (h) of the writ petition, thereby restraining the Regional School Service Commission having jurisdiction "from recommending/filling up two vacancies in Social Science and Language Group in the said school till the entire disputes being raised in the instant application is finally adjudicated by this Hon'ble Court".

4. The parties herein have exchanged their affidavits. They have also filed various supplementary affidavits in support their respective contentions and affidavits there against have also been filed.

5. This Court considers it unnecessary to advert to each of such affidavit in detail but would refer to those only which are considered relevant for a decision.

6. The dispute involved herein lies within a narrow compass. As is evident from the impugned order passed by the Director, he considered the issue as to whether Sahana is senior to Sazzad as organiser teacher of the school and, therefore, entitled to have her appointment approved. The Director held in favour of Sahana and, therefore, approval of appointment accorded in favour of Sazzad (vide Memo dated 4.8.1999) has been withdrawn resulting in he losing his service.

7. According to Sazzad, the organising Managing Committee of the School had resolved on 14.1.1990 to appoint him as Assistant Teacher in the Language group. Based on such resolution, he was offered appointment on 20.3.1990 pursuant where to he joined the school on 14.4.1990. At the time of his appointment there were five teachers in the school and consequently, he was the sixth teacher appointed by the school.

8. Sahana, admittedly, was appointed as seventh teacher of the school. In fact, the Director in the impugned order has recorded the submission of her learned Advocate before him that she was appointed as the seventh teacher of the school before its recognition, as an organiser teacher in Language group, with effect from 26.4.1990. The offer of appointment issued in favour of Sahana (Annexure P-9 to the petition) corroborates such fact.

9. That Sahana was appointed as the seventh teacher in the school is also

accepted by her, as is found on perusal of representations dated 31.12.1994 and 1.1.1995 addressed by her to the Secretary and the Headmaster of the school respectively. From such representations, it is evident that with effect from 26.4.1990, she was discharging functions of seventh organiser teacher. However, the second organiser teacher, Abu Bakker Siddique had expired on 29.9.1992 and, therefore, on the instructions of the Headmaster she had been signing the attendance register in the place meant for the sixth teacher. She had, accordingly, made a request to issue offer of appointment recognising her as the sixth organiser teacher.

10. By Memo No. 670-Edn (S) dated 4.9.1989 issued by the Directorate of School Education, Government of West Bengal, staff pattern of Teaching and Non-teaching staff in recognised Non-government Junior High Schools was prescribed. A 4-Class Junior High School, in terms thereof, was entitled to have two teachers each for Language, Science and Social Science groups. In respect of the Science group, one post had to be filled up by a candidate having Pure Science and the other by one having Bio-Science, while for Social Science group two teachers would be required for teaching History and Geography.

11. The school was recognized by the West Bengal Board of Secondary Education as a 4-Class Junior High School upto 30.4.2002 w.e.f. 1.5.1999, vide Memo dated 7.6.1999. The staff whose services were approved by the District Inspector vide Memo dated 4.8.1999 w.e.f. 1.5.1999 comprised of A.F.R. Karim (Teacher-in-charge), Md. Humayun Kabir, Rafiqul Islam, Sazzad, Safiqul Haque (hereafter Safiqul) and Tarun Kanti Paul (all Assistant Teachers), Ranjit Kumar Singh (Clerk) and Aklima Khatun (Class IV staff). It is evident from the materials on record that Sahana was not considered for approval since she was treated to be the 3rd Language Teacher, behind Rafiqul Islam and Sazzad.

12. It is not in dispute that Sahana had instituted writ proceedings previously before this Court being W.P. No. 1719 of 2000 feeling aggrieved by purported inaction of the District Inspector to approve her appointment as Assistant Teacher in Language group and approving the appointment of Safiqul in her place and stead though he was junior to her as regards date of appointment. In that writ petition Safiqul was impleaded as respondent No. 8. Prayer (b) of the writ petition reads as follows:

b) A further Writ in the nature of Mandamus commanding the respondents to forthwith set aside the appointment of the respondent No. 8 for effective adjudication of the instant application in the light of the fact that the respondent No. 8 was appointed illegally by the said school, who is very much junior to your petitioner as regards the date of appointment.

13. The writ petition was disposed of on 28.8.2000 by a learned Judge of this Court with a direction upon the Director to treat her writ petition as a representation and to dispose it of after hearing the parties by a reasoned order.

14. A copy of that writ petition, on the Court's request, has been placed before it

by Mr. Ali, learned Advocate for Sahana. Paragraphs 4, 6 and 10 of the petition reads as follows:

4. Your petitioner states that one Assistant Teacher namely, Abu Baquar Siddique was at the 2nd position of the staff pattern of the said organising school and he died in harness on 25-9-92 at the age of 40 years. After his death the position of the staff pattern was automatically changed thereby placing your petitioner at the 6th position from 7th position according to her seniority in respect of the date of appointment and since then your petitioner has been functioning as an Assistant Teacher of the said school, being placed at the 6th position of the Staff Pattern.

6. Your petitioner states that sometimes in the year, 1998 the District Level Inspection Team visited and inspected the said school and they have seen your petitioner on that date and recorded her name in the inspection report but your petitioner gathered a knowledge that deliberately only to accommodate the respondent No. 8 in place and stead of your petitioner, the school authority along with the said inspection team had tried to accommodate the respondent No. 8, who is an organiser teacher junior to your petitioner as regards the date of appointment. Further your petitioner got an information that the respondent No. 8 was initially at the 7th position of the staff pattern after upliftment of your petitioner from 7th position to 6th position of the staff pattern, caused due to the death of an Assistant Teacher Abu Baquar Siddique. From this information it is very much clear that the respondent No. 8 is junior to your petitioner respect of the date of appointment.

10. Your petitioner states that she has been serving the said school since 26-4-1990 as an Assistant Teacher and after the death of one Assistant Teacher on 25-9-1992 she has been placed at the 6th position in the Staff Pattern, being elevated from 7th position. But the said school authority declined to issue the appointment letter further stating that your petitioner has been placed at 6th position in the staff pattern but in true sense she has been placed at that (6th) position after the death of one Assistant Teacher on 25-9-1992 because after 25-9-92 the position of the staff pattern had totally altered. In this situation the respondent No. 8 in collusion with the said school authority had managed to get approval of appointment being Annexure "E" hereof in spite of his placement at 7th position of the staff pattern superseding the claim of your petitioner for being approved. Moreover, the respondent No. 8 is junior to your petitioner as regards the date of appointment. So in no manner whatsoever the authority concerned can approve the appointment of the respondent No. 8 to the exclusion of your petitioner.

15. Bare perusal of the writ petition, however, does not reveal any allegation levelled by Sahana against Sazzad. Whatever allegation was levelled appears to be directed against respondent No. 8 in the writ petition, viz. Safiqul. Since no allegation had been levelled against Sazzad, he was not even impleaded as a respondent in the writ petition.

16. It appears from the paper-book prepared in connection with appeal proceedings before the Division Bench referred to above, again placed before the Court on request by Mr. Ali, that the Director in compliance with the order dated 28.8.2000 had considered the grievance of Sahana and by an order dated 29.5.2002, overruled her claim observing that:

In the circumstances, I find that the petitioner was claiming to be an Asstt. Teacher in Bengali, i.e. in the Language Group, but at the same time she does not deny that she was the third teacher in the Language Group and that the other two teachers have been appointed earlier. According to the Govt. Order in No. 670-Edn (S) dated 04.09.1990, a 4-Class Jr. High School is entitled to two teacher in the Language Group. The petitioner being the third teacher as per her claim, cannot have any right to appointment, even if we assume that her contention is correct. The D.L.I.T. which inspected the School on 03.11.1998 also did not find the petitioner as one of the existing Asstt. Teachers and this report of DLIT was the basis on which the School was granted recognition as a 4-Class Jr. High School with effect from 01.05.1999 and it was also the basis for approval of the teaching posts as accorded by the D.I. of Schools (S.E.), North 24-Parganas, in Office Memo No. 1125/G Dated 04.08.1999 showing the two teachers, namely Rafiqul Islam and Sazzal Hossain as teachers in the Language Group.

17. Sahana challenged the order of the Director by filing another writ petition. Sazzad was impleaded as respondent No. 13. In paragraph 3 of the petition, Sahana pleaded that the Secretary of the school on 26.4.1990 appointed her "as an Assistant Teacher in Arts Group as seven teacher". In paragraph 4 she pleaded death of Abu Bakkar Siddique, the teacher at the second position of the staff pattern on 25.9.1992 at the age of 40 years, which consequently changed her position from seventh to sixth. Incidentally, the deceased was the elder brother of Sahana's husband. The position that Sazzad became the sixth teacher on account of death of Abu Bakkar Siddique was reiterated in paragraph 5 together with the fact that she had requested the Secretary and the Headmaster of the school to issue formal appointment letter in her favour as the sixth teacher. Allegations against Sazzad to the effect that he joined the school after Sahana's joining and that he is not a genuine organiser teacher was pleaded in paragraphs 7, 9, 17 and 24. Apart from these allegations levelled against Sazzad, the other grievance ventilated by Sahana was in respect of approval of appointment accorded in favour of Safiqul, Aklima Khatoon, Tarun Kanti Pal and Humayun Kabir, respondent Nos. 9, 12, 10 and 11 respectively. Documents were annexed to the writ petition to support her stand that respondents 9 to 13 were not organizer teachers/non teaching staff. However, it appears from copies of daily attendance register of the school for the month of January and April, 1992 (duly attested by the Headmaster of the school on 3.12.1998 that the following teaching staff had signed the register as a mark of their presence in the school on the working days. The names of the teachers, in the sequential order they appear in the daily attendance register, is A.F.R. Karim, A. Siddique, R. Islam, M.H. Kabir, T.K. Paul, S. Hossain (read Sazzad) and S. Begum (read Sahana).

18. Bare comparison of the contents of the two writ petitions filed by Sahana reveals contrasting stands. While in the former petition no allegation whatsoever was levelled against Sazzad, the latter did contain certain allegations noticed above. However, these allegations were not based on subsequent facts but existed at the time the former petition was filed. The change in stand in the subsequent petition, however, has not been explained.

19. Be that as it may, by an order dated 23.7.2002, a learned Judge of this Court was pleased to dismiss the latter writ petition filed by Sahana.

20. Sahana carried the order in appeal, registered as MAT No. 2581 of 2002.

21. By judgment and order dated 16.6.2005, the appeal was allowed. The order under appeal and the impugned order of the Director dated 29.5.2002 were quashed. The Division Bench directed the Director "to hold a fresh enquiry after spot verification through a competent officer and to decide after hearing all interested parties and on examination of all relevant documents, who were the actual organizing teachers at the time of approval of the school in the year 1999 and after holding such enquiry, the Director of School Education would pass necessary order regarding fresh approval of the actual teachers of the school including the writ petitioner/appellant".

22. It would be necessary at this stage to note some of the observations of the Division Bench, which read:

After careful perusal of relief documents produced by the writ petitioner appellant as well as respondent No. 6 and also on careful examination of the affidavit filed by respondent No. 5 and respondent Nos. 9, 12 and 13, we, find that it has not been challenged anywhere that petitioner was not appointed as a teacher of 26th April, 1990. We find from documents that on the death of Sidikki sometime in 1992, the petitioner automatically became 6th teacher in the school. The School Authority by obtaining the signature of a dead person namely Jobed Ali illegally gave appointment to respondent Nos. 9 and 12.

On perusal of documents of the parties, we further get that appointment of respondent No. 13 was illegal one and, in fact, the writ petitioner appellant was the 2nd teacher of the language group at the time when the DLIT held the inspection.

Thus, having regard to the entire fact and circumstances and with reference to the documents produced and relying on by the appellant petitioner as well as by respondent No. 6, we find that neither respondent No. 5 nor respondent Nos. 9, 12 and 13 have succeeded in controverting those documents which would go to show that the School Authority by adopting fraudulent means showed such persons as teacher who were in no way connected with the affair of the school

and naturally, the staff pattern presented before the DLIT was far from true and hence, the DLIT report was not acceptable and the authority concerned was not justified in according approval of the teachers on the basis of the report of the DLIT

23. Sazzad and Safiquil had then applied, by filing separate applications, for review of the judgment and order dated 16.6.2005. The review petition was disposed of on 8.8.2005 with the following order:

Having regard to the submissions put forward by Mr. Chatterjee, appearing on behalf of the petitioners in both the review applications, and having regard to the submissions made on behalf of the opposite parties, we feel that there is no scope of any review of our ultimate direction given to the Director of Education for holding verification of the entire affair relating to the appointment of Organising Teachers through the report of the D.L.I.T. submitted earlier. We, however, are very much impressed with the submissions of Mr. Chatterjee that some of the observations of ours in the body of the judgement might create some confusion in the mind of the officers holding such inspection and for that purpose to remove all doubts in the minds of the petitioners and also the opposite parties, who will be actively participating in the inspection process we make it clear that our observations touching the earlier appointment of the review petitioners shall have no bearing upon the inspection team and also upon the report to be submitted by the inspection team after thorough probe and enquiry and after examining all the documents and papers the team may think expedient for the purpose of making a full fledged and just enquiry to carry out in letter and spirit of our order reviewed against. With these observations, both the review applications are disposed of.

24. It is pursuant to the aforesaid orders of the Division Bench that the Director passed the order impugned in this writ petition.

25. To appreciate the rival claims, it is considered necessary to read the portion of the order of the Director wherein he has analyzed the evidence before him and assigned reasons in support of his order. It reads:

Considered the facts and circumstances of the case, the report of enquiry drawn up by the enquiring officers on the basis of spot enquiry held on 7-9-2005 and the documents and records as were placed before me and the submission of respective parties made before me. It appears that the main allegation in this matter is that Sm. Sahana Begum an organizer teacher of Ankipur Andulpota Junior High School has been deprived of her claim for approval of appointment as organizer teacher. The following questions has been raised in this issue viz.

- i) whether Smt. Sahana Begum was appointed on 26.4.90 as organizer teacher
- ii) Whether Sazzad Hossain organizer teacher of Language group was actually appointed on 20-3-90 in order to show him as senior to Sahana Begum.

iii) Whether Md. Javed Ali, Ex. Managing Committee member of the school had died on 3-5-1993 or on any subsequent date.

iv) Whether the DLIT team was correct regarding recording of the name of organizing staff during their DLIT inspection on 3-11-98. It has been established that the actual date of appointment of Sm. Sahana Begum is 26-4-1990 as none disputed to it. It is a fact that Md. Sazzad Hossain is the son of Ex, Secretary of the school which is not very much important here. But it appears from circumstantial evidence that the date of appointment of Sazzad Hossain has been shown as 20-3-90 in the record placed before the DLIT team on 3-11-98. The original attendance register and Managing Committee meeting resolution Book for the period from 1990 to 1999 has not been placed before the enquiry team as well as before me which means that the date of appointment of Sazzad Hossain being 20-3-90 senior to Sahana Begum has not been established. Only letter of appointment can not prove the original date of appointment and joining. A diary was lodged for missing of some school documents before the Police on 28-6-2000 whereas they had assured on 9-4-2001 before Director of School Education to produce original attendance register and resolution book on 135-2002 on the next date of hearing. In fact the missing of those original documents had been reported on 13-5-2002 before the Director of School Education. Therefore the actual loss of those two documents for the period from 1990 to 1999 has not been properly established.

26. The School authority admitted during enquiry that Sahana Begum was present on the date of DLIT inspection held on 3-11-98 and her name was not recorded as she was the 3rd teacher in Language group and 7th in the position of teaching staff. It may be so that the records in support of above contention was placed before the DLIT team.

However, it seems to me that it is a case of manipulation. The original records have been suppressed and new records appears to have been produced before DLIT with a motive to show Sazzad Hossain as senior to Sahana Begum.

The actual date of death of Md. Sabed Ali has been confirmed by the SDO, Barasat as 3-5-93 in terms of his report received vide memo No. 386 dated 11-10-2006. Therefore, in case of appointment of Saiful Haque, Assistant Teacher and Aklima Khatun, class IV staff there was manipulation also but that does not affected the claim of Sm. Sahana Begum. Perhaps the DLIT team's report was on the basis of records as produced before them. But there were sufficient grounds in support of the fact that Sm. Sahana Begum served in the school prior to recognition and after recognition.

That date of appointment of Sazzad Hossain has not been proved as 20-3-90 and on the other hand his date of appointment as 20-3-91 has not been disproved. I think there are some veracity on the affidavit of dated 29-1-2003 and 29-1-95 of Md. Moazzaffar Hossain and Md. Moksed Ali, the present Managing Committee members to the effect that the name of Sm. Sahana Begum were excluded from

the DLIT report in order to give birth to Md. Sazzad Hossain.

On the other hand the name of Md. Sazzad Hossain, Assistant Teacher, Saiful Islam, Assistant Teacher and Aklima Khatun Class IV staff appears in the DLIT report leading to recognition of the school and as per previous rules their appointment had been approved. But in terms of G.O. No. 177-SE(B) dated 14-1-94 the organizing staff can not claim approval as organizer teachers in this case as the school did not pay requisite fees along with their application for recognition before the West Bengal Board of Secondary Education prior to 1975. Therefore it can not be said that rules has been strictly followed in the matter of approval of organizer teacher. From the above findings I hold that the appointment of Md. Saiful Islam, Assistant Teacher, Md. Sazzad Hossain, Assistant Teacher and Aklima Khatun, Class IV staff as organizing staff had been made by the school authority by way of manipulation. The degree of manipulation is much higher in case of Sazzad Hossain in comparison to other two staff. I, therefore, allow the approval of Safiquil Hoque, Assistant Teacher and Aklima Khatun, Class IV staff and set aside the approval of Md. Sazzad Hossain, Assistant Teacher.

The District Inspector of Schools (SE) North 24 Parganas is directed to withdraw the approval of Md. Sazzad Hossain and accord approval in favour of Sm. Sahana Begum as Assistant Teacher in place of Sri Hossain with immediate effect.

The matter is thus disposed of.

All concerned be informed accordingly.

27. From the aforesaid extract, the following factors appear to have weighed in the mind of the Director to hold in favour of Sahana and against Sazzad, viz:

1. Original records were suppressed and new records were produced before the District Level Inspection Team (hereafter D.L.I.T.) with a motive to show Sazzad as senior to Sahana;
2. Date of appointment of Sazzad as 20.3.1990 has not been proved and date of appointment as 20.3.1991 has not been disproved; and
3. Affidavits dated 29.4.2003 and 29.1.1995 of Md. Mozzaffar Hossain and Md. Moksed Ali, the present Managing Committee members to the effect that Sahana was excluded from the D.L.I.T. report in order to give birth to Sazzad.

28. In the considered view of this Court, the impugned order of the Director is indefensible for the reasons following.

29. The observation of the Director that original records were suppressed and new records produced to show Sazzad as senior to Sahana, even if assumed to be true, was not worthy enough to tilt the scales in favour of Sahana. The pleadings contained in Sahana's writ petitions and the documents annexed therein are sufficient to dislodge her claim that she was senior to Sazzad, considering the respective dates of their appointment.

30. The appointment letter of Sahana, her letters dated 31.12.1994 and 1.1.1995 and copy of daily attendance register for the months of January, 1992 and April, 1992 are sufficient to establish that Sahana, at the time of her appointment, was the seventh teacher while Sazzad was the sixth teacher. If indeed Sazzad had been appointed after Sahana's appointment, as was her claim in the latter writ petition filed by her, there is no valid reason as to why Sahana signed the attendance register despite being aware that Sazzad's name preceded her name in such register and he, for all practical purposes and intents, was shown as the sixth teacher. It also appears from copies of daily attendance register for the months of October, 1998 and November, 1998, attested by the Headmaster, that the names of Sazzad and Sahana were written therein, in sequential order, as the fifth and sixth teachers. That was obviously because of the death of Abu Bakkar Siddique, the second teacher in position, resulting in Sazzad and Sahana being elevated from their original positions and becoming the fifth and sixth teachers in position respectively. Even if original records had been suppressed and new records produced before the D.L.I.T., the copies of daily attendance register for the months of January and April, 1992 and October and November, 1998, duly attested by the Headmaster and annexed by Sahana to her latter writ petition, were the relevant records making the position absolutely clear that Sazzad was senior to Sahana. These documents either escaped the notice of the Director or he ignored the same, much to the detriment of Sazzad.

31. The date of appointment of Sazzad which he claimed to be 20.3.1990, according to the Director, was not established owing to non-production of original attendance register and Managing Committee resolution book for the period 1990-1999. Even though original of the relevant records had not been produced before the Director, to the mind of this Court, the same could not have been the basis for negating the claim of Sazzad. Sahana herself having admitted that she was appointed as the seventh teacher of the school, the Director ought to have directed his enquiry for returning a finding as to who, in fact, were the six teachers after whom Sahana was appointed. Answer to this vexed question would have solved the problem since Sahana never objected to her status of seventh teacher at the time of her appointment on 26.4.1990. Copies of pages from the daily attendance register for the months referred to above, duly attested by the Headmaster of the School on 3.12.1998, were annexed by Sahana to her latter writ petition. Obviously the same were relied on to vindicate her stand that she was senior to Safiqul who, according to her, was the eighth teacher in position. Sahana could not have disputed the genuineness of these documentary evidence. Relying thereon, the conclusion is irresistible that Sazzad was senior to Sahana.

32. This Court, however, has not been able to comprehend as to how 20.3.1991 could be referred to in the impugned order as the date of Sazzad's appointment which was not disproved. Copy of the appointment letter issued in favour of Sazzad, in the further considered view of the Court, deserved to be considered creditworthy in the absence of clinching evidence to the contrary and the version

of Sahana as noticed from the former writ petition filed by her, wherein no allegation was levelled against Sazzad. If at all nepotism was the force behind Sazzad's name being recorded in the attendance register before Sahana though he had been appointed after her, as alleged, Sahana ought to have, as a reasonable person is expected to do, raise objection. Between 26.4.1990 i.e. her date of appointment till the latter writ petition filed by her, Sahana did not for once voice her grievance in respect of alleged illegalities perpetrated by scheming persons for advancing Sazzad's approval of appointment. On the contrary, she felt cheated at Safiqu'l's appointment being approved though, undisputedly, he was junior to her. Sahana's claim had to yield to Safiqu'l's claim for approval since he belonged to the Science Group and she was the third teacher in the Language Group, after Rafiqu'l Islam and Sazzad. It is indeed unfortunate that the dream she nurtured of having her service approved in lieu of rendering 8 (eight) years' service did not materialise. But she has herself to blame for she is bound by her own pleadings, which has led to her dream being shattered. Based on sympathy or sentiment, the Court cannot come to her rescue.

33. There are two other reasons, weighty enough, for which the impugned order stands vitiated.

34. First, a gross infirmity in the order of the Director that renders it vitiated is consideration of the purported affidavits dated 29.4.2003 and 19.1.2005 of Md. Mozzaffar Hossain and Md. Moksed Ali. These affidavits were not made available to Sazzad in course of hearing. The Director having relied on documents behind the back of Sazzad, the same clearly offended principles of natural justice and rule of fair play.

35. That apart, these two affidavits bearing similar contents could not have been of any assistance to hold that Sahana was senior to Sazzad. It appears therefrom that the school was inspected on 18.12.1991 by the Additional District Inspector of Schools and then on 3.11.1998 by the D.L.I.T. Sahana was present in the school and had signed the attendance register at No. 6. If that be so, it has to be accepted that five teachers preceding Sahana were there in position on the date of inspection. Once again, copies of the daily attendance register for October and November, 1998 reflect Sazzad's position at No. 5 while Karim, Islam, Kabir and Paul, referred to above, were at the first four positions. Merely because the deponent of those two affidavits had alleged that the erstwhile Secretary Md. Golam Sobhan, being the father of Sazzad, had indulged in nepotism, such allegation ought not to have been made the basis of a quasi-judicial order determining rights of parties without reaching a satisfaction regarding its authenticity and/or correctness upon notice to the concerned parties particularly having regard to the materials placed by Sahana herself before the Courts of Writ on two earlier occasions.

36. The other is that the Division Bench by its order dated 16.6.2005, read with order dated 8.8.2005, had directed holding of fresh enquiry after spot verification

through a competent officer. It appears from the order impugned of the Director that a fresh enquiry had already been held and his predecessor in office had heard the matter on several days. However, in course of hearing, a confusion had arisen regarding the actual date of death of one of the members of the Managing Committee namely Javed Ali Mondal and accordingly the matter had been referred to the appropriate authority to ascertain the actual date of his death. By the time the report reached the Directorate from the office of the SDO, Barasat, the then Director had been transferred and consequently a fresh hearing was conducted by him. From the impugned order no reference to the contents of the purported report of enquiry, as conducted in terms of the order of the Division Bench, is traceable. In all fairness, the Director ought to have based his decision on such report as ordered by the Division Bench. By not even advertent to it, he has acted in a manner not otherwise justifiable.

37. Significantly enough, neither the findings of enquiry are reflected nor the purported report finds place in the two affidavits of the State respondents, sworn by the concerned District Inspector. The contents of the purported enquiry report have thus been withheld from Court.

38. It is recorded that these affidavits not having been filed in Court by the erstwhile Advocate for the State respondents, the same are not on record. Mr. Samanta, learned Counsel representing the State respondents submitted that he has been engaged recently and he has no clue regarding the whereabouts of the original affidavits. This Court, however, has looked into the copy affidavits supplied to the Advocate-on-record of Sazzad and handed over by Mr. Sanyal.

39. In the ultimate analysis, this Court is constrained to hold that the Director had faltered in the process of decision making. For reasons indicated above, i.e. by not posing the correct question unto himself, by not considering relevant documents as well as the stand of Sahana previously before this Court and proceeding in clear breach of principles of natural justice, this Court holds the impugned order perverse.

40. In ordinary circumstances, this Court would have remitted the matter back to the Director or to the Principal Secretary, Education Department for a decision on the rival claims. However, for ascertaining the correct position, this Court by order dated 9.7.2009 had invited an affidavit from Sahana to state who were the six teachers employed in the school as organizer teachers at the time she was engaged in April, 1990. In compliance with the said order, Sahana has filed an affidavit dated 15.7.2009. While repeating and reiterating her stand that Sazzad had been appointed after she was engaged in April, 1990 and that Sazzad's father Md. Golam Sobhan had manipulated records to project him as senior to her, Sahana has conveniently evaded giving particulars of the six teachers who were in position in April, 1990 as organizer teachers of the school when she was engaged. This Court is, therefore, constrained to draw inference from the surrounding facts that Sazzad was, in fact, one of the six organizer teachers when Sahana was engaged in April, 1990.

41. Mr. Ali, learned Counsel for Sahana, however, invited my attention to the resolution of the organizing Managing Committee (at page 56 of the writ petition) and urged the Court to compare the names of the members therein with the names of the members who were in the organizing Managing Committee, as pleaded by Sazzad in his supplementary affidavit affirmed on 17.8.2007. It is true that on comparison some discrepancy is revealed but majority of the members appear to be common. Even otherwise, Sahana cannot derive any advantage vis-a-vis the said discrepancy in view of the findings reached by this Court based on the contents of the writ petitions filed by her, referred to above, and her evasive attitude as reflected in her affidavit dated 15.7.2009.

42. In the result, the impugned order of the Director dated 25.5.2007 stands set aside. Consequently Memo dated 19.6.2007 issued by the District Inspector on the basis of the impugned order of the Director also stands set aside. Approval of service of Sazzad, granted by the District Inspector vide Memo dated 4.8.1999, shall revive. The District Inspector is directed to treat Sazzad as an approved teacher of the school without any break of service. However, he shall not be entitled to any salary during the period he was unable to serve the school as Assistant Teacher as a consequence of the order impugned herein. The District Inspector without unreasonable delay shall issue an order to this effect.

43. Sahana shall no longer be treated as an approved Assistant Teacher of the school. However, since she has actually served in the school, no recovery of salary paid to her shall be effected.

44. The writ petition accordingly succeeds. However, the interim order restraining respondent No. 12 from recommending candidates stands vacated.

45. Parties shall, however, bear their own costs.

46. Urgent photostat certified copy of this judgment and order shall be furnished to the applicant as early as possible but positively within four days from putting in requisites therefore.