

(2007) 09 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A. No. 94 of 2006

State of West Bengal and Others

APPELLANT

Vs

Smritikana Maity and Others

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

West Bengal Board of Secondary Education Act, 1963 — Section 45(2)
West Bengal School Service Commission Act, 1997 — Section 10, 9

Citation : (2008) 1 CHN 582 : 112 CWN 189

Hon'ble Judges : Pranab Kumar Deb, J; Debiprasad Sengupta, J

Bench : Division Bench

Advocate : B.R. Patranabis, Susobhan Sengupta, Ashok De and Soumen Kr. Dutta, in F.M.A. No. 94/2006, Saikat Banerjee, Malay Kumar Basu and P.C. Ghosh, in M.A.T. No. 428/2007, for the Appellant; Saktipada Jena, for Respondent Nos. 8 and 9 in F.M.A. No. 94/2006 and Rajyasri Chanda, for Respondent Nos. 10 and 11, for the Respondent

Final Decision : Allowed

Judgement

Debiprasad Sengupta, J.—These two appeals being FMA No. 94 of 2006 and MAT No. 428 of 2007 are taken up analogously for disposal as the same point of law is involved in these two appeals. FMA No. 94 of 2006 State of West Bengal and Ors. v. Smritikana Maity and Ors. is preferred against the judgment dated 4.10.2004 in W.P. No. 17266 (W) of 2002 passed by the learned Single Judge and in MAT No. 428 of 2007 State of West Bengal and Ors. v. Harendranath Mondal and Ors. the subject-matter of challenge is the judgment dated 22.12.2003 passed by the learned Single Judge in W.P. No. 20315 (W) of 2003. In both the cases, the learned Single Judge directed the District Inspector of Schools to regularize the services of the writ petitioners by approving their respective services as organizing staffs of Classes IX and X of the concerned schools.

2. In both the appeals, this Court is required to decide the legality and/or validity of the claim for regularization of organizing staff of the upgraded sections

[Classes IX and X] of the respective schools, who initially entered into services after 10.03.1979 in the unrecognized Classes IX and X of a Non-Government Aided Educational Institution.

3. Before entering into the merit of the case, it will be convenient to discuss about the factual background of the case in FMA No. 94 of 2006 Dahalanda Barada Sundari Girls' High School in the district of Purba Medinipur, originally a Junior Girls' High School, was recognized as Junior High School. Since the said school was not getting upgradation order for Class X High School from the West Bengal Board of Secondary Education, the managing committee of the said school preferred a writ petition being W.P. No. 3780 (W) of 1999. A mandatory order was passed by this Court directing the West Bengal Board of Secondary Education to upgrade the school and such order was passed on 4.1.2000. An appeal was preferred against the said order, which was dismissed. After dismissal of the said appeal, the West Bengal Board of Secondary Education issued an order of recognition as class-X Girls' High School. Such recognition was given on 29.11.2000. Thereafter the managing committee of the school made repeated prayers to the concerned authorities praying for approval of the writ petitioners, who are the respondents in the present appeal. On 22.08.2001 the District Inspector of Schools (S.E.), Purba Medinipur passed an order refusing approval in favour of the writ petitioners. The decision of the District Inspector of Schools was challenged in another writ application being W.P. No. 13169 (W) of 2001. In the said writ application, the learned Single Judge directed that there would be an inspection by the District Level Inspection Team and after such inspection the report would be submitted before the Director of School Education and the said authority would decide the question of approval in terms of the said order, there was an inspection on 9.1.2002. The Director of School Education took up the matter for consideration and by his order dated 8.11.2002 held that the writ petitioners could not be given approval of their appointments on the grounds - (i) the school in question, particularly Classes IX and X, are coaching classes and (if) the West Bengal School Service Commission Act, 1997 already came into force with effect from 1.11.1997 and, therefore, the services of the writ petitioners could not be approved.

4. The decision of the Director of School Education as aforesaid was challenged by the writ petitioners in W.P. No. 17266 (W) of 2002 and by the impugned judgment and order, the learned Single Judge set aside the order of the Director of School Education and directed the District Inspector of Schools concerned to take steps for granting approval of the appointments of the writ petitioners from the date of upgradation. Challenging such order, present appeal being FMA No. 94 of 2006 was preferred.

5. Mr. Banerjee, learned Advocate, appearing for the appellant submits that the initial appointments of the writ petitioners, if any made, were contrary to the rules and any executive instruction issued by the Government cannot approve such illegal appointments contrary to the statutory rules. Mr. Banerjee also

submits that Section 45(2)(d) of the West Bengal Board of Secondary Education Act, 1963 empowers the State Government after previous publication to make rules for the purpose of carrying out the provisions of the Act. Such rules may provide for composition, powers and functions of the managing committee of the institutions. In 1969 the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules were made in exercise of the aforesaid delegated legislative power. Mr. Banerjee refers to Rule 28 as it stood prior to coming into operation of the West Bengal School Service Commission Act, 1997, which is reproduced 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 authorized 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 authorized by him, ordinarily within a week from the date of decision of the Committee.

6. Rule 28 circumscribes the power of the managing committee of the recognized aided institutions to make appointments. Once the school is first recognized as a IV-class Junior High School (Classes V to VIII) the managing committee of that school is bound by Rule 28. According to Mr. Banerjee such managing committee is not authorized by law to make any appointment beyond the sanctioned strength. Classes IX and X at that stage were in its unrecognized state. The question of sanctioned strength in Classes IX and X comes after those classes are formally recognized. In its unrecognized state, no sanctioned post is available with the managing committee to give any appointment. It is the submission of Mr. Banerjee that the appointments of the respondents/writ petitioners are in clear breach of Rule 28 and as such they are not legally entitled to regularization. Mr. Banerjee in support of his contention relies upon a judgment of this Court reported in *Aloke Jyoti Maitra Vs. State of West Bengal and Others*, . From a perusal of the said judgment it appears that the concerned school was recognized after the commencement of the West Bengal School Service Commission Act, 1997. The writ petitioner's contention was that he was appointed prior to commencement of the Act by the managing committee and accordingly, his appointment should be approved by the State Government in terms of Government Circulars as referred to in the said judgment. It was held in the said judgment that the school was recognized in 1999 i.e. after coming into

operation of the Act of 1997. Therefore, after such recognition no teacher could be appointed except in accordance with the provisions contained in the Act. Admittedly the petitioner was not appointed as such, but he claimed that he was appointed earlier by the managing committee and his appointment should be approved by the State Government in accordance with the various circulars issued by the Government. It was held by the learned Judge that by merely issuing Government instructions, illegal appointments cannot be regularized in this way. If the initial appointment is illegal according to the parent Act and the Rules, the Government by issuing notification through the Joint Secretary cannot approve such illegal appointments. Mr. Banerjee also relies upon a judgment of this Court reported in 2006 (2) CLJ (Cal) 489 Manindra Nath Sinha and Ors. v. State of West Bengal and Ors. In the said judgment it was held by the Division Bench of this Court that the moment the school is recognized, the managing committee is to be constituted in accordance with the Act and Rules framed thereunder and such duly constituted managing committee can alone appoint teachers and non-teaching staffs according to the provisions contained in Rule 28 of the Management Rules within the sanctioned strength, but even then there is no right conferred upon the duly constituted managing committee to appoint any staff, who before the recognition of the school was appointed by the organizing managing committee and even the guidelines or circulars did not permit the appointment of any staff before the school is recognized and the sanctioned strength is declared. The Division Bench held in the said case that the initial appointments of the writ petitioners were contrary to the Rules and any executive instruction issued by the Government cannot approve the illegal appointment contrary to the statutory rules. In the unreported decision of this Court in MAT No. 1413 of 2004 State v. Goutam Bandyopadhyay and Ors. the Division Bench refused to accept the submission made on behalf of the writ petitioners/respondents and allowed the appeal preferred by the State of West Bengal setting aside the order dated 18.11.2003 passed by the learned Single Judge in W.P. No. 18874 (W) of 2002 by which the learned Single Judge directed regularization of services of the concerned teachers. In another unreported judgment in W.P. No. 2945 of 1990 Abdul Hamid Mondal v. State of West Bengal and Ors. relied upon by the learned Advocate of the appellant, it was held that any Government Circular issued to that effect, which is contrary to the statutory provision of law, is per se bad and on the strength thereof no one can claim any right. It was held that any order issued by the Government in its executive capacity permitting regularization of an appointee, who has been appointed contrary to the statutory law, is per se illegal and no reliance can be placed thereon. With such observation the writ petition filed by the concerned teacher was rejected.

7. It was submitted by the learned Advocate of the appellant that in terms of memo No. 553-Edn(S) dated 26.4.1978 schools could only be started with permission from the Government and it was not open to the schools to start unrecognized Classes IX and X without the permission of the Government.

8. The learned Advocate of the appellant further submits that the West Bengal School Service Commission Act, 1997 came into force with effect from 1.11.1997. Section 9 of the said Act stipulates that notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, appointments to the posts of teachers in a school shall be made by the managing committee of that school on the recommendation of the Regional Commission having jurisdiction and any appointment of a teacher made on or after the commencement of the Act in contravention of the provisions of the Act shall be invalid and shall have no effect and the teacher so appointed shall not be a teacher within the meaning of Section 2(p) of the said Act. Consequently, Rule 28(1) of the 1969 Management Rules was amended with effect from 1.11.1997 thereby stipulating that in an aided institution the managing committee shall, subject to 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 to appoint, on recommendation of the West Bengal Regional School Service Commission in respect of the region concerned, teachers on permanent basis. It is submitted by the learned Advocate of the appellant that by the aforesaid legislative mandate, according approval to the services of organizer teachers of a recognized aided institution after its upgradation was evidently done away with by the legislators on and from 1.11.1997 and, therefore, the respondents/writ petitioners had no case before the learned Single Judge for regularization of their respective services from the date when Classes IX and X were recognized. It is submitted by the learned Advocate that neither any post was sanctioned nor vacancies were notified. A managing committee, being a State, within the extended meaning of Article 12 of the Constitution, while offering public employment, is bound to comply with the constitutional requirements. If any recruitment is made by way of regularization by according approval to the respondents/writ petitioners, the same would mean a backdoor appointment, which does not have any legal sanction.

9. In support of his contention the learned Advocate of the appellant relies upon a judgment of the Hon"ble Apex Court reported in Secretary, State of Karnataka and Others Vs. Umadevi and Others, . In the said judgment it was held by the Hon"ble Apex Court as follows:

It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment, which can only be called "litigious employment", has risen like a phoenix seriously impairing the Constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution.

Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time that the Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very Constitutional scheme of public employment.

10. It was further held by the Hon''ble Apex Court in the said judgment in paragraph 33 as follows:

It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency can an ad hoc appointment be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the Constitutional scheme for public employment.

11. The Hon''ble Apex Court was of the view that the High Courts acting under Article 226 of the Constitution of India should not ordinarily issue directions for absorption, regularization or permanent continuance unless the recruitment itself was made regularly and in terms of the Constitutional scheme. In paragraph 45 of the said judgment, it was further held by the Hon''ble Apex Court as follows:

While directing that appointments, temporary or casual, be regularized or made permanent, the Courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain at arm''s length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the Constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.

12. The judgment of the Hon''ble Apex Court in the case of Uma Devi (supra) was subsequently followed in another judgment reported in State of M.P. and Others Vs. Lalit Kumar Verma, . In the said case it was observed by the Hon''ble Apex Court that the respondent not being appointed in terms of the statutory

rules, he was not entitled to any regular scale of pay attached to any post. Ordinarily, therefore, he could not have been directed to be regularized in service having regard to the Constitution Bench decision in Uma Devi's case. The original appointment of the respondent being illegal and not irregular, the case would not come within the exception carved out by the Constitution Bench in paragraph 53 of Uma Devi's case. The Hon'ble Apex Court also was of the view that the Labour Court, Industrial Tribunal as also the High Court was not correct in directing regularization of service of the respondent.

13. The Constitution Bench judgment in the case of Uma Devi was followed by a Division Bench of this Court in a matter concerning regularization of a lien vacancy of an Assistant Teacher in a High School, a recognized aided institution, in FMA No. 746 of 2005 State of West Bengal v. Mahabubar Rahaman. From a perusal of the said judgment it appears that the learned Trial Judge had directed regularization of appointment in a permanent vacancy of the writ petitioner though it was an admitted position that the writ petitioner joined in the post in a lien vacancy. In such circumstances, the Division Bench was of the view that in terms of the service circular the post should be declared as vacant for permanent appointment of a candidate following the Recruitment Rules i.e. the procedure for selection of Assistant Teachers in the school service as framed by the State Government. In terms of the rules as prevalent the School Service Commission is to recommend a candidate for appointment in the post and accordingly relying upon the case of Uma Devi (supra) the impugned order was set aside.

14. Mr. Banerjee submits that it is the own admission of the respondents/writ petitioners in FMA No. 94 of 2006 that they were appointed between 1st December, 1996 and 18th June, 1997 as organizing staffs of Classes (IX) and (X) when those classes were not even recognized by the Board. Similarly in MAT No. 428 of 2007 it is the admission of the respondents/writ petitioners that they were appointed for the proposed Classes IX and X of the concerned school when those classes were not recognized. Significantly, all these appointments were made by the managing committee of the recognized portion of the concerned school (upto Class - VIII). The power of this managing committee although is circumscribed by Rule 28 of the 1969 Management Rules, the managing committee overstepped its powers conferred by the statute and gave such illegal appointments. It is the contention of Mr. Banerjee, the learned Advocate of the appellant that it is by way of private arrangement that the managing committee without any power or jurisdiction in clear breach of Rule 28 permitted the respondents/writ petitioners to act as organizing staffs of Classes IX and X. The State also cannot Constitutionally make a promise to make illegal entrants permanent.

15. It is the submission of Mr. Banerjee, the learned Advocate of the appellant that admittedly the school was recognized as X-class Girls' High School and it was upgraded on and from 29.11.2000 and it is also the admitted position that the writ petitioners/respondents were appointed much prior to such upgradation

and recognition as X-class Girls" High School. At that stage when such appointments were given, there was no validly constituted managing committee for giving such appointment. In the present case, the school got recognition in 29.11.2000 after coming into operation of the West Bengal School Service Commission Act, 1997. Therefore, after such recognition no teacher can be appointed except in accordance with the provisions contained in the said Act. Admittedly the writ petitioners were not appointed as such, but they claimed that their appointments should be regularized by the State Government in accordance with the various circulars issued by the Government. According to Mr. Banerjee, when the initial appointment is illegal according to the parent Act and Rules, the Government by issuing notification cannot approve such illegal appointments.

16. Mr. Ashok De, learned Advocate appearing for the respondents/writ petitioners submits that prior to upgradation of the school by the West Bengal Board of Secondary Education, there was an inspection in the school and in the said inspection report the names of the writ petitioners were mentioned. On the basis of such report of the DLIT, the school was upgraded. However, in terms of the order dated 9.1.2002 passed by this Court another inspection was held in the school on 22.03.2002. The second inspection report runs contra to the earlier report. As per direction of Justice, Amitava Lala (as His Lordship then was) the matter was considered by the DSE, West Bengal, who passed an order on 8.11.2002 refusing approval of the petitioners with regard to their services. The decision of the DSE, West Bengal dated 8.11.2002 was challenged by the writ petitioners in W.P. No. 17266 (W) of 2002. The said writ petition was allowed by the learned Single Judge on 04.10.2004 by setting aside the order of the DSE. The District Inspector of Schools was directed to grant approval of the appointments of the petitioners and such approval was directed to be accorded from the date of upgradation.

17. It is submitted by Mr. De, the learned Advocate for the respondents/writ petitioners that right from 21.04.1982 to 21.1.2003 the Government of West Bengal, School Education Department and Directorate of School Education issued various circulars with an object to absorb the organizer teachers and to regularize their appointments. Mr. De, learned Advocate of the respondents/writ petitioners submits that in the last circular bearing No. 97-SE(S) dated 21.1.2003 it was specified by the Government as follows:

In the circumstances, the undersigned is directed by the order of the Governor to say that henceforth all appointments in teaching and non-teaching posts available as vacant either due to retirement/death/resignation of an existing employee or due to creation of post in the aforesaid institution on first recognition or upgradation or otherwise should be filled up only as follows:

- a) in case of whole-time teaching post, through the School Service Commission of the concerned region; and
- b) in case of a non-teaching post, on the basis of the guidelines for recruitment as

contained in Memo No. 1736 (21)-GA dt. 1.11.99 issued by the Director of School Education, West Bengal.

18. According to Mr. De, learned Advocate, the circular dated 21.1.2003 was issued after the School Service Commission Act came into force on 1.11.1997. The object of the circular is that the organizer teachers, who were already appointed by the respective managing committees, will be considered for absorption and/or approval of their services, otherwise the word "henceforth" would not have been mentioned in the circular dated 21.1.2003. But we are unable to accept such contention. Much emphasis was laid by the learned Advocate of the respondents/writ petitioner to the circular dated 21.1.2003. Even if the contents of the said circular especially the word "henceforth" appearing in paragraph 4 is accepted, still the claim of the organizing staffs of the unrecognized Classes IX and X to be regularized by way of approval cannot be accepted. This is for simple reason that the State never represented that organizing staffs of Classes IX and X appointed after 10.3.1979 would be regularized. The State, as a matter of fact, is even Constitutionally not permitted to make such representation even exercising power under Article 162 of the Constitution. In number of judgments as referred to above it was specifically held that any order issued by the Government in its executive capacity permitting regularization of an appointee, who was appointed in contravention of the statutory law, is per se illegal and no reliance can be placed thereon. Any Government Circular issued to that effect, which is contrary to the statutory provisions of law, is per se bad and on the strength thereof no one can claim any right. It was held in the case of Uma Deni (supra) that our Constitutional scheme envisages employment by the Government and its instrumentality on the basis of the procedure established in that behalf. Equality of opportunity is the hallmark and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be made in terms of the Constitutional scheme. Adherence to Articles 14 and 16 of the Constitution is a must in a process of public employment.

19. It is submitted by Mr. De, learned Advocate of the writ petitioners/respondents that the School Service Commission Act has been enacted for initiating the recruitment process in respect of a clear vacancy, which has been reported by the District Inspector of Schools concerned and the task of School Service Commission is to choose a candidate. The School Service Commission Act and the Rules framed thereunder has not taken away invested right of the organizer teachers. But such submission of Mr. De does not appeal to us since we find that the initial appointments of the writ petitioners/respondents were bad. After coming into force of the School Service Commission Act, appointments to the posts of teachers in a school has to be made by the managing committee of that school on the recommendation of the Regional Commission having jurisdiction and any appointment of a teacher made on or after the commencement of the Act in contravention of the provisions of the Act shall be invalid. It is also submitted by Mr. De, the learned Advocate that long and

uninterrupted service given by the organizer teachers have created a legitimate expectation that their services would be regularized by the Government in future. In fact when the Government has regularized the services of other organizer teachers, such an action on the part of the Government has created a valid and legitimate expectation that the Government would be doing the same act in favour of the writ petitioners. Such contention also cannot be accepted by us in view of the judgment of the Hon''ble Apex Court reported in Ram Pravesh Singh and Others Vs. State of Bihar and Others, . In the said judgment, it was held by the Hon''ble Apex Court as follows:

It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the Courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negate the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognized legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine or legitimate expectation, merely on the ground that the authority has a general obligation to act fairly.

20. The next submission made by the learned Advocate of the respondents/writ petitioners is that the judgment of Uma Devi (supra) was delivered by the Supreme Court in the light of public employment. In the said case the Government servants were claiming regularization. The managing committee of the school does not come under Article 12 of the Constitution. A teacher, who gets an appointment in a school, cannot claim that he is a public servant or he is being given a public employment. The employment as a teacher is not a public employment within the meaning of Articles 309 and 311 of the Constitution. But such an argument cannot be accepted by us. Conditions of service of approved teaching and non-teaching staffs of a recognized aided institution are fully spelt out by the State through the 1969 Management Rules, which is by way of subordinate legislation. Every step is to be done as what has been spelt out by the Government subject to approval of the West Bengal Board of Secondary Education, which is another limb of the Government. How and in what manner these teachers and non-teachers are to get leave has been spelt out in Rule 28(9). How an approved staff is to be suspended has been spelt out by the State in Rule 28(9)(via). Salary grant of the teaching and non-teaching staff and non-salary grant concerning the education institution are entirely borne by the State.

Non-salary grant includes building allowance, mid-day meal expenses, hostel development funds for backward class schools. After any teaching and non-teaching staff retires, terminal benefits of the retired employee is paid in terms of a Pension Scheme which has been formulated by the State. The financial assistance from the State in these institutions is so much as to meet the complete and entire expenditure of the institution. In other words, these recognized aided educational institutions in West Bengal are imparting education as the education agencies of the State and are trying to fulfill the Constitutional obligation of the State contemplated in Article 45 of the Constitution of India. Functions of such recognized aided institutions are of public importance and related to Governmental functions. It is clear that there is existence of State control so far as approved employees of any recognized aided institution are concerned. In such circumstances, it cannot be said that the teachers and non-teachers of a recognized aided institution are not in public employment.

21. The learned Advocate of the writ petitioners/respondents relies upon two unreported judgments in MAT No. 30 of 2005 and MAT No. 1904 of 2005 allowing the regularization of service. We have gone through the said judgments. In none of the judgments the points of law, as raised in the present appeal, was raised before the two Division Benches and the Division Benches did not have any occasion to deal with such points. Apart from this at that point of time the judgment delivered by the Hon"ble Apex Court was not in existence.

22. It is submitted by Mr. De, the learned Advocate that the School Service Commission Act came into force on 1.11.1997 and admittedly the present writ petitioners/respondents were appointed as teachers prior to coming into force of the said Act and accordingly, the School Service Commission Act does not have any manner of application in the present case. The services of the writ petitioners are protected u/s 10 of the West Bengal School Service Commission Act. But we are of the view that Section 10 of the West Bengal School Service Commission Act has no manner of application in the present case. Section 10 has applicability to those teachers whose services were already approved prior to coming into force of 1997 Act. The submission made by the learned Advocate of the writ petitioners/respondents that the 1969 Management Rules are not mandatory and directory is also untenable since series of reported and unreported decisions being relied upon have in a sustained manner held the rules to be statutory and mandatory.

23. After hearing the learned Advocates of the respective parties and considering the judgments of the Hon"ble Apex Court as also of our High Court, we find sufficient merit in the submissions made by the learned Advocate of the appellant. It is an admitted position that all the writ petitioners/respondents were given appointments as organizing staff in Classes IX and X, when those two classes were not even recognized by the West Bengal Board of Secondary Education. Such recognition was given on 29.11.2000 and it appears from the letter dated 29.1.2000 issued by the Secretary, Board of Secondary Education

that the Secretary of the school was directed to reconstitute the managing committee of the upgraded school by 30.4.2001. So, it is apparent that there was no validity constituted managing committee for X-class High School (Classes IX and X) when the writ petitioners/respondents were given appointments. Rule 28 of the Management Rules empowers the Managing Committee of a recognized aided institution to give appointments. When the school was first recognized as Class IV Junior High School (Classes V to VIII), it had its managing committee, which was bound by Rule 28. But such managing committee had no power to give any appointments of teaching and non-teaching staff of an unrecognized part of the school i.e. Classes IX and X, which is known as X-class High School. In other words, a recognized managing committee when gave appointments of teaching and non-teaching staff of the unrecognized portion of the school (Classes IX and X), it must be held that they acted in a manner which is not permissible under the law. Such appointments must be held to be illegal appointments.

24. An argument was advanced before us that Government of West Bengal, School Education Department and Directorate of School Education time to time, from 1982 to 2003, issued various circulars with an object to regularize the appointments of organizer teachers. At the time of hearing, a bunch of circulars were produced before us by the learned Advocate of the writ petitioners/respondents. It was submitted before us that these circulars are executive instructions and those were issued for the benefit of organizer teachers, who had sacrificed the best part of their lives for such institutions. It was further argued before us that such long and uninterrupted service given by these organizer teachers has created a "legitimate expectation" that their services would be regularized in future. But such argument cannot be accepted by us in view of the judgment of the Hon'ble Apex Court in the case of Ram Pravesh Singh and Ors. (supra), which we have already discussed earlier. In the case of Uma Devi (supra) also the Hon'ble Apex Court observed as follows in paragraph 47 of the judgment:

When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot Constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

25. It is true that the State had recognized a number of people who were appointed by the managing committee for unrecognized classes, although such appointments were illegal and in clear violation of the Rules, but such recognition/regularization being contrary to law cannot be treated as precedent.

26. We are also of the view that inclusion of names of such organizer teachers in the report of the DLIT (District Level Inspection Team) can never be taken into consideration until and unless it is shown that such appointment is given by a validly constituted managing committee of a recognized aided institution within the sanctioned strength and that such appointment is given according to the provisions of the relevant Rules.

27. As we have already discussed above, in the case of Uma Devi (*supra*) the Hon'ble Supreme Court having considered various judgments of the Hon'ble Supreme Court as also of other High Courts observed that appointments made without following due process or the rules for appointment do not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them permanent.

28. In view of the discussions made above, we find sufficient merit in the submission of Mr. Banerjee, learned Advocate of the appellant. We are of the view that when the initial appointments of the writ petitioners/respondents were not in accordance with the Rules, any executive order or instruction issued by the State Government cannot confer any right upon such organizer teachers to claim absorption or regularization of their services.

29. We accordingly allow the appeals being FMA No. 94 of 2006 and MAT No. 428 of 2007 and set aside the judgments and orders passed by the learned Single Judge.

Writ petitions are also accordingly dismissed. There will be no order as to costs. Urgent xerox certified copy of this judgment and order may be supplied to the learned Advocates of the respective parties, if the same is applied for. The learned Advocate of the respondents/writ petitioners makes a prayer for stay of operation of the judgment and order. Such prayer is refused by this Court.

P.K. Deb, J.

I agree.