

(2023) 12 CAL CK 0079
In the Calcutta High Court
Case No : WPA No. 10605 Of 2019

Swapna De (Dutta) & Ors.

APPELLANT

Vs

Secretary, School Education Department & Ors.

RESPONDENT

Date of Decision : 21-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 12 CAL CK 0079

Hon'ble Judges : Aniruddha Roy, J

Bench : Single Bench

Advocate : Ekramul Bari, D.K. Sengupta, Sweta Saha, Tapan Kumar Mukherjee, Ranjan Saha

Final Decision : Dismissed

Judgement

Aniruddha Roy, J

Facts:

1. The petitioners claim to be the teaching and non teaching staffs of one Sukchar Swami Mahadebananda Junior High School (for short, the school).
2. The first petitioner claims to be Headmistress of the school and she was appointed on May 02, 1995 and joined her duty on May 05, 1995 with a qualification M.A. in Bengali and B.Ed. The second petitioner is an Assistant Teacher who was appointed on December 04, 1995 and joined her duty on December 18, 1995 with a qualification B.A. (Hons.) in English with M.A. The third petitioner is an Assistant Teacher appointed on May 13, 1996 and joined on May 17, 1996 with a qualification B.A. and B.Ed. The fourth petitioner is an assistant teacher appointed on December 10, 1996 and joined on December 16, 1996 with a qualification M.A. (History). The fifth petitioner is a Clerk appointed on May 13, 1997 and joined his duty on May 09, 1997 with a qualification Higher Secondary. The relevant appointment letters are marked as Annexure P-1 at pages 45 to 48 to the writ petition.

3. The school was initially established in the year 1966 and was recognized by the West Bengal Board of Secondary Education (for short, the Board) as Class IV Junior High School w.e.f. January 01, 1971. Subsequently, due to some severe political movement in the State, the school was closed down in 1976 as pleaded in the writ petition. Such closure of the school was notified to the Board in 1984. The school again started imparting education and the school authority took steps for revival of its recognition which was there in favour of the school. On May 02, 1988 an inspection was held by the Jurisdictional District Level Inspection Team (for short, DLIT). The DLIT by its report dated May 09, 1988 recommended for revival of the recognition of the school.

4. On February 26, 2000 the then Managing Committee of the School resolved that, the existing teaching and non teaching staffs who were working in the school, their names would be forwarded before the education department for approval of their employment, if ultimately the school gets revival of its recognition in future, Annexure P-2 at page 49 to the writ petition. The names of the present petitioners had featured in the said resolution of the Managing Committee. Except the petitioners the candidates who were named in the said resolution, their employment was approved by the State authority under a Memo dated February 07, 2012. Challenging the inaction of the State authority in reviving of the recognition of the school for which the school had applied, the then Managing Committee of the school moved a writ petition being W.P. No. 1647 (W) of 2000 (the first writ petition).

5. By a judgment and order dated March 16, 2001 Annexure P-3 at page 50 to the writ petition, the first writ petition was disposed of directing the respondent no.1 to consider the matter afresh for the purpose of revival of recognition of the school and necessary directions were made for the same.

6. Since no step was taken by the State authorities in wilful violation of the said order dated March 16, 2001, a contempt proceeding WPCRC No. 3533 of 2022 was filed.

7. By an order dated September 03, 2002, Annexure P-4 at page 56 to the writ petition, passed in the contempt application a Coordinate Bench appointed a Special Officer who would visit the school and submit a report. The Ld. Special Officer filed its report dated September 04, 2002 Annexure P-5 at page 59 to the writ petition.

8. When the Education Department was dealing with the matter the DLIT Report dated May 09, 1988 was there on record. The report was prepared for revival of recognition of the school.

9. Ultimately the board by its decision dated April 29, 2009 read with Memo dated June 21, 2011 issued by the Board, Annexure P-6 at page 63 to the writ petition, the recognition of the school was granted. However, the employment of the then existing teaching and non teaching staffs, namely, the petitioners, were not approved. In the said pending contempt proceeding the petitioners affirmed

a supplementary affidavit on August 02, 2011 contending that the petitioners were the then existing teaching and non teaching staffs of the school, Annexure P-7 at page 69 to the writ petition. The alleged contemnors were directed to comply with the order by an order dated August 05, 2011, Annexure P-7 at page 67 to the writ petition. The approval was granted to some of the then existing teaching and non teaching staffs by a Memo dated February 07, 2012. The employment of the petitioners were not approved, on the plea that the names of the petitioners had not featured in the DLIT report dated May 09, 1988. A compliance report was also filed in this regard in the contempt proceeding, Annexure P-8 at page 74 to the writ petition. The approval for appointment is available at Annexure P-9 at page 75 to the writ petition.

10. Ultimately a coordinate bench by its order dated February 14, 2013 directed the respondent no.3 for compliance of the order dated March 16, 2001 in its entirety. The respondent no.3 then approved the service of the petitioners herein on April 05, 2013 w.e.f. May 01, 2009 in terms of the said order dated February 14, 2013. Subsequently, an appeal was preferred by the State and by an order dated September 12, 2013, the Hon'ble Division Bench cancelled the approval of the petitioners. However, from paragraph 18 to the writ petition it appears that, the Hon'ble Division Bench granted liberty to the petitioners to move a fresh application with regard to their approval of service. It is noted that, the order of the Hon'ble Division Bench dated September 12, 2013 has not been annexed to the writ petition, however, the petitioners craved leave thereof.

11. The petitioner then filed a writ petition W.P. 31042 (W) of 2013 in terms of the liberty granted by the Hon'ble Division Bench. The coordinate bench by its order dated November 29, 2013 directed the respondent no.3 to grant approval in favour of the petitioners within a time frame. Though the order has been referred to in paragraph 19 to the writ petition but not annexed.

12. Pursuant to the said direction of the coordinate bench dated November 29, 2013 the service of the petitioners were again approved by Office Memo dated August 26, 2014 and November 13, 2014, Annexure P-9 at page 75 to the writ petition.

13. Being aggrieved by the order dated November 29, 2013 the State preferred five separate appeals.

14. Ultimately by an order dated April 20, 2006 the Hon'ble Appeal Court disposed of all five appeals directing the respondent no.1 to pass a speaking order in respect of the claims of the petitioners being respondents in those appeals in the light of the judgment dated March 16, 2001 passed in W.P. No. 16476(W) of 2000 within a specified time frame after granting an opportunity of hearing to the parties, Annexure P-11 at page 92 to the writ petition.

15. The respondent no.1 conducted the hearing on August 17, 2016. In the hearing it was pointed out that, the petitioners are working from their date of respective appointments since 1995, 1996 and 1997.

16. The petitioners then received a Memo dated September 29, 2016 where from the petitioners came to know that their claims were rejected on the ground that, names of the petitioners were not found in the DLIT report in 1988, Annexure P-12 at page 98 to the writ petition.

17. The petitioners then challenging the said decision dated September 29, 2016 filed another writ petition W.P. No. 9599(W) of 2017.

18. By an order dated August 28, 2018 passed by a coordinate bench the said decision dated September 29, 2016 was set aside, Annexure P-15 at page 105 to the writ petition. The coordinate bench directed the concerned authority to comply with the directions contained in the said order dated April 20, 2006 passed by the Hon'ble Division Bench in FMA 581 of 2015 and to consider the case of the petitioner.

19. Pursuant to the said direction dated August 28, 2018 the hearing was conducted by the respondent no.1 on January 16, 2019. The petitioners filed their written notes Annexure P-16 at page 110 to the writ petition.

20. The respondent no.1 passed its reasoned order dated January 30, 2019 rejecting the claim of the petitioners Annexure P-17 at page 120 to the writ petition. The plea for rejection was that the names of the petitioners were not there in the DLIT report and also in the report of the learned Special Officer.

21. Being aggrieved by the said decision, the petitioner moved the instant writ petition with the following prayers:

“(a) Writ in the nature of Mandamus commanding the respondents, their servants, agents to rescind, recall, quash and/or set aside the impugned order dated 30th January, 2019, as in annexure “P-17”;

(b) Writ in the nature of Mandamus commanding the respondents, their servants, agents to accord approval of the appointments in favour of the petitioners, treating the existing teaching and non-teaching staff of Sukchar Swami Mahadebananda Junior High School with effect from 1st May, 2009 being the date of recognition of the school and to release the arrear salaries and continue to release the current salaries and other emoluments month by month within a reasonable time as this Hon'ble Court may deem fit and proper;

(c) Writ in the nature of Certiorari directing the respondents, to certify and transmit the relevant records in connection with this case so that conscionable justice may be administered by quashing the impugned order dated 30th January 2019, as in annexure “P-17”;

(d) RULE NISI in terms of prayers (a), (b) and (c) above.

(e) Ad-interim order be passed directing the respondents their servants, agents, particularly the respondent No.3 herein to accord approval of the services of the petitioners herein as teaching and non-teaching staff of Sukchar Swami Mahadebananda Junior High School, with effect from 1.5.2009 and to release the

salaries and other emoluments within a reasonable time as this Hon'ble Court may deem fit and proper;

(f) To make the Rule Absolute after perusing the cause shown, if any, and after hearing the Learned Advocates for the parties;

(g) Costs;

(h) Such other or other orders, as this Hon'ble Court may deem fit and proper."

22. An affidavit-in-opposition was filed on behalf of respondent no.1, 2, 3 and 5. Affidavit-in-reply was also filed by the petitioner.

Submissions:

23. Mr. Ekramul Bari learned counsel for the petitioner submits that, the school was initially established in the year 1966. The school was recognized by the West Bengal Board of Secondary Education (for short, the Board) as a IV Class Junior High School w.e.f. January 01, 1971 due to some political activities within the State, the School was closed down in 1976, all the teaching and non teaching staffs left the school. In 1894 the Managing Committee of the school again decided to commence the functioning of the school and to take necessary steps for its revival of the original recognition granted by the Board. An inspection was held on May 02, 1988 by the District Level Inspection Team (for short, DLIT) which recommended the revival of the recognition of the school.

24. To impart education to the students the Managing Committee of the school from time to time during 1995, 1996 and 1997 appointed these petitioners as teaching and non teaching staffs as the old staffs had left the school. Since then the petitioners have been working in the school. The Managing of the school in its meeting held on February 26, 2000 adopted a resolution to move High Court for revival of the recognition of the school and for approval of the appointments of the teaching and non teaching staffs of the school. The first writ petition was moved W.P. No. 16476 (W) of 2000. A coordinate bench passed its order dated March 16, 2001 as already narrated above. The respondent no.1 was directed to cause a fresh inspection of the said school and after such inspection the said report to be forwarded to the respondent no.1 with his observation in connection with the revival of the recognition of the school. It was further directed that if the recognition of the school is accorded by the board, then it would pass appropriate orders in relation to the existing teaching and non teaching staffs of the school.

25. Despite the said direction of the coordinate bench dated March 16, 2001 since no step was taken a contempt application WPCRC No. 3533 of 2002 was filed. By an order dated September 03, 2002 passed in the contempt proceeding the coordinate bench appointed an Advocate Special Officer directing to inspect the school and to submit a report.

26. Pursuant to the said direction dated September 03, 2002 the Special Officer

inspected the school on September 04, 2002 in presence of the respondent no.3. Learned counsel submits that, the existing teaching and non teaching staffs including the petitioners herein were also present on September 04, 2002 when the Special Officer prepared the said inspection report. The school was then re-recognized by the board by its order dated April 29, 2009 read with June 21, 2011 passed by the Board.

27. After such re-recognition of the school the Managing Committee by its representation dated July 15, 2011 requested the respondent no.3 to approve the appointments of six teaching and non-teaching staffs of the school. According to Mr. Bari these names for seeking approval included the names of these petitioners also. The representation of the Managing Committee dated July 15, 2011 is available at Annexure P-6 at page 63 to the writ petition.

28. In terms of the said representation dated July 15, 2011 the services of two Assistant Teachers and one non-teaching staff were approved and other five members of the teaching and non-teaching staffs were not approved on the plea that their names were not included in the DLIT report dated May 09, 1988. This unapproved names include the petitioners.

29. Learned counsel for the petitioner submits that, throughout the process the respondent no,3 and the board rejected the approval of the petitioners on the sole plea that the names were not there in the DLIT report. He submits that from record it would be evident that by its memo dated April 05, 2013 and subsequently, November 13, 2014 and August 26, 2014 though the appointments of the petitioners were approved but the same was withdrawn and cancelled in the year 2016.

30. Referring to the order dated August 28, 2018 Annexure P-15 at page 105, Mr. Bari submits that, the decision of withdrawal of approval of the petitioners was quashed by a coordinate bench and the authority was directed to comply with the direction contained in the order dated April 20, 2016 passed by the Hon'ble Division Bench Annexure P-11 at page 92 to the writ petition and then to consider the case of the petitioners. He, however, further submits that on a close scrutiny of the said impugned decision dated January 30, 2019 it would be evident that the case of the petitioners were rejected on the plea that their names were not available in the DLIT report without following the said direction of the coordinate bench dated August 28, 2018. Hence he submits that the impugned order dated January 30, 2019 should be set aside and the service of the petitioners should be approved.

31. Learned counsel for the petitioners submits that, the petitioners had already been approved upon due consideration of all records. The authority having been satisfied that the petitioners were there since their appointment in 1995 onwards, the service of the petitioners was approved. Subsequently, the respondent authorities could not have been taken a different plea contrary to their earlier stand and should not have withdrawn the approval of the petitioners.

32. Learned counsel for the petitioner then submits that when the school started functioning as an organizing school there was no Recruitment Rules hence there is no scope for raising a plea that the appointments of the petitioners as organizing teacher were not in accordance with the Recruitment Rules. In support, he relied upon a decision of the Hon'ble Division Bench In the matter of: Hemoprova Sikdar vs. The State of West Bengal & Ors., reported at (1998) WBLR (Cal) 223.

33. With reference to the DLIT report he submits that, since the petitioners were appointed in between 1995 to 1997 the question of featuring the names of the petitioner, in the 1988 DLIT report did not and could not arise. Relying upon the representation of the Managing Committee of the school dated July 15, 2011 he submitted that, the names of the petitioners were included list for whom the Managing Committee of the school at the relevant point of time prayed for approval of service before the State authority. On the basis of the same it can be contended that from the relevant period since 1995 to 1997, the petitioners were working as teaching and non teaching staffs at the school and as of right they are eligible to receive their approval of service. The petitioners are the bona fide staffs of the school. In support, the learned counsel relied upon a decision of the Hon'ble Division Bench dated September 02, 2022, In the matter of Niranjana Sahoo @ Niranjana Sahoo & Anr. Vs. State of West Bengal & Ors., rendered in FMA 2089 of 2015 with CAN 1 of 2015 (Old Can 6625 of 2015). Referring to an order of the Hon'ble Apex Court dated February 27, 2023 passed in SLP (Civil) Diary No. 4340 of 2023 In the matter of: The State of West Bengal & Ors. vs. Niranjana Sahoo, learned counsel submits that, the special leave petition was not entertained and accordingly was dismissed by the Hon'ble Supreme Court with an observation that however, the questions of law is kept open. He submits that, the decision of the Hon'ble Division Bench In the matter of: Niranjana Sahoo (supra) has been upheld by the Hon'ble Supreme Court and is the settled law.

34. Mr. Bari then relied upon an order of the Hon'ble Supreme Court dated May 06, 2022 passed In the matter of: Prabir Kumar Ghosh & Ors. vs. The State of West Bengal & Ors., rendered in SLP (C) No. 27804 of 2019.

Referring to the said order of the Hon'ble Supreme Court he submits that, under identical situation the appointment of the teachers were approved by a coordinate bench of this Court which was ultimately affirmed by the Hon'ble Supreme Court.

35. In the light of the above submissions, learned counsel submits that, the service of the petitioner should be approved and the impugned decision of the respondent no.1 should be set aside.

36. Mr. Tapan Kumar Mukherjee learned senior counsel and the Additional Government Pleader appearing for respondent nos. 1, 2, 3 and 5, per contra submits, even if, at the time of commencement of an organizing school prior to the School Service Commission Act came into force no Recruitment Rules in

terms of a statute would apply but later when the teachers are seeking their approval of service, they need to show beyond any doubt and/or reasonable doubt that they were employed as teachers of the school and imparted education to the students. Referring to the records, namely, the DLIT report and the report filed by the Special Officer dated September 04, 2002, the learned Additional Government Pleader submits that, nowhere the name of the petitioners had appeared. Even if, the names of the petitioners appeared in the representation of the Managing Committee dated July 15, 2011 as contended by the petitioner the same cannot be construed as a document beyond doubt as because the report of the learned Special Officer did not show the names of the petitioners and the same might have been authored without any basis.

37. Learned Additional Government Pleader then submits that, the law is well settled that, if the teachers are appointed without following the due process of law and the Recruitment Rules, no approval should be granted by the State. In support, he has referred to the following decisions of the Hon'ble Division Bench In the matter of: Manindra Nath Sinha & Ors. vs. State of West Bengal & Ors., reported at 2006 (4) CHN 513 and State of West Bengal & Ors. vs. Smritikana Maity & Ors., reported at 2008(1) CHN page 532.

38. Referring to an order of the Hon'ble Supreme Court dated December 04, 2014 passed in Civil Appeal No.(C) 7897 of 2010 In the matter of: Manindra Nath Sinha vs. The State of West Bengal & Ors., he submits that, the special leave petition preferred was dismissed and the judgment of the Hon'ble Division Bench In the matter of: Manindra Nath (supra) referred to above was not interfered with.

39. Learned Additional Government Pleader then refers to a further Hon'ble Division Bench judgment, In the matter of: the District Inspector of Schools (Secondary Education) Burdwan & Ors. vs. Abdul Barik Shaikh & Ors., dated July 06, 2018 rendered in MAT 1626 of 2017, and submits that the Hon'ble Division Bench had observed in the identical facts situation, the said two judgments In the matter of: Manindra Nath (supra) and Srimitikana Maity (supra) should be followed.

40. He then submits that, the petitioners herein cannot be termed as a bona fide staffs within the meaning of the law laid down In the matter of: Niranjana Sahoo (supra) as their existence are not proved as it was required to be proved beyond any doubt. Hence, the decision of the State not to approve their service was just, proper and lawful. In the light of the above the learned State Counsel prays for dismissal of the writ petition.

41. The other respondents chose not to be represented when the writ petition was finally heard.

Decision:

42. After considering the rival contentions of the parties and upon perusal of the

materials on record, the facts which are admitted are the petitioner were appointed during the period 1995 and 1997 when the original recognition of the school stood lapsed. The recognition of the school was revived on April 29, 2009 read with the decision of the board dated June 21, 2011 w.e.f. May 01, 2009. The petitioners were allegedly working at the school as teaching and non teaching staffs. It is true that, the DLIT report dated May 09, 1988 could not have been featured with the names of the petitioners, as the petitioners were appointed much thereafter.

43. In the writ petition W.P. No. 16476 (W) of 2000 a coordinate bench while disposing of the same by its order dated March 16, 2001, Annexure P-3 at page 50 to the writ petition had observed, inter alia, as under:

"I, therefore, set aside the impugned communication dated 31st July, 2000 made by the Secretary, School Education Department, Government of West Bengal in view of the aforesaid report of the District Level Inspection tour dated 9th May, 1988 and of the implied recognition made by the Director of School Education under his memo dated 11th April, 1997 as also of the recommendation made by the Sabhapati, North 24-Parganas Zila Parishad. I, therefore, direct the Secretary, Education Department, Government of West Bengal to consider the matter afresh for the purpose of revival of recognition of the School in question in the light of the observations made hereinabove and on the basis of the documents as disclosed in this writ petition. However, it is made clear that the said secretary for the purpose of fresh consideration of the case for revival of recognition of the school in question would be entitled to cause an inspection in the school concerned. Such consideration shall accordingly be made by the said Secretary, Education Department, Government of West Bengal afresh expeditiously and preferably within a period of four months from the date of communication of this order. The said Secretary after having formed its opinion will refer the matter to the Board of Secretary Education who will then pass appropriate orders in terms of the provisions of law in relation to the revival of recognition of the School in question.

This writ petition is accordingly disposed.

It is further made clear that if the revival of recognition of the school in question is accorded by the Board of Secondary Education then it will also pass appropriate orders in relation to the existing teaching and non-teaching staff of the said School. In that view of the matter, no order is necessary on the application filed by one of the alleged organizing teacher of the school in question for being added as a party respondent to this writ petition. The same shall accordingly be disposed of".

44. In the contempt proceeding WPCRC 3533(W) of 2002 arising from the said order of the coordinate bench dated March 16, 2001, an order was passed on September 03, 2002, Annexure P-4 at page 56 to the writ petition when the coordinate bench had observed. Inter alia, as under:

"In view of such a contradictory statements made by the respective parties, it is necessary to find out as to whether the concerned respondent authorities noted bona fide in the spirit of the order passed by this court. I, therefore, for the purpose of elucidation of the facts relating to this contempt application, appointment Sri A.N. Banerjee, Learned Advocate to visit the locale and to submit his report on the next date. Mr. Banerjee will visit Sukchar Swami Mahadevananda Junior High School, Panchanantala, P.O. Sukhchar, Dist.- North 24-Parganas

..... at 11:30 a.m. Mr. Ashis Kumar Halder, Learned

Advocate appearing on behalf of the alleged contemnor/opposite party submitted that the concerned D.I. of Schools shall be informed accordingly and he will be asked to be present at the locale while Mr. Banerjee will be at the site. I, therefore, direct that he may be asked to do so. Mr. Banerjee will inspect the school building in respect of its area room and condition of structure as also the approximate number of students attending the school and will submit his report on the next date".

45. Pursuant to and in terms of the said direction of the coordinate bench the learned Special Officer, caused the inspection and filed his report, Annexure P-5 at page 59 to the writ petition. Relevant finding from the said report of the learned Special Officer is, inter alia, quoted below:

vi) I met one Sri Mihir Chakraborty, claiming to be the Head Master and serving since 1981 and two persons Sri Jahar Dasgupta and Sri Byomkesh Bhattacharya claiming to be the members of the managing committee of the school. I also met four persons (3 female and 1 male) claiming to be teachers and also one male and one female staff. I did not find any student present in the school. I was told that the school was closed from that date (4.9.2002) for study leave for the ensuring quarterly examinations starting from 9.9.2002.

viii) When I was about to leave at about 12.30 p.m. I was approached by almost all the said persons associated with the school with the proposal that if conditional recognition of the school is given by the authority, they would not even demand any monetary benefit, including the salary of the staff for 1 year to show their ability to run the school. According to them the poor student-strength of the school is mainly due to the non-recognition of the school. I have merely asked them to make this prayer formally before the Hon'ble Court in appropriate manner".

46. On the basis of the said fact finding enquiry caused by the learned Special Officer, the recognition of the school was granted on June 21, 2011, Annexure P-6 at page 66 to the writ petition.

47. Upon a close scrutiny of the finding of the Special Officer and the communication dated June 21, 2011 issued by the Board granting recognition of the school two principle features have emerged, which are:

(i) The names of the petitioners did not appear in the report of the Special Officer and;

(ii) The Board initially had granted recognition to the school.

48. The communication of the office of the respondent no.3 also informed the Secretary of the Managing Committee of the school through its communication dated May 09, 2012, Annexure P-8 at page 74 to the writ petition that recognition was granted to the school for three years w.e.f. May 01, 2009 and the approval of appointment was also granted to the teaching and non teaching staffs of the school.

49. State preferred an appeal from the said order of the coordinate bench dated March 16, 2001, inter alia, being FMA 581 of 2015 which was disposed of by the Hon'ble Division Bench by its order dated April 20, 2016, Annexure P-11 at page 92 to the writ petition. The Hon'ble Division Bench directed the Secretary, Education Department to consider the case of the respondents in that appeal being the petitioners herein. The observations of the Hon'ble Division Bench is quoted below:

"Therefore, the above order is quashed and set aside on that ground only up to the extent so far as the rejection of the claims of the respondents/writ petitioners are concerned. It is made clear that the order of approval of services of two teaching and one non-teaching staff of the said school has not been interfered with so far as the above order dated May 9, 2012 is concerned.

Therefore, we direct the Secretary to the Government of West Bengal, School Education Department to pass a Speaking order in respect of the claims of the respondents in these appeals in connection with their services in the said school in the teaching and non-teaching posts, as their case may be, in the light of the judgment dated March 16, 2001 passed in the W.P. No. 16476 (W) of 2000 with the observations made hereinabove within a period of three months from the

date of communication of this order after giving opportunity of hearing to the parties or their authorized representative/representatives.

The Secretary to the Government of West Bengal School Education Department is further directed to communicate his above decision to the respondents of these appeals within a period of fortnight from the date of passing the above order.

These appeals are, thus, disposed of".

50. The Secretary the School Education Department had passed reasoned order without following the direction of the Hon'ble Division Bench dated April 20, 2016. The said decision of the Secretary, School Education Department was set aside by a coordinate bench under its order dated August 28, 2018 passed in WP 9599 (W) of 2017, Annexure P-15 at page 105 to the writ petition with the following observations:

"In such circumstances, the impugned order is not in conformity with the directions given by the Appeal Court. The same is quashed. The authorities will comply with the directions contained in the order dated April 20, 2016 passed by the Division Bench in FMA 581 of 2015 within a period of three months from the date of communication of this order. It is expected that, the parties will abide by all other directions in the judgment and order dated April 20, 2016.

W.P. 9599 (W) of 2017 is disposed of".

51. Upon reading the said Hon'ble Division Bench order dated April 20, 2016 this Court is of the firm view that, the department was directed to consider the issue in the manner as specified by the Hon'ble Division Bench in its order dated April 20, 2016 as quoted above. There was no fetter otherwise upon the Secretary, School Education Department to decide the issue by a reasoned order. Similarly the coordinate bench order dated August 28, 2018 after setting aside the decision of the Secretary, School Education Department, simply directed the Secretary to decide the issue by passing a reasoned order following the direction of the Hon'ble Division Bench dated April 20, 2016. Again no fetter was imposed upon the Secretary, School Education Department to decide the issue but by following the direction of the Hon'ble Division Bench dated April 20, 2016. The respondent no.1 then passed the impugned order dated January 30, 2019 rejecting the claims of the petitioner for their approval as teaching and non teaching staffs at the school. The relevant observations from the impugned order is quoted below:

"4. Having considered the representation of the petitioners, the order of the Hon'ble High Court dated 20.04.2016 passed in FMA 581 of 2015 and order of the Hon'ble High Court dated 16.03.2001 passed in W.P. No. 16476 (W) of 2000, this is to state that petitioners have failed to submit any cogent documents by which it can be established that the petitioners were appointed following laws prevalent at the material point of time in respect of selection of teaching and non-

teaching staff. It also appears that when the petitioners were appointed, there was no validly constituted Managing Committee of School. It also reveals that the action taken by the school authority as a blatant disregard of recruitment procedure not suitable in law. It appears from Government order dated 20.12.1984 vide memo no. 2605-Sc/S that regularisation of service could be considered for those teaching and non-teaching employees whose names were appeared in the DLIT report. It also comes to the surface that the special officer engaged by the Hon'ble High Court had not mentioned the names of the petitioners who are claiming present on the date of inspection of special officer. Moreover, Xerox copies of attendance register submitted are without any authentication of the competent authority. Thus, the foregoing facts nullify the claim of the petitioners for regularization of their service. Hence, the records available in the file submitted by the petitioners in their support and law applicable in the same subject the claim of the petitioners is not maintainable and sustainable at all. The claim of the petitioners is hereby rejected.

Thus, the matter is disposed of. All concerned be informed accordingly”.

(emphasis supplied)

52. The said impugned order dated January 30, 2019 is under scrutiny in the instant writ petition.

53. On a close scrutiny of the said impugned order, it appears to this Court that, upon careful consideration of all the materials on record which were relevant for taking the decision by the respondent no.1. The impugned order speaks of referring to a Government Circular dated December 20, 1984 that regularization of service could be considered for those teaching and non teaching staffs whose names appeared in the DLIT report. In the fact of this case, admittedly the 1988 DLIT report, which was on record, could not have featured the names of the petitioners as the petitioners joined in their service much thereafter during the period 1995 to 1997. Therefore, the coordinate bench while considering the recognition of the school and to take steps in respect of the service of the teaching and non teaching staffs of the school in the contempt proceeding appointed the Learned Special Officer, who in turn had filed its report. The relevant content of the report of the Learned Special Officer has already been quoted above wherefrom it appears that, the names of the petitioners also did not feature in the said report of the Special Officer which was filed admittedly in 2002 much after the alleged appointments of the petitioners in their service.

54. It has to be noted that the names of the teaching and non teaching staffs featured in the DLIT report of 1988, their service were duly approved at the school.

55. The logic behind preparation of a DLIT report on a plain reading of the relevant Rules and Government Memoranda, that prior to recognition when a school was organized, there could not be any recruitment rules save and except the government orders issued in its executive fiat. When the process was

initiated for recognition of the school, a detailed fact finding enquiry as to the viability of the relevant school with its feasibility for recognition was required to be assessed and accordingly the 1988 DLIT report was prepared contemporaneously. On the basis of such 1988 DLIT report the process for re-recognition of the school was initiated. Thereafter for assessment of the then status of the school, for recognition of the school the Special Officer was appointed by the Coordinate Bench and a detailed enquiry was carried out. On the basis of the said enquiry report, which speaks in detail as to the contemporaneous status of the school with all its infrastructure claiming recognition and as to its teaching and non teaching staffs for their approval of service. Significantly the report of the Special Officer did not feature the names of the petitioners. Though the petitioners claim to have been appointed during 1995 to 1997. The said report was never challenged. The petitioner placed much thrust upon the resolution of the Managing Committee of the school dated February 26, 2000, Annexure P-2 at page 49 to the writ petition and the representation dated July 15, 2011 whereunder the Managing Committee of the school adopted the resolution to move the High Court for revival of the recognition of the said school and for approval of appointments of the teaching and non teaching staffs of the school and the State authority was requested to grant approval to the teaching and non teaching staffs of the school. The names of the petitioners had featured in the said resolution and the representation. Therefore, the petitioners claimed their approval showing there presence in the school as teaching and non teaching staffs.

56. In the matter of Niranjana Sahoo @ Niranjana Sahoo & Anr.(supra) the Hon'ble Division Bench had observed as under:

** Further to a resolution dated 15th December, 1978 of the Managing Committee of the school, on 21st December, 1978, the school issued to the appellant No. 1, a letter of appointment appointing him as an assistant teacher of the school. He started teaching from 2nd January, 1979. Another resolution of this Committee led to the appointment of the appellant No. 2 in the same post with effect from 16th April, 1989. The appellants say that they have continuously taught in the school from the date of their joining. In support of it they have appended some attendance sheets. Gradually the school was upgraded and on 9th November, 1981 with effect from 1st January, 1980 the school was recognized as a junior high school. Classes IX and X were started as the unrecognized section. The Committee applied for recognition of the unrecognized Classes IX and X of the school. For this purpose, the District Inspector of Schools, Midnapore had caused inspection of the school and its activities on 18th

October, 1985, 16th May, 1992 and 3rd May, 2000 by the District level inspection team. The appellants assert that during these inspection drives, they were found to be serving the unrecognized IX and X section of the school as organizer teachers. According to the report of the District Level Inspection team dated 16th May, 1992, there were 28 students in Class IX and 27 in Class X, comprising of 11 boys and 7 girls in Class IX and 15 boys and 12 girls in Class X. Both the appellants were found to be teaching in the unrecognized part of the school. The remark of the inspecting authority was that they had been "continuously serving upto the date of inspection". In the inspection report, it was stated that the appellant No. 1 had qualification of MA. BEd. and had been appointed on 2nd January, 1979. The appellant No.2 with qualification BA had been appointed on 11th April, 1989.

The appellants/petitioners found to be bona fide working in the Mamadpur Gobinda Smriti Siksha Niketan School at the time of its said inspection by the District Level Inspection team shall be presumed to be the organizing staff and should be recommended by the Commission to the Board for appointment under Section 7 of the Act. The Board would have the obligation to regularize such appointments from the date of recognition of the school".

(emphasis supplied)

57. In the matter of Niranjana Sahoo @ Niranjana Sahoo & Anr.(supra) the Hon'ble Division Bench had further observed as under:

"In a similar type of situation, the Supreme Court in an unreported decision in Prabir Kumar Ghosh & Ors. Vs. State of West Bengal and Ors. decided on 6th May, 2022 setting aside a division bench judgment of this court observed and held as follows:-

"Considering the entirety of the matter, the single judge found that in view of the report submitted by District Magistrate, Cooch Behar, order dated 12.04.2002 of Director of Education, was not sustainable. The Single Judge, therefore, directed District Inspector of School (Secondary Education) to approve the appointments of writ petitioners except writ petitioner No.6 with effect from 05.06.2014. The aforesaid decision of the Single Judge was, however, set aside by the Division Bench in an appeal arising therefrom. It was observed by the Division Bench that if the initial appointment itself was illegal, the appointments could not be regularized and that the decision rendered by the Single Judge was otherwise unsustainable. As the record indicates that the school was set up by the villagers.

The facility of the school in the neighbourhood was not made available by the official agencies. In a situation such as that the 13 engagement of the writ petitioners cannot strictly be called to be illegal. They were definitely imparting education in keeping with the letter and spirit of the legislation enacted by the Parliament being Right to Education Act. In the circumstances, the Division Bench was not justified in setting the order passed by the Single Judge. Consequently, we allow the appeal, set aside the order passed by the Division Bench and restore the order passed by the Single Judge of the High Court. The appeal is accordingly, allowed."

58. In the matter of: Abdul Barik Shaikh & Ors. (supra) the Hon'ble Division Bench had observed as under:

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

20. For the reasons aforesaid, the order of the learned Judge stands set aside. The writ petition stands dismissed.

21. The appeal is allowed, without any order for costs".

59. In the matter of: Manindra Nath Sinha & Ors. (supra) the Hon'ble Division Bench had observed as under:

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

22. Therefore, it is clear that initial appointments of the writ petitioners, even if those were really made, were contrary to the rules and any executive instruction issued by the Government cannot approve the illegal appointment contrary to the statutory rules.

23. As regards the applicability of the doctrine of promissory estoppel raised by Mr. Deb we are of the view that if the appointment itself is de hors the existing statutory enactments, there is no question of applicability of the doctrine of promissory estoppel. According to the Parent Act, namely, the West Bengal Board of Secondary Education Act, 1963 and the rules framed thereunder, there is no

provision of appointment of organizer-teacher by a so-called Organizing Managing Committee before a school has been recognized by the Board. There is no statutory provision for giving appointment to the so-called organizer-staff after a school is recognized by the Board. According to the present law, a Managing Committee is to be duly constituted and such duly-constituted Managing Committee alone will appoint teachers and non-teaching staff by complying with the requirements of the Management rules. In the case before us, such formalities were admittedly not complied with. The decision of the Supreme Court in the case of Motilal Padampat Sugar Mills Ltd. (supra), relied upon by Mr. Dev rather lays down that the doctrine of promissory estoppel is not applicable against the Government if it is under the obligation or liability to act differently by operation of law. In a subsequent decision of the Supreme Court in the case of Bangalore Development Authority vs. R. Hanumania , reported in 2005(12) SCC 508, it has been clearly held that the principle of promissory estoppel cannot be invoked to permit or condone a breach of law or to compel the Government to do an act prohibited by law. It was pointed out in that case, that in the absence of any statutory provision enabling the Bangalore Development Authority to reconvey the land acquired to implement scheme for framing of sites and allotment thereof, the Authority could not be directed to reconvey a part of the land merely because it had earlier promised to do so. We, thus, find no substance in the contention of Mr. Dev on the question of invocation of the principle of promissory estoppel in the facts of the present case.

29. After going through the materials on record we are at one with the District Inspector of schools that this was a new school created by the local Panchayat and the land and the building also vested in the local Panchayat. Therefore, the claim of the writ petitioners that they had been acting as organizer-staff from an earlier point of time is on the face of it contrary to the materials on record. The findings of the learned Special Officer appointed by Shyamal Kumar Sen, J. was contrary to the materials on record and thus, even on merit, the petitioners have failed to prove their case that they were organizing-staff”.

60. In the matter of: Smritikana Maity & Ors. (supra) the Hon’ble Division Bench had observed as under:

“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.

30. Writ petitions are also accordingly dismissed.

31. There will be no order as to costs".

61. In the light of the law discussed above, it appears to this Court that, the admitted fact is the names of the petitioners did not feature in the report of the Learned Special Officer though, it featured in the resolution of the managing committee of the school dated February 26, 2000, the representation dated July 15, 2011 as referred to above and the un-authenticated attendance registers. So the existence of the petitioners as teaching and non teaching staffs claiming for approval for service itself give rise to a cloud in the fact situation. It also appears from record that letters of appointment were issued in favour of the petitioners, Annexure P-1 at page 44 onwards. Hence the existence of the petitioners in the school had raised a grave doubt to the mind of this Court on the basis of the existing materials.

62. When a credential value has to be weighed between the documents prepared by the managing committee of the school and the report of the learned Special Officer filed in terms of the direction of the coordinate bench and such report not being challenged in any manner achieved its finality, it is beyond doubt that credence has to be placed on the report of the learned Special Officer.

63. In the matter of Niranjana Sahoo @ Niranjana Sahoo & Anr.(supra) the Hon'ble Division bench came to a specific conclusion that the teaching and non teaching staffs concerned in the relevant school were found to be bona fide working at the school at the time of its inspection by the DLIT. In the facts of the instant case, the question of finding the petitioners to be working in the 1988 DLIT report admittedly did not arise but subsequently to ascertain their presence pursuant to

the direction made by the coordinate bench, the Learned Special Officer made an enquiry, on the basis whereof the service of the petitioners were directed to be considered by the coordinate bench, in the said report of the learned special officer the names of the petitioners admittedly were not found to be there as working teaching and non teaching staffs. Therefore, the question of bona fide working of the petitioners in the fact of this case did not and cannot arise. Therefore, the ratio decided In the matter of Niranjana Sahoo @ Niranjana Sahoo & Anr.(supra) has no application in the facts and circumstances of this case.

64. Even if, assuming that, the appointment letters were actually issued in favour of the petitioners, the resolution of the managing committee of the school dated February 26, 2000 and the representation of the school dated July 15, 2011 record the presence of the petitioners, then also the case of the petitioners in the writ petition seeking approval of service claimed on the basis of the said documents of the managing committee of the school read with the report of the learned special officer cannot be accepted. In absence of any challenge against the said report of the learned special officer which was a fact finding enquiry under the direction of a coordinate bench; the same has attained a finality and this Court is of the firm view that, in such fact situation when a doubt is raised between the said two sets documents for their credential value, credence should be placed on the report filed by the learned special officer.

65. In the matter of: Manindra Nath Sinha & Ors. (supra) and In the matter of: Smritikana Maity (supra) the core finding of both the Hon'ble Division Bench were that any appointment without following the due process of recruitment rule and law shall not be approved. In the fact situation of the instant case, since the existence of the petitioners as teaching and non teaching staffs are not proved beyond doubt and are under a cloud as discussed above, it cannot be construed that the petitioners are working bona fide or their appointment can be said as lawful beyond doubt.

66. The Writ Court in exercise of its power under judicial review under Article 226 of the Constitution of India cannot exercise its jurisdiction placing reliance upon an evidence which is not beyond any doubt and may be impeachable in a properly constituted trial. The disputed questions of facts are beyond adjudication by a Writ Court. In the facts of this case, if equity is weighed between the said appointment letters issued by the managing committee of the school in favour of the petitioners, the resolution of the managing committee dated February 26, 2000 and the representation dated July 15, 2011 on the one hand and the report of the learned special officer on the other, then of course, the said appointment letters, the managing committee resolution and the representation cannot be said to be the documents which are beyond doubt.

67. Hence, the petitioners have failed to satisfy this Writ Court as to their existence as teaching and non teaching staffs at the relevant school which is a mandatory precondition for approval of their service. Since the existence of the petitioners are not beyond doubt as discussed above, the question of their lawful

appointment was also not beyond doubt. The Writ Court also exercises its equitable jurisdiction, which much depends on facts.

68. The Writ Court in exercise of its power under judicial review has a limited jurisdiction to assess the impugned decision of the State authority. To assess the impugned decision of the authority, the Writ Court shall go for a scrutiny of the impugned decision to the extent, whether the finding and reasons appearing in the impugned decision are on the basis of correct appreciation of the materials available on record. Unless there is a glaring perversity and infirmity on the face of the impugned order, the Writ Court shall not interfere with it. In the light of the above, upon scrutiny of the impugned order dated January 30, 2019, this Court is of the firm view that, the State authority upon due consideration and proper appreciation of the materials available on record passed the impugned order with reasons.

69. In view of the fore going reasons and discussions, this Court is of the considered view that there is no infirmity in the impugned order dated January 30, 2019, Annexure P-17 at page 120 to the writ petition passed by the respondent no.1 and the same stands affirmed.

70. This writ petition W.P.A. 10605 of 2019 stands dismissed, without any order as to costs.