

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE MADHURESH PRASAD
AND
THE HON'BLE JUSTICE PRASENJIT BISWAS

F.M.A. 1246 of 2025

With

CAN 4 of 2025

Syed Kaiser Rahaman & Ors.

Vs.

State of West Bengal & Ors.

For the Appellants	: Mr. Kamalesh Bhattacharya, Adv., Mr. Aninda Bhattacharya, Adv., Mr. Nyamul Hoque, Adv.
For the State	: Ms. Chandreyi Alam, Ld. AGP, Ms. Kakali Dutta, Adv.
Heard on	: 21.07.2026
Judgment on	: 03.08.2026

Madhuresh Prasad, J.:

1. The present appellants were the writ petitioners in the writ court. Seeking quashing of an order dated 19.04.2012 passed by the Chief Secretary to the Government of West Bengal, whereby and whereunder the petitioners' claim for regularization as teachers in the madrasah in question was rejected. The petitioners claimed an absorption/regularization by asserting that they were organizing teachers imparting education in the madrasah in question since 1995-96.

2. In compliance of an order dated 17.02.2012 passed on the writ petitioners earlier writ petition in W.P No.18024 (W) of 2010 an order dated 19.04.2012 was passed by the Chief Secretary after according consideration to the writ petitioners' claim.
3. The writ court found no fault in the order dated 19.04.2012 issued by the Chief Secretary and dismissed the writ petition by an order dated 07.12.2018, which was put to challenge in the present appeal.
4. The writ petitioners' claim to be organizing teachers of the Madrasah in question. They claim to be imparting education therein since 1995-1996. The school was upgraded for imparting education in IX and X Section of the institution. For the purpose of upgradation, the management of the Madrasah submitted an affidavit wherein they declared that no teaching/non-teaching staff was required to be considered as having been engaged or appointed earlier by the Managing Committee of the Madrasah, or by any member of the signatory to the affidavit.
5. Therefore, in view of the undertaking given on affidavit, the petitioners were not considered as organizing teachers of the Madrasah for the purpose of regularization at the time of its upgradation. The petitioners are aggrieved by the fact that despite rendering services since 1995-1996 they remained deprived of the benefits of regularization on the basis of such affidavit given by the management to their prejudice. The issue was earlier raised by them in an earlier writ proceedings. [W.P. No.18024 (w) of 2010].

6. Pursuant to direction, vide order dated 17.02.2012, passed in W.P. No. 18024(w) of 2010 their claim was considered by the Chief Secretary to the Government of West Bengal. A reasoned order dated 19.04.2012 was passed rejecting the petitioners' claim. This rejection was put to challenge in the writ proceeding. The Hon'ble Single Judge dismissed the writ petition by an order dated 07.12.2018, which is the subject matter of the present Intra Court Appeal.
7. The learned advocate for the writ petitioners places reliance on a letter dated 06.01.1994 issued by the Joint Secretary to the Government of West Bengal in the Education Department to submit that it was incumbent upon the inspecting team to verify the records of the school and record the petitioners' claim in the inspection report at the time of inspection prior to an upgradation. The authorities however, have instead, relied upon the false declaration given under coercion by the Managing Committee by way of an affidavit and thereby deprived the petitioners' consideration, in violation of the Mandate of the letter dated 06.1.1994.
8. Such illegality led to petitioners' exclusion at the time of upgradation despite the fact that the petitioners were duly qualified in terms of the memorandum dated 14.01.1994 issued by the Secretary to the Government of West Bengal in the Education (Secondary Branch) Department.

9. It is further submitted that under similar circumstance the coordinate Bench of this Court in the case of ***The State of West Bengal & Ors. – Vs.- Mrinal Kanti Kumar & Ors.*** in ***F.M.A. 1946 of 2018***, relying upon an earlier decision of the Hon'ble Supreme Court of India in the case of ***Prabir Kumar Ghosh & Ors. –Vs.- State of West Bengal & Ors.*** in ***SLP (C) No. 27804/2019*** held that the appointment of the staff imparting education since prior to upgradation as organizing teachers was not to be regarded as illegal and were required to be regularized. Claiming a similar benefit it is submitted that the petitioners herein also were organizing teachers working since 1995-1996. Therefore, they are entitled to similar treatment as was meted out to the writ petitioners by decision of the Co-ordinate Bench.

10. The learned AGP on the other hand submits that the reasoned order passed by the Chief Secretary has accorded a detailed consideration to the petitioners' claim.

11. A fact not in dispute is that neither the report of the District Level Inspection Team (for short '*DLIT*'), nor the application made by the management acknowledged existence of the petitioners in the Madrasah at the time of upgradation. On the contrary at the time of upgradation, an affidavit was filed on behalf of the management committee and members of the committee, in unambiguous terms declaring that there was no existing teaching/non-teaching staff. The Madrasah availed the benefit of upgradation based on such declaration. Therefore, there is no scope for the petitioners to stake a claim for regularization against the

Government. Even if the Managing Committee had given a false declaration, it was for the petitioners to take appropriate steps in accordance with law against the management, which they have not done.

12. We have considered the rival submissions, the Memorandum/letter, and judgments relied upon. The undisputed facts arising from the record and submissions is that at the time of upgradation of the school in question, i.e., with effect from 01.05.2005, the managing committee of the madrasah submitted an undertaking with an affidavit. Paragraph 2 to 4 of the affidavit reads:

“2) That for the proposed upgraded Section IX and X of the said Institution, no staff (Teaching and Non-Teaching) has been engaged/ appointed by the authorities of the Jr. High Madrasah and/or by any number of the signatories herein below.

3) That the said institution does not maintain any teaching/ non - teaching staff beyond the sanctioned strength in the 4-class Jr. H Madrasah.

4) That we undertake that in case the Madrasah is upgraded the new/additional posts of teaching and non-teaching staff to sanctioned will be filled up in strict adherence to the Recruitment Rules, i.e. through School Service Commission in case of teaching staff and by the school authority in case of non-teaching staff following the reservation principles in existence.”

13. The Madrasah in question was thus upgraded based on such representation made out by the Managing Committee. Thereafter it is not in dispute that the ‘West Bengal Madrasah Service Commission Act, 2008’ (for short “2008 Act”), came into force with effect from 22.10.2008. The

Act provided for constitution of the Madrasah Service Commission for the purpose of selecting and recommending persons for appointment to the vacant post of teachers of a Madrasah recognized by the Board or Council as the case may be. Therefore, after coming into force of the 2008 Act appointments were required to be made by the Commission in accordance with the provisions contained in the 2008 Act regarding qualification procedure for appointment etc.

14. The learned Advocate for the writ petitioner submitted that the petitioners were duly qualified in terms of memorandum dated 14.01.1994 which was applicable at the time of upgradation of the Madrasah in question. Had the DLIT verified the School records with reference to the date of inspection of the Madrasah in question, and incorporated the names of the petitioners as per mandate of the Joint Secretary of the School Education Branch to the Education Department vide letter dated 06.01.1994, the Petitioners would not have been left out.
15. Insofar as this submission is concerned, we find that such an issue regarding the Petitioners' claim as organizing teachers by the Madrasah in question is a disputed question of fact. Such a claim was required to be raised with reference to the madrasah-in-question before the Management of the madrasah and thereafter in appropriate proceeding.
16. In the case of **Kamarunnessa Vs. State of West Bengal & Ors.**, W.P No. 2559 of 2001, the organizing teachers of the madrasah in question challenged the order dated 05.12.2001 passed by the Director of School

Education refusing to approve the teaching and non-teaching organizing staff of the madrasah. In that case the names of the writ petitioners therein was admitted at the time of inspection of the school by the DLIT. The claim of the petitioners therein was also supported by the school authority. In fact, in the writ proceeding, the school authorities took a stand that an affidavit was taken by the authorities under compulsion, which they complied since they were desirous of obtaining the recognition. Under such facts and circumstances of that case, the learned Single Judge Bench held the writ petitioners therein were entitled for approval of their services.

17. The facts of the present case are, however, at variance. The present petitioners are not figuring in any inspection done by the DLIT in the process of upgradation. The school also submitted an affidavit/undertaking that at the time of upgradation there was no teaching and non-teaching staff. Therefore, reliance placed by Mr. Bhattacharyya learned advocate for the writ petitioner on decision in the case of ***Kamarunnessa*** (*supra*) is unsustainable. We further find that the judgment is delivered by learned Single Judge Bench having no binding precedent over this Bench.

18. Mr. Bhattacharyya also relied upon decision of a Co-ordinate Bench in the case of ***Mrinal Kanti Kumar*** (*supra*). We find that the Co-ordinate Bench took into consideration the facts of the case therein, where the authorities were rejecting the claim for upgradation of the school in question on one ground or the other. The same gave rise to series of the

writ petitions. Ultimately a special officer was appointed to submit a report. On the basis of a special officer's report, the writ petition was disposed of for reconsideration of the request for upgradation. Thereafter upgradation was allowed on 12.05.2011 but with a condition that teaching and non-teaching staff has to be recruited in accordance with the West Bengal School Service Commission Act, 1997.

19. In that case there was no denial of the fact that the writ petitioners therein were working in the school prior to upgradation of the school in question. The DLIT also found the petitioners to be discharging their duties while conducting inspection for the purpose of upgradation.
20. Considering such facts and circumstances the Co-ordinate Bench answered the issue whether appointment of such staff prior to upgradation would entitle them to regularization and approval of such appointment, even though an intervening Act (West Bengal School Service Commission Act, 1997), provides a different method of appointment; and creates an embargo in appointment by the Managing Committee.
21. Such facts do not arise in the present case, as noticed above. Petitioners' existence in the school in question prior to upgradation or at the time of upgradation is not acknowledged by the DLIT. On the contrary the madrasah in question has given an affidavit/undertaking that no teaching, non-teaching staffs were employed. Decision in the case

of **Mrinal kanti Kumar** (*supra*) therefore, does not come to the aid of the writ petitioners.

22. We also considered the claimed eligibility of the writ petitioners with reference to the Memorandum dated 14.01.1994. We found that apart from laying down the requisite academic qualifications, the Memorandum contemplates that only such teachers be considered as organizing teachers, whose names are recorded in the final inspection report leading to such recognition/upgradation. Admittedly the petitioner's name does not figure in any inspection report. Therefore, we find no force in submission of the learned advocate for the appellants that the petitioners were eligible for absorption in terms of Memorandum dated 14.01.1994.
23. In view of our above consideration, we find that the petitioners were not able to make out a claim for upgradation/regularization as organizing teachers. The order of the Chief Secretary dated 19.04.2012 therefore, in our opinion was rightly not interfered with by the writ court.
24. The order of the writ court dismissing the writ petition in our considered opinion does not require any interference in the present intra court appeal.
25. The appeal is accordingly dismissed.

26. Urgent certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)