IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(APPELLATE SIDE)

MAT/2150/2025

THE DISTRICT INSPECTOR OF SCHOOLS (S.E.), UTTAR DINAJPUR
VS.
DHRUBAJYOTI ROY AND OTHERS

Before: **The Hon'ble Justice Arijit Banerjee**

&

The Hon'ble Justice Apurba Sinha Ray

For the appellant	:	Mr. Ranjan Saha, Adv.
For the Respondent no. 8	:	Mr. Arabinda Chatterjee, Sr. Adv. Ms. Kakali Dutta, Adv.
For the Respondents Nos 1-5 /Writ Petitioners	:	Mr. Kamalesh Bhattacharyya, Adv. Mr. Aninda Bhattacharyya, Adv.
For the State	:	Mr. Kaustav Seal, Adv. Ms. Soma Chakraborty, Adv.
For orders on	:	07.10.2026

Arijit Banerjee, J. :-

1. This appeal is directed against a judgement and order dated July 22, 2025, whereby a learned Judge of our Court in effect allowed the writ petition of the private respondents.

2. The writ petitioners had approached the learned Single Judge with primarily the following prayer: -

> **"**Under the circumstances it is prayed that your Lordship would graciously be pleased to issue:
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> a) Writ in the nature of Mandamus commanding the respondents to forthwith grant approval of the appointment of the petitioners as teaching and non-teaching staff (Petitioner No. 1 to 4 teaching and petitioner No. 5 is non-teaching staff) whose names are appearing in the DLIT report leading to first recognition as unaided till 2013 and followed by recognition with aide in 2021 and to ensure formal approval of appointment with financial assistance to the petitioners in the form of payment of salary month by month with effect from the date of recognition of the said school with effect from the date when financial aid was given to the school in 01.01.2021 and not to interfere with the service of the petitioner in any manner till the formal approval of appointment of the petitioners.**"**

3. The aforesaid prayer was made in the following factual background:

i. Writ petitioner nos. 1 to 4, having the requisite qualifications for appointment as Assistant Teachers, and the petitioner no. 5 having requisite qualification for a Non- Teaching Staff position, were appointed by Lakshman Chandra Jageswar 4 - Class Junior High School (in short 'the school') sometime prior to 2013. The school had

been set up in the area by the local residents as there was no other school for children in that area.

ii. The District Level Inspection Team (DLIT) conducted an inspection of the school on July 22, 2013. The report submitted by the DLIT acknowledged that the petitioners were working in the school in their respective positions.

iii. The managing committee of the school filed writ petition no. 32821 of 2013 for a direction on the government to extend financial aid to the school. The writ petition was dismissed. Upon the matter being carried to the Division Bench by way of FMA 1136 of 2017, the Division Bench, by an order dated April 17, 2019, opined that the school was entitled to financial aid and directed the State accordingly.

iv. The authorities filed an application for review of the Division Bench order dated April 17, 2019, which was dismissed by an order dated July 15, 2019. However it was clarified that the conditions for grant of financial aid would have to be scrupulously adhered to by the school.

v. The State's Special Leave Petition against the parent order dated April 17, 2019 and the order dated July 15, 2019, disposing of the review petition, was dismissed on the ground of delay, leaving all questions of law open.

vi. Thereafter by an order dated August 9, 2021, the West Bengal Board of Secondary Education (in short 'the Board'), granted provisional recognition to the school with financial aid for the current academic session in respect of classes V-VI and for classes VII-VIII from

the academic year commencing on January 1, 2022. By the said order, three teaching posts were sanctioned for the current academic session for classes V-VI and three other teaching posts were sanctioned for classes VII – VIII effective from January 1, 2022, subject to fulfillment of the conditions stipulated in the memo dated September 5, 2013.

vii. The writ petitioners made several representations seeking approval of their appointments. Alleging that such representations received no attention from the authorities, the petitioners approached the learned Single Judge.

4. Before the learned Single Judge, the respondent authorities basically contended that the School Education Department, by its memo dated November 11, 2022, sanctioned six teaching posts for the school. However, the school authority did not submit the requisite documents along with the managing committee's resolution specifying the subject-wise vacancies and the register of appointments as per the Hundred-Point Roster to the office of the District Inspector of Schools, nor did it enter into communication with the West Bengal Central School Service Commission (SCC) or the Board for filling the said posts. It was further contended that the District Inspector of Schools, by a communication dated March 4, 2024, had instructed the school authority to submit necessary documents for initiating the process of filling up the vacant posts, but such documents were not submitted.

5. Learned Single Judge noted that the DLIT report clearly mentioned the petitioners. The Division Bench had directed grant of financial aid to the school subject to conditions which included payment of prescribed pay scales and retirement benefits under DCRB scheme to the teaching and

non-teaching staff of the school. The learned Judge rejected the contention of the authorities that the six new posts had been created for being filled up by initiating a recruitment process and not necessarily by absorbing the petitioners in such posts. The learned Judge referred to and discussed the relevant provisions of the West Bengal School Service Commission Act, 1997 as also a Circular dated September 30, 1992, issued by the Education Department, Government of West Bengal. Such Circular provided for approval of appointment of Organiser Teacher and non-teaching staff in secondary schools upgraded by the Board. Ultimately the learned Judge allowed the writ petition with the following observations: -

> **"**36. Article 21A of the Constitution of India casts a duty upon the State to provide free and compulsory education to all children between the ages of 6 and 14 years, in such manner as the State may determine by law. Similarly, Section 6 of the Right of Children to Free and Compulsory Education Act, 2009 imposes an obligation on the State to establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established within a period of three years from the commencement of this Act 4 of 2006.
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> 37. However, in the present case, despite the absence of any school within a 9 k.m.- radius of the locality, the State, though vested with *parens patriae* responsibility towards its citizens, particularly in matters of essential public services such as education, failed to take any initiative to establish a school in the area. Instead, it was the organising Managing Committee that took

the initiative to set up the school. The petitioners, serving as teaching and non-teaching staff, have been operating the institution and imparting education to the children of the locality, thereby fulfilling a critical obligation that rests with the State.

38. In the present case, most probably to discharge such duties, the State seeks to utilise the infrastructure and other facilities developed by the organising Managing Committee, along with the running school, complete with the requisite number of students, to cater the educational needs of children aged 11 to 14 in the locality. However, in an apparent attempt to avoid assuming the financial liability of paying the prescribed pay scales and retirement benefits to the organising teaching and non-teaching staff, the State is invoking the provisions of the 1997 Act, the 2005 Act, and various notifications as a shield. Such a stance is not only inequitable but also unjustified.

39. An inevitable question that arises is whether it would be appropriate to remit the matter to the concerned respondents for resolution. In the decision reported at (2004) 8 SCC 683 (E.T. Sunup vs. C.A. N.S.S. Employees Association), the Hon'ble Supreme Court expressed concern over the growing tendency of government officials to circumvent court orders by resorting to various justifications. The Court observed that such conduct reflects a complete lack of grace in accepting judicial directions and cannot be tolerated. In a constitutional democracy, the authority of the courts cannot be rendered subordinate to

administrative discretion. The executive and the legislature are bound to act within the framework of the Constitution, and the judiciary has been entrusted with the vital role of ensuring that both remain within their constitutional limits.

40. Therefore, applying the principle established in *E.T. Sunup* (supra), and in light of the respondents' stance in the present case as well as the protracted history of litigation between the school authority and the respondents, I am of the considered opinion that issuing a directive to approve the appointment of the petitioners would best serve the interests of justice.

Order:

41. Therefore, in view of the discussions and reasons set forth in the preceding paragraphs, respondent no. 3 is directed to approve the appointment of petitioner nos. 1 to 4 to the posts of teacher, and petitioner no. 5 to the post of non-teaching staff of the school, with effect from the date on which financial aid was granted to the school. The respondent no.3 shall also release all consequential benefits, including arrears of salary and retirement benefits, if found admissible. The entire exercise shall be completed within a period of 8 (eight) weeks from the date of receipt of a copy of this order. Respondent nos. 1 and 2 shall ensure that respondent no. 3 complies with this order in its letter and spirit, and within the time frame stipulated herein.**"**

6. Being aggrieved, the District Inspector of Schools (S.E.), Uttar Dinajpur, has come up by way of this appeal.

7. Appearing for the appellant, learned Counsel argued that the writ petitioners were not appointed following recruitment rules. Their initial appointment being illegal, they are not entitled to approval.

8. Learned Counsel further submitted that since the school has been recognised, the teachers and non-teaching staff of the school are to be appointed as per the provisions of the West Bengal School Service Commission Act, and any recruitment made without SSC recommendation is invalid.

9. Learned Counsel for the respondent no. 8 submitted that since the writ petitioners were appointed much prior to recognition of the School, the question of following recruitment rules for their appointment did not arise. It cannot be said that their appointments were illegal and therefore cannot be approved. Learned Counsel relied on the decisions of two Division Benches of this Court in the cases of ***Niranjan Sahoo @ Niranjan Sahoo & Anr. v. State of West Bengal & Ors. [FMA 2089 of 2015]*** and ***Asit Ranjan Gayen & Ors. v. State of West Bengal & Ors., (FMA 992 of 2021] and 2023 SCC OnLine Cal 2565***.

10. Learned Advocate for the respondent nos. 1 to 5 referred to a Government Circular, dated December 20, 1984, issued by the Director of School Education, in support of his submission that bona fide organiser teachers appointed prior to recognition being granted to the concerned school, should not be displaced. Learned Advocate also referred to a decision of a learned Judge of this Court rendered on August 20, 2013, in the case of ***Rakhal Chandra Das & Ors. v. The State of West Bengal and Ors. [W.P. No. 19811 (W) of 2011] and 2013 SCC OnLine Cal 22943***. In that

case, the learned Judge held that upon recognition of a school, its bona fide organising staff including the Managing Committee should also be recognised by the Government. Analysing the scheme of the West Bengal School Service Commission Act, 1997, the learned Judge held that the School Service Commission should recommend the petitioning teaching and non-teaching staff who were appointed before recognition was granted to the school. The respondent authorities should sanction the posts in the School to accommodate the writ petitioners. The Government should make formal appointments thereafter. Learned Counsel submitted that the said order was accepted and implemented by the State Government by its order dated August 8, 2019.

Learned Advocate also relied on an unreported decision of the Hon'ble Supreme Court in the case of ***Prabir Kumar Ghosh & Ors. v. State of West Bengal & Ors., [SLP (C) 27804 of 2019] and 2022 SCC OnLine SC 2523***, dated May 6, 2022, and also on a Division Bench decision of this Court rendered on December 24, 2024, in the case of ***State of West Bengal & Ors. v. Mrinal Kanti Kumar & Ors. [FMA No. 1946 of 2018] and 2024 SCC OnLine Cal 11540***.

11. Learned Advocate for the appellants relied on the decisions of this Court in ***State of West Bengal and Ors. v. Smritikana Maity & Ors., reported in (2008) 1 CHN 582 and in Manindra Nath Sinha & Ors. v. State of West Bengal & Ors., reported at (2006) 4 CHN 513***.

12. We have given our anxious consideration to the rival contentions of the parties.

13. It is not in dispute that when the DLIT inspected the school in question, the private respondents were found to be serving there. The DLIT report clearly mentions their names.

14. At the time when the respondents were appointed, the West Bengal Service Commission Act, 1997, was not there. The school was also not a recognised school at that point of time within the meaning of the 1997 Act. Hence, the question of such appointments being invalid for alleged contravention of the provisions of the 1997 Act and in particular Sections 7, 8 and 9 of the Act, does not arise.

15. Since the appointments of the respondents cannot be said to be illegal, in our opinion, while granting recognition to the school, it was the duty of the concerned authorities to grant provisional approval to the Organiser Teachers who have been instrumental in running the school for decades, subject to subsequent formal approval.

16. It has to be kept in mind that the respondents/writ petitioners being the organising staff of the school, rendered valuable service by keeping the school afloat in an area where there was no school for children. The school and its staff were discharging a duty that The Right to Education Act, 2009 imposed on the State. It would be grossly unfair, inequitable and a mis-construction of the provisions of the 1997 Act to hold that once recognition was granted, the school got transformed into a new institution and is required to make fresh appointments of teachers following the provisions of the 1997 Act.

17. Our above view finds support from the decision dated September 2, 2022 of a Coordinate Bench in the case of ***Niranjan Sahoo @ Niranjan***

Sahoo & Anr. v. State of West Bengal & Ors. (Supra) and also the decision dated September 1, 2023 of another Coordinate Bench in ***Asit Ranjan Gayen & Ors. v. State of West Bengal & Ors., (Supra)***.

18. In ***Niranjan Sahoo @ Niranjan Sahoo & Anr. v. State of West Bengal & Ors.***, ***(Supra)*** the Coordinate Bench quoted the observation of the Hon'ble Supreme Court in ***Prabir Kumar Ghosh & Ors. v. State of West Bengal & Ors., (Supra),*** to the following effect: -

> ***"***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.
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> The aforesaid decision of the Single Judge was, however, set aside by the Division Bench in an appeal arising therefrom.
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> 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.
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> 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 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.***"***

19. The two decisions relied upon by learned Counsel for the appellants ***i.e., Manindra Nath Sinha & Ors. v. State of West Bengal & Ors., (Supra),*** and ***State of West Bengal and Ors. v. Smritikana Maity & Ors., (Supra),*** have been dealt with by the Coordinate Bench in ***Niranjan Sahoo @ Niranjan Sahoo & Anr. v. State of West Bengal & Ors., (Supra)***. The Bench in ***Niranjan Sahoo @ Niranjan Sahoo & Anr. v. State of West Bengal & Ors., (Supra)***, held, and in our respectful opinion rightly held, that the facts in ***Manindra Nath Sinha & Ors. v. State of West Bengal & Ors., (Supra),*** and ***State of West Bengal and Ors. v. Smritikana Maity & Ors., (Supra),*** were completely different. In those cases, the Court had held that the initial appointment of the Organiser Staff was illegal. The Coordinate Bench in ***Niranjan Sahoo @ Niranjan Sahoo & Anr. v. State of West Bengal & Ors.***, ***(Supra),*** held that the decisions in ***Manindra Nath Sinha & Ors. v. State of West Bengal & Ors., (Supra),*** and ***State of West Bengal and Ors. v. Smritikana Maity & Ors., (Supra),*** have no manner of application to appointment of teaching and non-teaching staff upon recognition of a bona fide staffed school. We respectfully agree.

20. In view of the aforesaid, we do not find any infirmity in the judgment and order sought to be assailed in this appeal. The impugned order is a well-reasoned one and discusses the applicable case law. The view taken by the learned Single Judge is an eminently plausible one. It is established law that when a learned Single Judge while exercising discretionary power, comes to a conclusion, the appeal Court, in an intra court appeal, will not interfere only because the appeal court may have come to a different conclusion had it acted as the court of first instance. Interference is warranted only if the learned Single Judge takes an impossible view or his order is clearly wrong or perverse. In this connection one may refer to the dicta of the Hon'ble Supreme Court in the case of ***Wander Ltd. and Anr. v. Antox India (P) Ltd., reported at 1990 Supp SCC 727 : 1990 SCC OnLine SC 490***. Paragraph 14 of the reported judgment reads as follows: -

> **"14.** The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court

would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph [(1960) 3 SCR 713 : AIR 1960 SC 1156] : (SCR 721)

> "... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton [1942 AC 130] '...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'.**"**

21. In the result, the judgment and order under appeal does not call for interference. The appeal is dismissed. There will be no order as to costs.

22. Urgent Photostat certified copies of this judgment and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Apurba Sinha Ray, J.) **(Arijit Banerjee, J.)**