

## Amar Kumar Jha Vs State of West Bengal

**Court:** Calcutta High Court

**Date of Decision:** Sept. 26, 2011

**Citation:** (2012) 3 CHN 373

**Hon'ble Judges:** Jyotirmay Bhattacharya, J

**Bench:** Single Bench

**Advocate:** Partha Sarathi Bhattacharya, Ritwik Pattanayak and Arunava Maity, for the Appellant; Supriyo Chattopadhyay for the School, Sadananda Ganguly and Paritosh Sinha, for the Respondent

**Final Decision:** Allowed

### Judgement

Jyotirmay Bhattacharya, J.

The petitioner was appointed as an Assistant Teacher in a non-sanctioned post in Shree Maheshwari

Vidyalaya, which is a D.A. getting school. The petitioner joined his service in the said school in the Department of Physical Science on 23rd

March, 2004 and since then he has been rendering his service in the said school without any break. A vacancy in a sanctioned post in the Arts

Stream was created on 14th January, 2007 on the retirement of an approved Assistant Teacher, namely, Sri Ram Singh, whose educational

education was M.A., B.Ed. The school authority adopted a resolution recommending his absorption in the vacancy which was created on the

retirement of the said approved Assistant Teacher so that the petitioner may get the admissible dearness allowance from the State respondents.

Since such proposal of the school authority remained unattended for a long time, the petitioner also requested the concerned District Inspector of

Schools for early consideration of the school's proposal for absorbing him permanently in the said sanctioned vacancy. Ultimately, however, in

terms of the order passed by this Court on 19th November, 2008 in the earlier writ petition being W.P. No. 819 of 2008 filed by a number of

unapproved Assistant Teachers of the said school, the concerned District Inspector of Schools (S.E.), Kolkata, considered the school's proposal

for approving the service of some of the unapproved Assistant Teachers including the petitioner and ultimately disposed of the school's such

proposal by an order passed by him on 20th August, 2009.

2. As a matter of fact, the school's proposal for approving the service of the petitioner in the aforesaid sanctioned vacancy was rejected by the

said District Inspector of Schools as the appointment of the petitioner, according to the said District Inspector of Schools, was not made in

conformity with the Government Order, namely, Memo No. 670- SE(S)/IM/14-98 Dated 4th September, 2001. The legality and/or propriety of

the said order as contained in Annexure P/9 to this writ petition at page 52, is under challenge in this writ petition at the instance of the said

Assistant Teacher.

3. Let me now consider as to how far the concerned authority was justified in passing the impugned order in the facts of the instant case.

4. Since the concerned authority refused to approve the service of the petitioner in the said sanctioned vacancy on the basis of the aforesaid

Government Order, this Court has carefully considered the Government Order which is annexed to this writ petition at page 52 therein.

5. So far as the Government Order dated 4th September, 1998 is concerned, this Court finds that the said Government Order was not issued by

the Government for distribution of the teaching staff in a DA getting school. The said Government Order was issued on the subject of distribution

of teaching staff in the recognized Non-Government Junior High School, Junior High Madrasah, High School, High Madrasah and Higher

secondary School (Normal Section). Thus, this Court can safely conclude that the said Government Order is not applicable to a DA getting

school. As such the rejection of the school's proposal for approving the service of the petitioner in the said sanctioned vacancy on the basis of said

Government Order, cannot be supported.

6. The State respondent in its affidavit contended that since no prior permission was taken for filling up the said vacancy by an existing non-

approved teacher by the school authority from the concerned District Inspector of Schools, his appointment in the sanctioned vacancy, cannot be

regularized. Such stand of the State authority cannot be supported in view of the unreported decision of this Hon'ble Court passed by a Learned

Single Judge of this court on 10th September, 2002 in W.P. No. 1169 of 2002 wherein it was held that there was no requirement of obtaining

prior permission for recruitment of an Assistant Teacher in a DA getting school. If the said principle is applied in the instant case, then the

irresistible conclusion which can be arrived at, is that approval of service of the petitioner in a sanctioned vacancy cannot be refused on the ground

that his appointment was given in the said post without taking prior permission from the concerned District Inspector of School.

7. It is rightly pointed out by Mr. Ganguly, learned Advocate, appearing for the State respondent, that without ascertaining the norms of staff

pattern in the said school, the school's proposal for regularizing the service of the petitioner in any sanctioned vacancy cannot be effectively

considered. It is rightly pointed out by Mr. Ganguly that none of the parties in their respective affidavits has disclosed the norms of staff pattern in

the said school. Even the school authority has also not disclosed the norms of staff pattern in the said school in its affidavit.

8. Under such circumstances, this Court is of the view that Mr. Ganguly was right in his submission that even though a vacancy in the sanctioned

post exists in the said school still then service of the petitioner cannot be regularized without ascertaining the norms of staff pattern in the said

school in as much as such ascertainment is absolutely necessary for finding out as to whether the service of the petitioner can be regularized in any

sanctioned vacant post by adhering to the norms of the staff pattern.

9. The school authority proposed to regularize the service of the petitioner in the place of Sri Ram Singh who was an Assistant Teacher in the Arts

Stream. His educational education was M.A., B.Ed. Thus, since the vacancy which was created on the retirement of Sri Singh in the Arts Stream,

such vacancy is required to be filled up by an Assistant Teacher who has requisite qualification for teaching the students in the Arts Stream. The

educational qualification of the petitioner, as recorded in his service record, is B.Sc. Annexure "P-3" shows that he was allotted teaching subjects

in Physical Science Group. He does not have requisite qualification for any post in the Arts Stream. If that be so, can his appointment in the Arts

Stream be regularized? In my view, his appointment in the Arts Stream cannot be regularized as he does not have requisite qualification for

teaching any subject in the Arts Stream. As such, even though it is contended by Mr. Chattopadhyay, learned Advocate, appearing for the school

authority, that on earlier occasions services of several other non-approved teachers were ultimately approved in sanctioned vacancy whenever

such vacancy arose, without adhering to the staff pattern, but still then this Court cannot direct the State authorities to commit repeated wrongs

simply because of fact that such wrong was committed earlier.

10. Though the school's proposal for regularizing the petitioner's service in the Arts Stream, cannot be allowed but at the same time the

petitioner's claim for absorption in any sanctioned vacancy cannot be rejected altogether without ascertaining the norms of staff pattern in the said

school and/or availability of any suitable vacancy in the school where his prayer for absorption can be considered.

11. Under such circumstances, this Court disposes of this writ petition by directing the concerned District Inspector of Schools to ascertain as to

whether any vacancy in the post of Assistant Teacher in Physical Science Group or in any other Science Group in the Secondary Section still exists

or not and in the event it is found that any vacancy in the Physical Science Group or in any other Science Group in the Secondary Section exists

then the concerned District Inspector of Schools will consider as to whether the service of the petitioner in the said vacancy can be regularized or

not. Such exercise should be completed within twelve weeks from the date of communication of this order. It is made clear that in the event it is

found that no such vacancy is presently available in the said school and the service of the petitioner cannot be regularized presently then the

concerned authority may presently, refuse to regularize his service with this rider that whenever any vacancy in the Physical Science Group or in

any other Science Group will arise in the said school, his claim for his regularization will be considered by the concerned Authority in terms of the

Government Order dated 20th September, 2001.

12. The writ petition is, thus, disposed of with the above observations. Urgent xerox certified copy of this judgment, if applied for, be given to the

parties as expeditiously as possible.