

**(2011) 09 CAL CK 0020**

**Calcutta High Court**

**Case No:** F.M.A. No. 62 of 2006

Md. Ainul Haque

APPELLANT

Vs

State of West Bengal

RESPONDENT

**Date of Decision:** Sept. 6, 2011

**Citation:** (2012) 2 CHN 780

**Hon'ble Judges:** Kalyan Jyoti Sengupta, J; Joymalya Bagchi, J

**Bench:** Division Bench

**Advocate:** Narayan Chandra Mandal, Sipra Maity and Sankar Sarkar, for the Appellant;  
Syamal Sanyal for the State and Anita Khattri for the Respondent No. 7, for the  
Respondent

### **Judgement**

1. This appeal is directed against the judgment and order of the learned single Judge dated 22nd June, 2005 whereby the writ petition was dismissed. The short fact of this appeal is narrated hereunder:

The appellants before us are claiming to be organizing teacher and clerk in the upgraded section, namely, Class IX and X of Hadipur Adarsha Junior High School, P.O. Hadipur, District-North 24-Parganas. According to them, they were appointed in the year 1988.

The District Level Inspection Team visited the school for considering up gradation. On the date of visit, appellants were not to be found but according to them, they had and have been working in the said school. On the basis of report the school was upgraded in the year 1988. Consequent upon up gradation the appellants before us filed a writ petition seeking appropriate direction upon the respondents, namely, for approval to their appointments as organizing teacher and non-teaching staff. The said writ petition being CO 1458(W) of 1994 was disposed of by an order dated 22nd September, 1999 by Justice S.K Sinha (as His Lordship then was). His Lordship in the said order had been pleased to record that as the appointments were made before School Service Commission had come into force. His Lordship had been pleased to

direct the Director of School Education and District Inspector of School to consider and approve the appointment of the first two writ petitioners as an assistant teachers and the third petitioner as clerk with effect from 1st May, 1988 in accordance with law within four weeks from the date of communication of this order.

However, the said direction was carried out belatedly that too after filing of the application for contempt. The D.I considered the matter in the context of the said judgment and passed an order on 9th September, 2002. In this order, the D.I recorded the fact that the appellants before us were appointed on 25th August, 1988 and 21st August, 1988 and the school was upgraded on 1st May, 1998 but it was the opinion of the D.I that they were not the organizing teachers since inception, namely, in the junior stream.

Challenging this order last writ petition was filed on which the impugned order was passed. The learned trial Judge has accepted the views expressed by the D.I and held that appointment was not made in accordance with law.

2. Challenging the said judgment and order the present appeal is filed and the learned lawyer for the appellant submits that the learned Trial Judge has committed grave error on fact as well as in law observing that appellants were not the organizing teacher in the upgraded section. According to him, Justice Sinha has already recorded the fact that appellants have been working in the upgraded section long before up gradation was done by the West Bengal Board of Secondary Education. Therefore, there is no warrant to hold that appointments were not made in accordance with law. Justice Sinha had been pleased to observe that provision of School Service Commission would not be applicable only requirement is that their appointments should be approved with the date of up gradation.

3. Mr. Syamal Sanyal, learned counsel, appearing for the State contends that judgment and order of the learned trial Judge is just and proper and from the narration of the fact made by D.I, it is shown that at the time of inspection of District Level Inspection Team, they were not to be found on the date. As such, their names were not to be found in the report of District Level Inspection Team. Accordingly, approval to the appointment would not be made.

4. Having considered the submission we think the real picture is not depicted in the report of the District Level Inspection Team. It is noted by the D.I. himself long before up gradation of the said school the appellants have started working with the issuance of appointment letter.

5. It might not be possible for one some time to remain present on the date of inspection of the District Level Inspection Team and there may be varieties of reasons for not to be present. Mere absence of one particular day does not disqualify or disentitle to get relief in accordance with law. We think that this matter needs reconsideration since appellants are still serving in the said school.

6. Accordingly, we set aside the order of the D.I and also the order of the learned trial Judge. We direct the D.I to hold a fresh inspection and to find considering and examining contemporaneous records and documents whether these appellants were appointed before the up gradation and they have been serving continuously or not and whether at the time of appointment they did have requisite qualification to become assistant teachers or for that matter clerk. On such inspection if it is found that they did qualify to the aforesaid requirements, obviously, the D.I shall approve their appointments in terms of the order of Justice Sinha, which was never appealed against.

7. This fresh exercise shall be done by the D.I within eight weeks from date of communication of this order. If the appointment is approved, the arrears of salary from the date of up gradation shall be released in suitable installments but current salary shall be paid.

8. The appeal is, thus, disposed of.

9. There will be no order as to costs. Urgent xerox certified copy of this order be supplied to the applicants.