

2026 LiveLaw (SC) 667

**IN THE SUPREME COURT OF INDIA
ORIGINAL CIVIL JURISDICTION**

DIPANKAR DATTA; J., AUGUSTINE GEORGE MASIH; J.

WRIT PETITION (CIVIL) NO. 566/2024; JULY 13, 2026

NAJMA KHATUN & ORS. *versus* THE STATE OF WEST BENGAL & ORS.

Constitutional Law — Article 30(1) & Article 16 — Minority Rights Vs. Public Exchequer Accountability - Minority educational institutions do not possess an absolute right under Article 30(1) of the Constitution to burden the public exchequer through a completely non-competitive, opaque selection process - Government aid without financial accountability is constitutionally unsustainable - Clause 6 of Notification-I, which permitted a "10% Management Quota" for appointments without wide public advertisements, is unconstitutional and an anti-thesis to the mandate of equality and equal opportunity enshrined in Articles 14 and 16 of the Constitution. [Para 35-39]

Civil Procedure & Jurisprudence — Interim Orders — Stay Of Operation Vs. Quashing Of An Order - There is a distinct legal difference between the quashing of an order and staying its operation - While quashing restores the original position before the order was passed, a stay merely makes the order inoperative from the date of the stay without wiping it out from existence - Where the High Court's judgment striking down a recruitment Act was stayed by the Supreme Court, it created a legal vacuum where neither the original Act nor the transitional notifications could operate independently - Any public employment appointment made by managing committees after the date of the stay order (14th March 2016) without seeking express permission or leave from the Supreme Court is ex-facie illegal and invalid. [Relied On *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*, (1992) 3 SCC 1; Paras 40 - 42]

Public Employment & Labour Law — Regularisation Of Service — Binding Nature Of Larger Bench Decisions - Claims of regularisation in public service cannot be entertained when the initial appointment is rooted in fundamental breaches of recruitment procedures or made against non-existent/un-sanctioned posts - Under Article 141 of the Constitution, the principle of stare decisis dictates that the strict ratios laid down by Larger Benches regarding public employment regularisation bind all courts unequivocally - Co-equal or smaller benches adopting liberal views confined to specific facts cannot dilute or contradict these established Larger Bench precedents. [Relied on *State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1; *Official Liquidator v. Dayanand*, (2008) 10 SCC 1; *Distinguished: Jaggo v. Union of India*, 2024 SCC OnLine SC 3826; *Sukhendu Bhattacharjee v. State of Assam*, 2026 SCC OnLine SC 909; Paras 24 - 31]

Administrative Law — Extraordinary Jurisdiction — Article 142 Powers - The invocation of extraordinary powers under Article 142 of the Constitution to do complete justice is contextual and cannot be exercised mechanically - The Supreme Court will not invoke Article 142 to protect the services of irregularly or illegally appointed teachers at the cost of the students' future and the integrity of public employment streams. [Para 27-32]

WITH W.P.(C) NO. 651/2024, W.P.(C) NO.120/2025, W.P.(C) NO.825/2024, W.P.(C) NO. 578/2024, W.P.(C) D. NO.35840/2024, W.P.(C) D. NO.36427/2024, W.P.(C) NO.826/2024, W.P.(C) NO.828/2024, W.P.(C) NO.627/2024, W.P.(C) NO.121/2025, W.P.(C) NO.557/2024, W.P.(C) NO.540/2024, W.P.(C) NO.558/2024, W.P.(C) NO.108/2025, W.P.(C) NO.109/2025, W.P.(C) NO.112/2025, W.P.(C) NO.110/2025, W.P.(C) NO.111/2025, W.P.(C) NO.618/2024, W.P.(C) NO.656/2024, W.P.(C) NO.626/2024, W.P.(C)

NO.634/2024, W.P.(C) NO.663/2024, W.P.(C) NO.638/2024, W.P.(C) NO.633/2024, W.P.(C) NO.653/2024, W.P.(C) NO.616/2024, W.P.(C) NO.662/2024, W.P.(C) NO.635/2024, W.P.(C) NO.827/2024, W.P.(C) NO.641/2024, W.P.(C) NO.680/2024, W.P.(C) NO.692/2024, W.P.(C) NO.679/2024, W.P.(C) NO.682/2024, W.P.(C) NO.689/2024, W.P.(C) NO.683/2024, W.P.(C) NO.106/2025, W.P.(C) NO.107/2025, W.P.(C) NO.776/2024, W.P.(C) NO.105/2025, W.P.(C) NO.734/2024, W.P.(C) NO.814/2024, W.P.(C) NO.800/2024, W.P.(C) D.NO.55256/2024, W.P.(C) D.NO.22974/2025, W.P.(C) NO.958/2025, W.P.(C) D.NO.36144/2025

For Petitioner(s): Mr. Anil Kumar, AOR Mr. Prashant Singh, AOR Mr. Abu Soheli, Adv. Mr. Rajeev Kumar Gupta, Adv. Mr. Parminder Singh Bhullar, AOR Mr. Gaurav Choudhary, AOR Mr. Pijush K. Roy, Sr. Adv. Ms. Kakali Roy, Adv. Mr. Pritthish Roy, Adv. Mr. Apoorva Kumar Sharma, Adv. Mr. Swarandeep Singh, Adv. Mr. Rajan K. Chourasia, AOR Mr. Abu Soheli, Adv. Mr. Rajeev Kumar Gupta, Adv. Ms. Rupali Panwar, Adv. Mr. Vijay Pal Sharma, Adv. Mr. Vishal Arun Mishra, AOR Mr. Biswaroop Bhattacharya, Adv. Mr. Gholam Mohiuddin, Adv. Mr. Anindo Mukherjee, Adv. Mr. Rameshwar Prasad Goyal, AOR Mr. Sunando Raha, Adv. Mr. Abu Soheli, Adv. Mr. Vikalp Gupta, Adv. Ms. Niti Priya Kar, Adv. Ms. Priyanka, Adv. Mr. Kunal Malik, AOR Mr. Nagender Singh, Adv. Mr. Vikrant Dhama, Adv. Mr. Manish Awasthi, Adv. Mr. Devadatt Kamat, Sr. Adv. Mr. Sunando Raha, Adv. Mr. Abu Soheli, Adv. Mr. Vikalp Gupta, Adv. Mr. Revanta Solanki, Adv. Mr. Ajay Desai, Adv. Mr. Hruday Bajentri, Adv. Ms. Nitipriya Kar, Adv. Mr. Rajeev Gupta, Adv. Mr. Sudhanshu Kaushesh, Adv. Mr. Anubhav Lamba, Adv. Mr. Rajat Kumar, Adv. Mr. Sudhanshu Kumar, Adv. Mr. Shubham Singh, Adv. Mr. Pulkit Agarwal, AOR

For Respondent(s) : Mr. Raju Ramachandran, Sr. Adv. Mr. Kunal Mimani, AOR Mr. Prashant Alai, Adv. Mr. Mohammed Afeef, Adv. Mr. Abhinav Rana, Adv. Ms. Madhumita Bhattacharjee, AOR Ms. Mayuri Raghuvanshi, AOR Mr. Vyom Raghuvanshi, Adv. Ms. Akanksha Rathore, Adv. Mr. Shashank Singh, AOR Mr. Adil Sharfuddin, Adv. Ms. A. Anisha, Adv. Mr. Varun Singh, Adv. Ms. Priya, Adv. Mr. Chand Qureshi, AOR M/S. Plr Chambers And Co., AOR Mr. Huzefa Ahmadi, Sr. Adv. Mr. Suhaan Mukerji, Adv. Mr. Adarsh Kumar, Adv. Mr. Sayandeep Pahari, Adv. Mr. Tanmay Sinha, Adv. Ms. Vanshika Jain, Adv. Mr. Ashray Chopra, Adv. Ms. Rashmi Singh, Adv. Mr. Towseef Ahmad Dar, AOR Mr. Vipin Kumar Bharti, Adv. Mr. Naeem Ilyas, Adv. Ms. Malik Ifshana, Adv. Mr. Vikas Jain, AOR Mr. Aviral Saxena, Adv. Mr. Hardik Jayal, Adv. Mr. Paras Gilhotra, Adv. Mr. Paritosh Goyal, Adv. Mr. Abhishek Wadhwa, Adv. Mr. Siddhartha Chowdhury, AOR Mr. Gaurav Choudhary, AOR Mr. Snehasish Mukherjee, AOR Mr. Vishal Agarwal, Adv. Mr. Rajesh Kanwal, Adv. Mr. Bhaskar Malakar, Adv. Mr. Chand Qureshi, AOR Mr. Mohit Yadav, Adv. Mr. Md.imran Siddiqui, Adv. Mr. Mohd Shahzad Ansari, Adv. Mr. Vijay Kumar, Adv. Mr. Sundeep Pandhi, Adv. Mr. Siddhartha Chowdhury, AOR Ms. Shagufa Salim, AOR Mr. Jatin Choudhary, Adv. Mr. Hariom, Adv. Mr. M. R. Shamshad, Sr. Adv. Mr. Aditya Samaddar, AOR Mr. Arijit Sarkar, Adv. Mr. Saiful Haque, Adv. Mr. Nadeem Ahmed, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

- 1.** Re-filing delay condoned.
- 2.** This batch of 49 (forty-nine) petitions under Article 32 of the Constitution of India, at the instance of petitioners numbering in excess of 350 (three hundred fifty), are proposed to be decided by this common judgment and order in light of the commonality of the facts involved and the questions of law arising for decision.
- 3.** Insofar as the identity of the petitioners are concerned, they claim to be teachers and non-teaching staff of various madrasahs in the State of West Bengal. The singular grievance expressed by these petitioners relate to alleged deprivation of their legitimate service benefits by the respondents, which include among others the State of West Bengal.
- 4.** Multiple judicial proceedings preceded these writ petitions. The original cause of dispute related to the *vires* of certain provisions of the West Bengal Madrasah Service Commission Act, 2008¹. While the challenge to the enactment attained finality by virtue of this Court's ruling in ***Sk. Mohd. Rafique v. Managing Committee, Contai Rahamania***

¹ MSC Act

High Madrasah², the present dispute stems from subsequent proceedings instituted to enforce this Court's orders. For the purpose of deciding the claims raised by the petitioners, it is necessary to bear in mind the situation on the ground, legislative ordainments and subordinate legislation, the trajectory of judicial proceedings including the verdicts delivered over a period of time by this Court in proceedings arising in different jurisdictions, orders passed on review and miscellaneous applications as well as the report/observations of a 3-member Committee³ constituted by this Court, while dealing with the claims of each of the petitioners.

5. The undisputed facts are:

a. Regulation of madrasah education in the State of West Bengal by an enactment is not of too distant an origin. The West Bengal Board of Madrasah Education Act, 1994 was enacted to establish a Board of Madrasah Education⁴ in West Bengal and to provide for matters connected therewith or incidental thereto. In terms of provisions contained in Section 38(2)(c) of the 1994 Act, the State Government after previous publication in the Gazette framed the Management of Recognised Non-Government Madrasahs (Aided and Un-aided) Rules, 2002⁵. The Management Rules, *inter alia*, contained provisions for constitution of the Managing Committees of the madrasahs, their powers and functions including the power to appoint staff, both teaching and non-teaching, supersession, etc.

b. Prior to enactment of the MSC Act, the managing committees of the madrasahs recognised by the Madrasah Education Board and the West Bengal Council of Higher Secondary Education, receiving financial assistance from the State Government, were required to appoint teachers on vacant sanctioned posts on the basis of recommendations made by the relevant Regional School Service Commissions constituted under the West Bengal School Service Commission Act, 1997⁶. Although Section 15 of the SSC Act expressly excluded educational institutions established and administered by a religious/linguistic minority from its coverage, provisions of the SSC Act still applied to such madrasahs which were yet to be formally recognised by the State Government as having been established and administered by a religious minority [see Section 2(n)(iii) of the SSC Act read with Section 15]. Payment of salary and allowances could be released in favour of the appointees only upon approval of their services by the District Inspector of Schools (Secondary Education)⁷ concerned within whose jurisdiction the relevant madrasahs were located.

c. A notification came to be issued on 12th October, 2007 by the Department of Minorities Development & Welfare and Madrasah Education reciting that unless the State Government declares an institution as a minority institution, the same cannot operate as such (i.e., as a minority institution); and that this Court having held that the State Government is the competent authority to verify and determine the minority status of an educational institution for the purpose of Article 30(1) of the Constitution, the State Government was satisfied about the antecedents of the recognised madrasahs that are aided and guided by the prescribed guidelines. Accordingly, the recognised and aided madrasahs in the State of West Bengal were declared as minority institutions. The said notification while stipulating that such madrasahs would continue to receive financial

² (2020) 6 SCC 689

³ Committee

⁴ Madrasah Education Board

⁵ Management Rules

⁶ SSC Act

⁷ DIoS

assistance from the State Government and the reservation policy would not be applicable in case of appointment of teachers and non-teaching staff therein, also stipulated that “(S)election of teachers may continue to be done by West Bengal School Service Commission through separate panel”.

d. Close on the heels of such notification, the MSC Act was enacted and enforced with effect from 22nd October, 2008. It was modelled on the lines of the SSC Act. The MSC Act introduced the concept of selection for appointment on vacant sanctioned posts of teachers and non-teaching staff in the recognised and aided madrasahs through the aegis of an expert body, viz. the Madrasah Service Commission⁸. Section 8 laid down the functions of the Commission; Section 9 provided that the manner and scope of selection of persons for appointment to the posts of teachers in the madrasahs shall be such as is prescribed; Section 10, a non-obstante clause, ordained that the recommendation of the Commission is mandatory; Section 11 warned that any appointment of a teacher made on or after the commencement of the MSC Act in violation thereof would have no effect in law; and Section 12 mandated the penalty that could visit the Managing Committee, the *Ad hoc* Committee or the Administrator, as the case may be, in case of refusal, failure or delay in implementing the recommendations of the Commission.

e. A section of the members of the religious minority community viewed such legislation as an intrusion on the right guaranteed to them by Article 30 of the Constitution of India. Challenge was laid to the provisions of Sections 8 and 10 to 12 of the MSC Act by institution of writ proceedings⁹ titled ***Managing Committee, Contai Rahamania High Madrasah v. State of West Bengal & ors.*** before the High Court at Calcutta¹⁰. A Single Judge of the High Court declared Sections 8, 10, 11 and 12 of the MSC Act as *ultra vires*, *vide* judgment and order dated 12th March, 2014¹¹.

f. Three intra-court appeals¹² preferred thereagainst before the Division Bench by Sk. Mohd. Rafiq & others, the Secretary of the Commission & another, and the State of West Bengal & others proved abortive. The Division Bench by its judgment and order dated 9th December, 2015¹³ concluded that the impugned legislation abrogated the fundamental right of the minority community and, consequently, while upholding the verdict of the Single Judge dismissed the appeals.

g. Prior to and post the said judgment and order of the Division Bench, the State Government had issued two notifications dated 9th February, 2015¹⁴ and 4th March, 2016¹⁵, respectively. While NOTIFICATION-I laid down “*Recruitment procedure in the institutions exempted from recruitment from West Bengal School Service Commission under Section 15(a)*”, NOTIFICATION-II introduced “*Recruitment Procedures for the non-Government Recognised Aided Madrasahs (Primary, Junior High, High, Higher Secondary and Senior), 2016*”. These two notifications were intended to regulate selection and appointment of teachers and nonteaching staff.

⁸ Commission

⁹ W.P. 20650 (W) of 2013

¹⁰ High Court

¹¹ 2014 SCC OnLine Cal 5787

¹² AST 192/2014, AST 130/2014 and MAT 473 of 2014

¹³ 2015 SCC OnLine Cal 10521

¹⁴ NOTIFICATION-I

¹⁵ NOTIFICATION-II

h. In the aftermath of these developments, proceedings commenced before this Court. The judgment and order dated 9th December, 2015 of the Division Bench upon a challenge before this Court in a special leave petition¹⁶ by Sk. Mohd. Rafiq and others, a coordinate Bench by its order dated 14th March, 2016 stayed the operation thereof during the pendency of such petition.

i. Numerous interim orders subsequently came to be passed on applications filed in connection with prayers for release of salary and allowances in favour of teachers and non-teaching staff who had been recruited after the MSC Act was outlawed and before the stay was granted. However, the order of stay was never vacated nor modified. In fact, order dated 17th November, 2017 permitted the selection process by the Commission to go on while restraining appointments unless otherwise directed by this Court; whereas, by its subsequent order dated 17th May, 2018, this Court lifted the restraining order and permitted appointments to be made from the merit list/panel of candidates prepared by the Commission in connection with the recruitment process of 2014. The said order, while restraining further recruitment process from being undertaken in terms of the MSC Act, nonetheless, permitted appointment of successful candidates from the process of 2013 subject to the willingness of the madrasahs to employ them.

j. Orders also followed, directing payment of salary to those teachers and non-teaching staff who had been appointed in the madrasahs after Sections 8 and 10 to 12 of the MSC Act were declared *ultra vires* and prior to grant of stay, as aforesaid.

k. Several contempt petitions came to be filed in the meanwhile, alleging non-compliance with the orders directing release of payment. Orders were made from time to time to release payments to those who had the essential qualifications for appointment. Detailed reference to these orders is considered unnecessary having regard to the issues involved in these writ petitions.

l. Ultimately, a 2-Judge Bench speaking through Hon'ble U. U. Lalit, J. (as the Chief Justice then was), upon considering several precedents in the field including the Constitution Bench decision in **T.M.A. Pai Foundation v. State of Karnataka**¹⁷, set aside the judgment and order of the High Court under challenge *per* its judgment and order dated 6th January, 2020 in **Sk. Mohd. Rafique** (supra). Relevant passages from the same read as follows:

58. The regime put in place by the State Legislature thus ensures that the Commission comprising of experts in the field would screen the talent all across the State; will adopt a fair selection procedure and select the best available talent purely on merit basis; and even while nominating, the interest of the minority institution will also be given due weightage and taken care of. The statutory provisions thus seek to achieve “excellence” in education and also seek to promote the interest of the minority institutions. The provisions satisfy the test as culled out in the decision of this Court in T.M.A. Pai Foundation case.

59. In our considered view going by the principles laid down in the decision in T.M.A. Pai Foundation case, the provisions concerned cannot, therefore, be said to be transgressing the rights of the minority institutions. The selection of the teachers and their nomination by the Commission constituted under the provisions of the Commission Act, 2008 would satisfy the national interest as well as the interest of the minority educational

¹⁶ SLP (C) No.6661 of 2016

¹⁷ (2002) 8 SCC 481

institutions and the said provisions are not violative of the rights of the minority educational institutions.

62. We, therefore, have no hesitation in going by the test culled out in *T.M.A. Pai Foundation* and hold that the provisions of the Commission Act, 2008 are not violative of the rights of the minority educational institutions on any count.

63. In the premises, while allowing these appeals, we set aside the view taken by the Single Judge and the Division Bench of the High Court and dismiss Writ Petition No. 20650 (W) of 2013 and other connected matters. We also hold Sections 8, 10, 11 and 12 of the Commission Act, 2008 to be valid and constitutional.

64. In the end, we declare all nominations made by the Commission in pursuance of the provisions of the Commission Act, 2008 to be valid and operative. However, if after the disposal of the matters by the High Court any appointments are made by the Madarsahs concerned, such appointments of teachers shall be deemed to be valid for all purposes. But the Commission shall hereafter be competent to select and nominate teachers to various Madarsahs in accordance with the provisions of the Commission Act, 2008 and the Rules framed thereunder.

65. With the aforesaid observations these appeals are allowed. ...

m. This Court's order, allowing the appeal on the terms noted above, wiped out the declaration of invalidity of the MSC Act.

n. Closure of the appellate proceedings, triggered by the challenge to the MSC Act, did not bring about a quietus to the controversy. Rather, it was quickly followed by initiation of petitions alleging contempt of the directions made in *Sk. Mohd. Rafique* (supra). The contempt petitions came to be decided by a 2-Judge Bench, presided over by Hon'ble S. Ravindra Bhat, J. (as His Lordship then was), *vide* its judgment and order in *Snehasis Giri v. Subhasis Mitra*¹⁸. Having regard to the claims and counter-claims of the parties, the Bench proceeded to pass the following order:

18. Accordingly, this Court exercising its powers under Article 142 hereby constitutes a Committee headed by Justice Debi Prasad Dey, retired Judge, Calcutta High Court. The Committee shall also consist of a Principal Secretary ranking officer of the IAS, who had served in the West Bengal cadre and stationed in Kolkata with experience in the Higher Education Department as well as a retired Registrar of one of the State Universities in West Bengal, residing in Kolkata. The State Government shall nominate the members other than the Chairman. The Committee is requested to consider the claims of the petitioner, keeping in mind the following:

(a) Whether the madrasa or its managing committee was recognised by the State Government on the date on which the appointment was made?

(b) Whether such appointments were made, of candidates who possessed the requisite prescribed qualifications and fulfilled the experience and other eligible conditions stipulated for the post concerned?

(c) Whether such an appointment was made by following the recruitment procedure indicated in the Kolkata Gazette Notification dated 11-3-2015 (No. 93-SE/S/10R-14/2013-9-2-2015) and in Kolkata Gazette Notification dated 4-3-2016 (No. 486-MD/O/2M-11/2016)?

¹⁸ (2023) 18 SCC 529

- (d) Whether the appointments were made against vacancies that existed and whether the vacancies conformed to the staffing pattern for the institution/madrasas concerned?
- (e) Whether after the appointments were made, the persons appointed actually worked on their respective posts?
- (f) Whether the appointments were actually made on the date of the appointment letter, or were backdated?

19. ***

20. Ms Madhumita Bhattacharjee submitted that all necessary cooperation would be extended by the State Government, which is directed to provide infrastructure, and the necessary staff to the committee to complete its task. The State Government is directed to notify the Committee, within four weeks from today, and give appropriate publicity to those interested to seek verification of their claim. Such publicity shall be through appropriate advertisement in newspapers, both in English and in Bengali. In addition, the notification shall also be placed on the website of the State Government's Minority Affairs & Madrasah Education Department, Nabanna, Howrah. The notification shall indicate the time within which representations can be made. It is open to those claiming benefit, as well as those likely to be affected by the report, to represent to the committee, within the time stipulated. The committee shall also consider a suitable and practicable method of giving hearing to those interested.

o. Disposal of the contempt petition on the above terms resulted in a deluge of applications being filed before this Court to have the same reversed. First, an application¹⁹ seeking modification of the order dated 2nd February, 2023 in **Snehasis Giri** (supra) was filed by a group of candidates. On 22nd August, 2023, the said application was dismissed as withdrawn with liberty to apply for review of the said order. Next, a petition seeking review²⁰ of the order in **Snehasis Giri** (supra) was filed by a group of candidates which came to be rejected by circulation on 7th February, 2024. This was followed by miscellaneous applications²¹ seeking modification/clarification. These applications stood disposed of by orders dated 22nd March, 2024 with direction to the respondents for disclosure of the report of the Committee by uploading it on the website to enable the aggrieved candidates to take appropriate steps in accordance with law.

p. Meanwhile, the State had proceeded in the manner directed by this Court by nominating the members of the Committee other than the Chairman. Notifications were issued inviting claims. The Committee having examined the individual claims of a little less than 500 (five hundred) claimants (teacher and non-teaching staff) prepared a report with its observations in respect of each and every claimant. Not a single teacher or non-teaching staff could substantiate his/her claim before the Committee of being validly appointed, resulting in rejection of such claims.

q. Thoroughly dissatisfied with the findings returned by the Committee, a spate of writ petitions came to be instituted before this Court. These were listed before different Benches. Orders were passed, *inter alia*, on 30th August, 2024 and 9th May, 2025 directing that employment of the petitioners may not be disturbed until further orders and the petitioners who are discharging duty should be paid salary, respectively.

¹⁹ M.A. No.1694 of 2023

²⁰ RP (C) No. 264 of 2024

²¹ M.A. Nos.580-85 of 2024

r. Ideally, the Registry ought to have listed all the writ petitions before a common Bench. An order dated 18th August, 2025 passed by us expressed serious concern noticing listing of different writ petitions before different Benches.

s. Finally, all the writ petitions, upon consolidation, were placed before us and preliminary hearings conducted. What was observed in course thereof is captured in our order dated 19th November, 2025, *inter alia*, reading as follows:

6. On an earlier occasion, noticing the deficiency in the pleadings, we had requested advocates-on-record for the petitioners to project before us the ten most glaring cases where the petitioners despite creditworthiness of their claims might have been meted out injustice by the Committee. No such exercise appears to have been undertaken.

7. We once again grant liberty to the advocates-on-record appearing on behalf of the petitioners to identify cases of not more than ten teachers and five non-teaching staff who have been grossly wronged, to persuade us to hold that the Committee was unjustified in spurning their claims. While projecting the cases of these ten teachers and five non-teaching staff, we require answers, preferably on affidavits, to the following questions:

(i) Whether on the dates the petitioners were appointed in the concerned Madrasahs (the names may be disclosed), as claimed, such Madrasahs enjoyed valid recognition granted by the West Board of Madrasah Education²?

(ii) Whether the Managing Committees of the concerned Madrasahs, where the petitioners claim to have been appointed, were valid Managing Committees in the sense that the same were duly constituted in accordance with the Management Rules and had the imprimatur of the Madrasah Education Board?

Subject to answers to the aforesaid two questions being in the affirmative:

(iii) What is the educational qualification of the petitioner and on which post in which Madrasah was he/she appointed?

(iv) What was the staff pattern of the concerned Madrasah in question (both teaching and non-teaching staff) as on date the selection process was initiated and appointment of the petitioner made either as teacher or non-teaching staff?

(v) Whether the permission of the relevant District Inspector of Schools was required for initiating the selection process? If no, why? If yes, was it sought and obtained by the Managing Committees prior to initiating the process of selection?

(vi) Whether the petitioners applied in response to any advertisement? If yes, where was the advertisement published?

(vii) What is the nature of competition and the test/examination that the petitioners faced prior to appointment?

(viii) Whether the Managing Committees, with their own recommendations and the recommendations of the Selection Committee constituted for the purpose, had forwarded all papers together with the panel/merit list to the District Inspector for approval?

(ix) Whether the District Inspector had approved such panel/merit list leading to appointment?

(x) Whether the service of the petitioner, upon appointment, (sic, has been) approved by the District Inspector?

8. Any other information that the petitioners would wish to disclose, relevant for a decision on the writ petitions, is permitted to be disclosed.

9. Additionally, the petitioners who wish to furnish answers to the above questions may extract the specific observation by which the Committee had spurned their claims.
10. Having regard to the submission of Mr. Huzefa Ahmadi, learned senior counsel, we also direct that such of the petitioners on whose behalf submissions are proposed to be advanced on the next date by furnishing particulars on the above ten questions must also disclose on affidavits whether they have instituted any previous proceedings before this Court or before the High Court and the fate of such proceedings.
11. The advocates-on-record for the petitioners may intimate the Court Master / Registry which out of these writ petitions are at the instance of the teaching staff and which are at the instance of the non-teaching staff. On the next date, the writ petitions filed by the teachers shall be listed together, followed by the writ petitions filed by the non-teaching staff.
12. If any of the writ petitions the petitioners are both teaching and nonteaching staff, the particulars thereof shall also be provided so that same may be listed separately.
13. We request the advocates-on-record for the petitioners to also furnish the particulars to the advocates-on-record for the State, the Madrasah Education Board and the West Bengal Madrasah Commission at least 72 hours in advance of the next date of hearing.
14. Re-list the writ petitions on 17th December, 2025, as the first item in the list, marked 'part-heard'.
- 6.** Pursuant to the aforesaid order, affidavits/compilations have been placed on record by both the parties.
- 7.** On behalf of the petitioners, the claims of (i) Raj Kumar Bag²², (ii) Md. Saidul Islam²³, (iii) Sahana Khatun²⁴, (iv) Md. Abdur Rahman Gazi²⁵, (v) Md. Mahamudur Rahman Laskar²⁶, (vi) Salma Sultana²⁷, (vii) Shikha Khatun²⁸, (viii) Rajiun Kasfima²⁹ (ix) Md. Eliyas³⁰, and (x) Kazi Md. Jahirul Hassan³¹ were screened and projected before us as the ten most glaring cases of gross injustice meted out to them by the Committee and followingly, by the State. In addition to the 10 (ten) noted above, the claims of Sk. Saifuddin³², Sk. Mosaddek Hossain³³ and Md. Mir Mosarraf Hossain³⁴ have also been put forward which too would be considered.
- 8.** In opposition, the respondents have placed a counter-compilation detailing therein particulars to demonstrate that the claims of the said teachers and non-teaching staff are wholly without any basis and that the writ petitions deserve outright dismissal.
- 9.** We have had the able assistance of Mr. Salman Khurshid, Ms. Maninder Acharya, Mr. Devdutt Kamat, Mr. Pijush Kanti Roy, learned senior counsel, and Mr. Biswaroop

²² 4th petitioner in WP (C) No.557 of 2024

²³ 2nd petitioner in WP (C) No.616 of 2024

²⁴ 2nd petitioner in WP (C) No.641 of 2024

²⁵ 2nd petitioner in WP (C) No.653 of 2024

²⁶ 2nd petitioner in WP (C) No.662 of 2024

²⁷ 1st petitioner in WP (C) No.689 of 2024

²⁸ 2nd petitioner in WP (C) No.800 of 2024

²⁹ 25th petitioner in WP (C) No.800 of 2024

³⁰ 1st petitioner in WP (C) No.814 of 2024

³¹ 38th petitioner in WP (C) No.105 of 2025

³² 15th petitioner in WP (C) No.557 of 2024

³³ 18th petitioner in WP (C) No.653 of 2024

³⁴ sole petitioner in WP (C) No.651 of 2024

Bhattacharya and Ms. Srija Choudhury, learned counsel, who addressed us on behalf of the petitioners, apart from others. Mr. Huzefa Ahmadi, Mr. Raju Ramchandran and Mr. M. R. Shamshad, learned senior counsel appearing for the respective Article 12 authorities also duly assisted us.

10. The common grievance running through the arguments of learned senior counsel/counsel for the petitioners is that this Court had constituted the Committee, headed by a former Judge of the High Court, to verify claims and recommend genuine cases for acceptance. The Committee, however, has rejected all claims across the board. Such wholesale rejection is not an exercise to verify claims but a colourable exercise of power. The report, including the observations made/findings recorded, without an individual assessment of all the claims is not what this Court had required. Nonapplication of mind is writ large and the Committee's findings suffer from the vice of arbitrariness, are opposed to principles of fair play and justice, and violates the petitioners' rights protected under Articles 14, 16 and 21 of the Constitution of India. Being unworthy of credence, it was urged that the Committee's report be excluded from consideration and each of the claims of the petitioners be considered on its own merits and granted.

11. *Per contra*, it has vehemently been contended on behalf of the respondents that the arguments advanced on behalf of the petitioners lack substance. The Committee was constituted to determine the veracity of the claims. Its remit was factual. The mandate was clear: recommend for acceptance only those cases which were above board. Significantly, after examining the material placed before it and upon assessment of all individual cases, the Committee did not find a single claim worthy of recommendation. Having found no claim to have been substantiated, the Committee had no other option but to reject each and every claim. The scope of judicial review of such fact-finding exercise is limited and the present challenge being nothing but a second round of litigation on concluded facts, it was asserted that no interference in exercise of high prerogative writ jurisdiction under Article 32 is warranted.

12. Having heard the parties, the dispute seems to lie in a narrow compass. The Committee was set up to filter claims. Parties were put on notice and those petitioners who presented themselves before the Committee were heard. A painstaking exercise was undertaken by the Committee, which revealed that not a single claim met the threshold of a valid appointment. No claim was found to be genuine on individual assessment, and the rejection was on merits and not on technicalities. Petitioners, who suffered rejection of their claims upon due consideration, now seek to reagitate issues of fact which have been settled by the Committee.

13. We are conscious that absent manifest perversity in the findings of the Committee, the judicial review court ought to stay at a distance. However, considering that this is the Court of last resort and that there has been protracted litigation since 2014, as a very special case, we were a bit indulgent. Accordingly, we proceeded to treat these writ petitions essentially as appeals against the findings of fact recorded by the Committee subject to the rider that not every claim would be considered. Instead of a random choice, which we could have made, we extended due opportunity to the advocates for the aggrieved petitioners to screen and project *inter se* the glaring instances of gross injustice and to demonstrate infringement of their legal rights for the same to be remedied.

14. Such screening and selection having been made, at this stage we are tasked to consider and examine the claims of only those (13) thirteen petitioners named above and to conclude whether there is any ring of truth in their claims that they were validly appointed by the respective Managing Committees of various recognised aided

madrasahs between the dates of rendering of the judgment by the Single Judge of the High Court in **Managing Committee, Contai Rahamania High Madrasah** (supra) [declaring Sections 8 and 10 to 12 of the MSC Act *ultra vires* Article 30 of the Constitution] and pronouncement of the judgment by this Court in **Sk. Mohd. Rafique** (supra) [declaring that the MSC Act does not infringe any right of the minority in the State of West Bengal]. If the examination reveals truth, legitimacy and justification in what the petitioners assert, they would most certainly be entitled to have their services approved on the premise that they were appointed in the interregnum in terms of the provisions contained either in NOTIFICATION-I or NOTIFICATION-II, referred to above, and also other consequential benefits flowing from such appointment. Also, a positive finding could open the gates for the others for their claims to be individually examined. However, if not a single claim is found genuine out of the selected few to be considered, closure of the proceedings once and for all would be the obvious consequence.

15. Prior to looking into the claims of the screened individual petitioners, we need to deal with an argument advanced by Mr. Roy which, however, no other learned senior counsel/counsel appearing for the other petitioners advanced. Referring to an observation³⁵ made in paragraph 64 of this Court's decision in **Sk. Mohd. Rafique** (supra), Mr. Roy contended that the whole exercise undertaken by the Committee was unnecessary since all appointments made, after the decision of the Single Judge in **Contai Rahamania High Madrasah** (supra), have to be treated as valid for all purposes. Rights of the petitioners had crystallised in pursuance of the binding directions of this Court and, therefore, he submitted that it was too late in the day for the respondents to deny the petitioners the benefits of the same.

16. The same contention was urged by Mr. Roy before the coordinate Bench deciding **Snehasis Giri** (supra). Such contention was negated in the following words:

8. In para 64, the Court in *Mohd. Rafique case* declared the nominations by the Commission in pursuance of the provisions of the Act as valid, and the appointments made, after disposal of the matters by the High Court as deemed to be valid for all purpose. However, there is no discussion with respect to whether the court had applied its mind as to how the madrasahs had proceeded to appoint teachers as teaching/non-teaching staff. Also there is no discussion regarding rules/regulations, applicable circulars and guidelines in terms of which aided and unaided recognised institutions could make appointments, having regard to the standard of education required and the requisite experience; whether a transparent method was followed; whether the madrasa concerned was recognised one or not; whether the committee or body selecting the individual was constituted in accordance with the rules and regulations, etc. The argument of the respondent/alleged contemnors that there ought to be an exercise of verification, therefore, appears to be merited and substantial.

11. In the present case too, this Court is of the opinion that the respondents' stand that without verification of the petitioners' appointment and whether the procedures prescribed were duly followed in respect of matters such as fulfilling eligibility conditions (essential qualifications and relevant experience); availability of vacancy; staff pattern in respect of madrasahs where recognition was granted and if so for what period; whether the institution was aided and recognised or not or recognised and non-aided, and if so for what duration; whether a duly empowered selection body or bodies considered the candidature of the claimant before he/she was appointed and whether the committee or body selecting the individual/claimant was

³⁵ ..., if after the disposal of the matters by the High Court any appointments are made by the Madrasahs concerned, such appointments of teachers shall be deemed to be valid for all purposes.

constituted in accordance with the rules or guidelines, etc. is justified. In these circumstances, this Court is of the opinion that further proceedings cannot be continued as no determination can be made unless there is a due verification in regard to the employment of each of the petitioners.

14. It is thus, apparent, that if this Court were to pronounce upon the merits of the respondents' position, it would necessarily have to consider the facts of each case, and decide whether the stand of the alleged contemnors — wherever a decision adverse to the petitioners is taken, is correct on its merits. That exercise, plainly is not admissible in proper exercise of contempt jurisdiction.

15. The above observations would have ordinarily been conclusive and dispositive of the present petitions. However, this Court is conscious of the fact that the process of verification undertaken by the State would result in further delay and may lead to multifarious litigation, spelling uncertainty to individuals and members of staff of madrasas who were appointed after following all norms and procedures.

(emphasis ours)

17. It is, therefore, clear as day that the observation made in paragraph 64 of **Sk. Mohd. Rafique** (supra), relied on by Mr. Roy, was duly considered in **Snehasis Giri** (supra) and bearing in mind the factors referred to in the extracted passages, further directions were issued regarding constitution of the Committee for verification of the claims. On the point as to whether the appointments are valid or not, the directions in **Snehasis Giri** (supra) constitute the binding directions which each party to the *lis* is now bound to follow. Building a case placing reliance on the said observation in paragraph 64 of **Sk. Mohd. Rafique** (supra), in the changed circumstances, is like building on sand; to rest a claim on such observation is to mistake a whisper for authority. We, thus, have no hesitation in rejecting this argument of Mr. Roy as misconceived.

18. We also record having heard Mr. Ahmadi make a specific submission. According to him, Md. Saidul Islam, Sahana Khatun, Salma Sultana, Md. Eliyas and Kazi Md. Jahirul Hassan were admittedly appointed after 14th March, 2016, i.e., after this Court had stayed the judgment and order dated 9th December, 2015 of the Division Bench. He contended that though several interim orders were made directing payment of salary to staff appointed immediately after Sections 8 and 10 to 12 of the MSC Act was struck down by the Single Bench, no further appointment could have been made in terms of NOTIFICATION-II, which replaced NOTIFICATION-I *qua* madrasahs, without the express permission of this Court after such stay was granted. We shall deal with this argument at a later stage of this judgment.

19. Since either NOTIFICATION-I or NOTIFICATION-II was required to be followed by the Managing Committees of the recognised and aided madrasahs, it would be worthwhile to note the relevant clauses therefrom which would have a bearing on our process of decision making.

20. Clauses 4, 5, 7 and 14 of NOTIFICATION-I read as follows:

"4. The appointment shall be made against a clear vacancy in permanent/additional post duly sanctioned by the competent authority.

5. The appointment shall be given after selection from eligible candidates through open advertisement of the vacancy in at least two State-level dailies, one of them should be in English, in order to satisfy the provision of equality of opportunity as enshrined in Art. 16 of the Constitution of India.

7. The school authority will constitute a Selection Committee for recruitment of a candidate, against an approved post maintaining pupil-teacher ratio, at least 3 months before the scheduled date of Interview/Written Test and the same is to be communicated to the office of the District Inspector of Schools (SE) concerned and the Director of School Education, West Bengal with post sanctioning memo, cause of the occurrence of the vacancy, no litigation certificate in respect of the vacancy and the validity of the Managing Committee.

14. The Head of the Institution and/or the Secretary of the School Managing Committee shall be personally/jointly liable if any appointment is made on the basis of panel prepared by the school authority by way of illegal and irregular procedure or panel prepared against any unauthorised vacancy not duly approved by the competent authority. Government shall not bear any financial liability of such illegal or irregular appointment and the District Inspector of Schools (SE) concerned shall not be bound to accord approval or give any cognisance to such illegal appointment.”

21. Clauses 4, 5 and 17 of NOTIFICATION-II, on the other hand, are to the following effect:

“4. Publication of Employment Notifications

(1) The appointment of teaching and non-teaching staff including the post of Head Master/Head Mistress/Superintendent shall take place after selection from the eligible candidates obtained through open advertisement as per **Annexure-I** in at least two State-level dailies, of which one will be in Bengali, in order to satisfy the provision of equality of opportunity as enshrined in Article 16 of the Constitution of India.

(2) The Madrasah Managing Committee shall submit a prayer to the concerned District Inspector of Schools for approval of service of the candidate appointed through open advertisement for filling up the vacant post of teaching and non-teaching staff including the post of Head Master/Head Mistress/Superintendent as per **Annexure II**.

5. Selection Committee - The appointment shall be made by the Madrasah Managing Committee which will frame the norms and selection procedure, at least three months before the Written Test and Interview of the appointment in question and the same is to be communicated to the office of the District Inspector of Schools (PE)/(SE)/Additional District Inspector of Schools (PE)/(SE) concerned and the Director of Madrasah Education, West Bengal. The Madrasah Managing Committee shall also constitute a selection committee for this purpose and intimate the same to the concerned Inspector of Schools.

17. Statutory obligation

(1) The State Government in the Minority Affairs & Madrasah Education Department or the Director of Madrasah Education or the District Inspector of Schools (PE)/(SE) concerned shall not take any financial responsibility for any appointment, if made in violation of these Procedures.

(2) Recruitment procedure initiated before this notification, shall be completed as per provisions of the Order No 93-SE/S/10R-14/2013 dated 9.2.15 of the School Education Department.”

22. Let us now test the substance of the petitioners’ claims as projected before us by learned senior counsel/counsel. Each of the claims is proposed to be dealt sequentially, as per names appearing in the compilation chart provided by Mr. Ahmadi. While the findings returned by the Committee *qua* each of the petitioners deserve to be accorded due weight, our hands are not tied by its findings; an independent assessment by us is intended in the interest of justice to satisfy our conscience and to set the controversy at rest.

23. No. 1 – Raj Kumar Bag:

- a). It is claimed by this petitioner that he was appointed on 20th January, 2016 as an Assistant Teacher to teach Environmental Science/Studies in Gimageria Welfare High Madrasah³⁶ (H.S.), Contai, district Purba Medinipur.
- b). In course of hearing, it transpired that there was no valid Managing Committee in existence on the date this petitioner came to be appointed. An *Ad hoc* Managing Committee (constituted by a Division Bench of the High Court *vide* its interim order dated 17th June, 2014 and since continued by the final order dated 24th July, 2014, passed in an intracourt appeal³⁷) was functional and it had appointed this petitioner. It is noted that the Division Bench had restricted the functioning of such *Ad hoc* Managing Committee to “day-to-day administration” of GWH Madrasah.
- c). Question that arises is, whether a process of appointment is comprehended within the meaning of “day-to-day administration” which the *Ad hoc* Managing Committee was only authorised to carry on, in the given facts and circumstances as noted by the Division Bench in its two orders?
- d). In normal parlance, day-to-day administration encompasses routine academic, administrative and financial functions necessary for smooth running of the educational institution, such as conduct of classes and examinations, observance of student and staff discipline, upkeep of records and maintenance of campus, correspondence with authorities, collection of fees, if any, payment of salaries to staff appointed on sanctioned posts, sanction of routine leave for such staff, incurring petty expenses, etc. but would exclude major policy matters such as infrastructure development, creation of posts, prescription of pay scales or recruitment to permanent vacancies, etc. All of these involve substantial financial implications and policy choices, which lie beyond the ambit of day-to-day administration.
- e). Notably, the *Ad hoc* Managing Committee was not authorised by the Division Bench to take any policy decision or to incur expenditure other than what was required to run the day-to-day administration of GWH Madrasah. Payment of salary and allowances to a newly appointed teacher would necessarily involve substantial expenditure, which obviously is not comprehended within the meaning of day-to-day administration and was also not permitted. In the absence of express authorisation, the argument of Mr. Kamat that the *Ad hoc* Managing Committee did have the authority and competence to appoint this petitioner defies logic and prudence.
- f). Mr. Kamat, however, sought to draw support for the validity of the recruitment process by referring to Rule 2(d) of the Management Rules. According to him, Rule 2(d) defines appointing authority of a madrasah to include an *Ad hoc* Managing Committee; *ergo*, in appointing this petitioner the *Ad hoc* Managing Committee did not commit any illegality.
- g). Support drawn by Mr. Kamat from Rule 2(d) of the Management Rules is inconsequential as the said rule has no application to the facts before us. Rule 8 of the Management Rules provide for supersession of a Managing Committee by the Madrasah Education Board in certain circumstances. An *Ad hoc* Managing Committee referred to in Rule 2(d) would mean such a committee as the Madrasah Education Board may appoint (as and when the situation therefor arises, to exercise the powers and perform the functions of the Managing Committee) in exercise of power conferred by and in terms of the provisions contained in Rule 8(1)(iii) of the Management Rules. An *Ad hoc* Managing Committee appointed by the Court cannot, thus, be equated with an *Ad hoc* Managing

³⁶ GWH Madrasah

³⁷ MAT 943 of 2014

Committee appointed by the Madrasah Education Board. While the *Ad hoc* Managing Committee appointed by the Madrasah Education Board can exercise all the powers and perform all the functions of the Managing Committee which has been superseded, the powers of the Court appointed *Ad hoc* Managing Committee are limited by the very terms of the Court's order. The argument based on Rule 2(d) is, therefore, overruled.

h). Assuming for a moment that Mr. Kamat's argument of the *Ad hoc* Managing Committee having the requisite authority to appoint this petitioner has merit and could be accepted, yet, we find the *Ad hoc* Managing Committee to be remiss in not following NOTIFICATION-I to the tee. In terms of the orders dated 17th June, 2014 and 24th July, 2014 of the Division Bench, the Additional District Inspector of Schools, Contai was a member of the *Ad hoc* Managing Committee. He submitted a report before the Committee that the rules of recruitment as per NOTIFICATION-I were not followed. As per clause 7 of NOTIFICATION-I, several steps had to be initiated and communicated to the Director of School Education, West Bengal³⁸ and the DIOs concerned with relevant documents. We have not been shown from the writ petition or any other affidavit filed in Court by this petitioner that there was due observance of clause 7.

i). NOTIFICATION-I does not specifically refer to the judgment and order dated 12th March, 2014 of the Single Judge, yet, we cannot ignore that the said notification was issued close on the heels of such judgment. The very strict standards of selection for appointment that the MSC Act envisaged, though no longer applicable in the manner as mandated because of judicial intervention by the High Court, did neither vest the Government in the School Education Department with any authority to dilute the standards nor did it attempt to do so. A strict standard was nevertheless sought to be maintained with the only change being the identity of the selector: instead of the Commission, it became the Managing Committee. Therefore, to accept the contention that the provision should be read as directory would result in dilution of standards which was neither intended nor permissible, since it would have the effect of defeating the object of ensuring merit-based selection. We, thus, reject Mr. Kamat's contention that the requirement should be read as directory and not as mandatory.

j). Raj Kumar Bag's claim of a valid appointment, thus, has to fail.

24. No.2 – Md. Saidul Islam:

a). This petitioner claimed that he was appointed as an Assistant Teacher on 19th December, 2019 to teach History in Margram High Madrasah (H.S.), district Birbhum pursuant where to he joined on 26th December, 2019. Such appointment was preceded by his response to an advertisement dated 27th October, 2018, participation in a written examination on 3rd November, 2019 and appearance for an interview on 5th November, 2019.

b). The Committee made detailed observations as to why it did not consider Md. Saidul Islam to have been validly appointed.

c). It is noted that *vide* Office Memorandum dated 3rd November, 2008 of the Director of Madrasah Education, West Bengal³⁹, 3 (three) additional posts of Assistant Teacher were sanctioned for Margram High Madrasah. One of these was a post in Social Science group. The said office memorandum made it clear that the additional posts had to be retained within 3 (three) years by submitting proposal for retention together with requisite

³⁸ DSE, WB

³⁹ DME, WB

documents. However, no appointment on the additional post of Assistant Teacher in Social Science group was made within 3 (three) years of 3rd November, 2008; hence, no proposal for retention of such post was forwarded within the stipulated period and it is reasonable to infer that the sanction lapsed. It was on such non-existent post that this petitioner came to be appointed. We have recorded these findings based on our appreciation of the documents forming part of the affidavit of this petitioner dated 14th December, 2025 (particularly pages 208 and 203204).

d). Mr. Kamat could not satisfactorily explain how this petitioner could at all be appointed on a non-existent post. Although it was argued on behalf of the respondents that there have been breaches of the guiding norms, it is not considered necessary to examine that aspect in light of the finding that we have reached, i.e., no appointment could have been offered without there being a sanctioned post.

e). We, therefore, see no reason to hold that Md. Saidul Islam has been subjected to any injustice.

25. No. 3 – Sahana Khatun:

a). This petitioner claimed that she was appointed on 8th February, 2015 as an Assistant Teacher in English in Hasnecha Islamia Siddiquia Senior Madrasah⁴⁰, Birlapur, district South 24 Parganas.

b). The educational qualifications of this petitioner would reveal that she graduated in the Bachelor of Arts examination from Vidyasagar University with 34% marks and the Master of Arts examination from the same university with 42.7% marks. Though the Committee observed that she fell short of the required percentage (50%), we see no such stipulation in Annexure-II of NOTIFICATION-I. To that extent, the Committee must be held to have erred.

c). However, where this petitioner's claim is found to falter is that the Managing Committee of HISS Madrasah failed to comply with clauses 5 and 7 of NOTIFICATION-I. Neither were advertisements issued inviting applications as required nor was the DSE, WB and/or the DloS concerned kept informed of the process.

d). In the absence of any vested or accrued legal right, Sahana Khatun lacks the *locus* to maintain the writ petition.

26. No. 4 – Md. Abdur Rahman Gazi:

a). This petitioner claimed that he was appointed as an Assistant Teacher on 27th February, 2016 to teach Geography in Sundarban Hazi Moffijaddin Towsel Ali Amjedia High Madrasah⁴¹, district North 24 Parganas.

b). From the affidavit dated 14th December, 2025 filed by this petitioner, it appears to be the admitted case that he responded to a public notice dated 17th December, 2015 issued by the Managing Committee of SHMTAAH Madrasah. There is no evidence of any advertisement published in two State-level dailies, as required by clause 5 of NOTIFICATION-I. There is also no evidence of compliance with clause 7 thereof.

c). In such circumstances, the claim of Md. Abdur Rahman Gazi of being validly appointed is untenable.

27. No. 5 – Md. Mahmudur Rahman Laskar:

⁴⁰ HISS Madrasah

⁴¹ SHMTAAH Madrasah

- a). Mr. Khurshid argued this petitioner's case claiming that he was appointed as an Assistant Teacher on 28th January, 2016 to teach Kamil/Theology in Chhayani Islamia Senior Madrasah, Bamanpukur, district North 24 Parganas.
- b). During arguments, it came to light that a fair and transparent recruitment process was not followed in terms of NOTIFICATION-I, which laid down the guiding principle. No advertisement was issued, and this petitioner did not possess the requisite qualification for an appointment. Faced with such a situation, Mr. Khurshid prayed for invocation of Article 142 of the Constitution.
- c). Article 142 does not run on a single track. Doing complete justice is not a mechanical exercise; it is contextual in the sense that interests of all concerned deserve consideration. Protecting the service of an ineligible teacher cannot be at the cost of the future of students. We regret, Article 142 cannot be invoked in such a case.
- d). The claim of Md. Mahamudur Rahman Laskar is, thus, absolutely without any substance or merit.

28. No.6 – Salma Sultana:

- a). This petitioner claimed that she was appointed on 14th November, 2019 as an Assistant Teacher to teach Geography in Enayatpur Rameswarpur Siddiquia Asrafia Senior Madrasah⁴², district South 24 Parganas.
- b). *Vide* communication dated 26th August, 2014, the Madrasah Education Board reconstituted the Managing Committee of the said madrasah and extended its life for a period of 3 (three) years with effect from 6th June, 2014. Subsequently, the life was further extended till 30th November, 2017. It appears that challenging a show cause notice seeking explanation for not reconstituting the Managing Committee of ERSA Sr. Madrasah, the High Court's writ jurisdiction was invoked by Md. Ruhulla Gazi, the Secretary of the said madrasah⁴³. An interim order dated 31st August, 2017 passed by the High Court reveals that it was dealing with the case of a Managing Committee of an unnamed madrasah whose life had expired in May, 2016. This observation obviously could not have related to ERSA Sr. Madrasah because if the communications on record are true and correct, the Managing Committee of ERSA Sr. Madrasah had life until end of November, 2017. It has not been explained to us why, in the first place, the writ petition by Md. Ruhulla Gazi was necessitated when the life of the Managing Committee of ERSA Sr. Madrasah was yet to expire. Be that as it may, it is further revealed that having regard to conclusion of submission on behalf of the writ petitioners before it and the Advocate General being in the midst of his arguments, the High Court protected the day-to-day functioning of the erstwhile Managing Committee. Recording that the Managing Committee in the eye of law was defunct but was *de facto* continuing to function, the High Court restrained the Madrasah Education Board from taking any coercive measures during the pendency of the writ petition; however, monthly statements of accounts were directed to be filed with such board. The writ petition, we were informed and as per our search on the website of the High Court, is still pending.
- c). Certain additional facts, placed on record by this petitioner, now deserve notice and deliberation. As noted, the judgment in Civil Appeal No.5808 of 2017 [**Sk. Mohd. Rafique** (supra)] and connected matters was pronounced on 6th January, 2020. The coordinate Bench, however, had reserved judgment on 13th December, 2018. Between the dates of

⁴² ERSA Sr. Madrasah

⁴³ W.P. No.11856(W) of 2017 and connected matters

judgment being reserved and its pronouncement, an order dated 13th June, 2019 was passed by this Court (Vacation Bench) on a writ petition⁴⁴ filed by the Managing Committee of Majna High Madrasah. The said order, which is of some significance as would unfold hereafter, reads as follows:

“Let this writ petition be placed before the Bench which has passed the order dated 13.12.2018 in Civil Appeal No.5808 of 2017 etc., immediately after the vacation.

In the meanwhile, in terms of the Notification dated 04.03.2016, to which there is no challenge, the process of appointment of teachers on short term contract basis may be commenced. However, the appointments shall be finalized with the leave of this court.

Needless to mention that persons who possess the prescribed qualifications shall be considered for appointment.”

d). Soon thereafter, the Secretary, ERSA Sr. Madrasah published an advertisement in, *inter alia*, an English newspaper on 5th July, 2019, inviting applications from eligible candidates for filling up 10 (ten) posts of Assistant Teachers in various subjects. It is reflected from the legible paper cutting produced in Court that it was an advertisement for recruitment as per NOTIFICATION-II.

e). It is this petitioner's case that 1 (one) post of Assistant Teacher in Social Science had been sanctioned for ERSA Sr. Madrasah *vide* sanctioning order bearing P.P.No.20/1(1) PAT dated 4th June, 2013. Vacancy on the post of Assistant Teacher in Geography (Pass) was one of 10 (ten) vacancies that was advertised. She had responded to such advertisement, appeared in the written test on 23rd October, 2019 and was interviewed on 26th October, 2019. Being the holder of a Master's degree in Geography and a Bachelor's degree in Education, it was her claim that she was duly qualified for appointment. She was ultimately selected and an appointment letter dated 14th November, 2019 issued, pursuant where to she joined as an Assistant Teacher in Social Science on 20th November, 2019.

f). The affidavit dated 14th December, 2025 filed by this petitioner reveals that the Secretary, ERSA Sr. Madrasah had, *vide* his letter dated 16th July, 2019, forwarded to the DloS concerned the schedule of dates of written examination and interview for filling up the 10 (ten) vacant posts. Reference was made therein to the order of this Court dated 13th June, 2019, as if this Court had permitted ERSA Sr. Madrasah to proceed with the recruitment process as per NOTIFICATION-II (though the fact is that the writ petition had been instituted by Majna High Madrasah and the Secretary of its Managing Committee).

g). Two questions arise here. First, whether the order dated 13th June, 2019 permitted ERSA Sr. Madrasah to proceed with the recruitment process following NOTIFICATION-II, as referred to in the Secretary's letter dated 16th July, 2019? If yes, did the Secretary, ERSA Sr. Madrasah have the authority to finalize the appointment of the petitioner without obtaining leave of this Court?

h). While venturing to answer the first question, we undertook a search to find out whether on any writ petition instituted by ERSA Sr. Madrasah, this Court passed any order similar to the one passed on the writ petition of the Managing Committee of Majna High Madrasah. Our search has revealed that ERSA Sr. Madrasah did not file any independent writ petition seeking permission from this Court to proceed with the recruitment process. In such view of the matter, we hold that ERSA Sr. Madrasah could not have initiated recruitment process by referring to the order dated 13th June, 2019 passed by the Vacation

⁴⁴ Writ Petition (C) No.758 of 2019

Bench of this Court. The said order being confined to the writ petition of the Managing Committee of Majna High Madrasah, we hold that the Secretary of ERSA Sr. Madrasah misrepresented facts in his letter dated 16th July, 2019 by projecting such an order as the source of validation for the recruitment process initiated by him.

i). Assuming that the order dated 13th June, 2019 passed by the Vacation Bench of this Court or similar such order did apply to ERSA Sr. Madrasah too, the terms of such order permitted commencement of recruitment process on short term contract basis and appointments could be finalized only with the leave of this Court. The appointment letter issued to this petitioner neither refers to appointment on short term contract basis nor does it record that the same was preceded by leave obtained from this Court.

j). On these grounds alone, the claim of this petitioner ought to fail.

k). Mr. Kamat, however, sought to draw support for the validity of the recruitment process by referring to the interim order dated 31st August, 2017 of the High Court on the writ petition filed by Md. Ruhulla Gazi.

l). What was observed and permitted by the High Court *vide* its order dated 31st August, 2017 in relation to functionality of the *Ad hoc* Managing Committee has been noted above and is, thus, not repeated. For the same reasons that we have assigned while dealing with the claim of Raj Kumar Bag, we reject the argument of Mr. Kamat that in terms of the interim order dated 31st August, 2017, the *Ad hoc* Managing Committee of ERSA Sr. Madrasah was competent to initiate and conclude the recruitment process.

m). Nonetheless, the advertisement dated 5th July, 2019 and the appointment letter dated 14th November, 2019 issued to this petitioner clearly stipulated that the appointment shall be subject to the final outcome of Civil Appeal No. 5808 of 2017, which was pending before this Court at the relevant time. Civil Appeal No. 5808 of 2017 having been allowed by this Court *vide Sk. Mohd. Rafique* (supra), the *vires* of the MSC Act stood upheld. Appointments of teachers and non-teaching staff in the madrasahs could, therefore, be made only in terms of the recommendations of the Commission and not otherwise. This petitioner can, therefore, derive no benefit of the recruitment process in which she allegedly participated.

n). Before parting with the claim of this petitioner, we wish to additionally observe that the advertisement published in the English daily on 5th July, 2019 placed by Mr. Kamat before us has caused quite an unease and meets our disapproval. Publication of the advertisement in the said newspaper, in our opinion, failed to have the requisite impact. Inviting applications for appointment to the post of teachers in a village madrasah, located within the jurisdictional limits of Police Station Kulpi in the district of South 24-Parganas (which is towards the extreme southern tip of West Bengal and lying on the transit corridor to the Sunderbans) by issuing an advertisement which is printed on a page where tender notices were majorly published⁴⁵, smacks of an attempt to keep deserving candidates unaware and restrict the selection to a limited zone of consideration, and thereby frustrate the object of wide publicity. Such an attempt can and should never be countenanced by any court, much less this Court.

o). Be that as it may, appointment of Salma Sultana being clearly illegal, she has no enforceable legal right and, therefore, no justiciable claim.

⁴⁵ by Jawahar Lal Nehru Port Trust, Maharashtra Pollution Control Board, Central Power Research Institute, South Eastern Railway, Eastern Railway, Asansol Municipal Corporation, etc.

29. No. 7 – Shikha Khatun:

- a). This petitioner claimed that she was appointed as an Assistant Teacher on 6th April, 2016 to teach English in Ghola NHM High Madrasah, Milki, district Murshidabad.
- b). The Committee recorded that despite notice being served, this petitioner did not turn up for verification of her credentials. From the documents that were produced before the Committee by the Teacher-inCharge of Ghola NHM High Madrasah, it was established that neither the recruitment rules were followed nor did she ever work as an Assistant Teacher. The claim was rejected as false and fabricated.
- c). Mr. Roy contended on behalf of this petitioner that after her appointment, the proposal for approval of service was forwarded to the DloS concerned and this, by itself, is proof of her appointment.
- d). However, statements made by the State in its counter affidavit reveals that no communication at all was received from the Managing Committee of Ghola NHM High Madrasah with regard to initiation and/or completion of the selection process, as required by NOTIFICATION-I. Reliance has been placed on the report submitted by the DloS in this regard in which he categorically stated that there was no communication relating to recruitment of this petitioner. Furthermore, the State in its affidavit has also relied upon the report of the Committee to reiterate its observation regarding the claim of this petitioner being false and fabricated.
- e). Rejoinder affidavit of this petitioner does not bring on record any documentary evidence to disprove the assertion of the State that the terms of the relevant recruitment rules were not followed. Queries put to Mr. Roy were also not answered to our satisfaction. Neither is it proved by this petitioner that there was an advertisement inviting applications published in two daily newspapers as required by clause 5 of NOTIFICATION-I and that steps as required by clause 7 of such notification were taken, nor is it shown that she came to be appointed following due recruitment process where she was made to compete with other equally eligible aspirants for securing an appointment.
- f). We, thus, do not feel persuaded to agree with the contention that Shikha Khatun has been wrongfully deprived of the benefits of a legitimate appointment.

30. No. 8 – Rajiun Kasfima:

- a). Claim of this petitioner is that she was appointed on 18th December, 2015 as a Clerk in Debkunda High Madrasah, district Murshidabad.
- b). The Committee recorded having perused the Resolution Book of the Managing Committee, Debkunda High Madrasah and found no resolution in relation to appointment of this petitioner. Moreover, the Teacher-inCharge and the DloS concerned appeared before the Committee and stated that the documents filed by this petitioner were false and fabricated.
- c). Similar to the case of Shikha Khatun, the State has specifically averred in its affidavit that no selection process was followed in case of this petitioner's appointment and it has placed reliance on the report of the Committee, which records the same finding. The State has also averred that no advertisement inviting applications was published in the State-level daily newspapers and no publication has been placed on record by this petitioner. Furthermore, no communication regarding this petitioner's appointment was ever made to the DloS concerned, a fact duly corroborated by the report submitted by such inspector.
- d). While we have no valid reason to doubt the observations of the Committee, we made a query regarding the advertisement inviting applications. Queerly, it is not the case of this

petitioner too that she noticed an advertisement published in any daily newspaper pursuant to which she responded and offered her candidature. As per this petitioner's own showing, the advertisement dated 9th September, 2015 (Annexure R-3) upon issuance by the Secretary, Debkunda High Madrasah was displayed at Beldanga Block Development Office, Beldanga Railway Station, Beldanga Bus Stand and Beldanga Police Station. At best, this is localised advertising instead of Statewide publication, which the recruitment rules ordained and is also expected by the Courts for appointment on public posts in terms of Article 16.

e). In view of the above, we conclude that no injustice has been caused to Rajiun Kasfima.

31. No. 9 - Md. Eliyas:

a). This petitioner claimed that he was appointed as an Assistant Teacher on 13th July, 2018 to teach Bengali in Milangarh Senior Madrasah, district Malda and has been discharging his duty since 16th July, 2018.

b). During the hearing, it emerged that a fair and transparent recruitment process was not followed in terms of NOTIFICATION-II, which laid down the guiding principle. No advertisement was issued, and the petitioner obtained employment based on a walk-in interview. Neither NOTIFICATION-I nor NOTIFICATION-II contemplates a walk-in interview.

c). Ms. Acharya representing this petitioner had to concede that the norms/guidelines laying down the selection process were observed in complete breach. She, however, claimed this petitioner's regularisation in service based on the decisions of this Court in **Jaggo v. Union of India**⁴⁶ and **Sukhendu Bhattacharjee v. State of Assam**⁴⁷.

d). We find no merit in such prayer. First, this petitioner has not claimed the relief of regularisation in the writ petition. Grant of relief beyond the prayer clauses, though normally impermissible, could be considered in exceptional cases. This does not qualify to be an exceptional case warranting departure from the settled rule of "no prayer, no relief". Secondly, the question of regularisation in service does not arise in this case because of the nature of breach that has occasioned. This Court in **Jaggo** (supra) and even in the most recent decision in **Sukhendu Bhattacharjee** (supra) might have taken a liberal view but such views have to be read as confined to its own facts rather than laying down law which is binding under Article 141 of the Constitution. **State of Karnataka v. Umadevi (3)**⁴⁸ and **Official Liquidator v. Dayanand**⁴⁹ are larger Bench decisions of this Court. The ratio laid down therein has neither been doubted nor diluted by any Bench of co-equal strength. The principle of *stare decisis* and Article 141 of the Constitution leaves us with no choice. Article 141 commands and the law declared in **Umadevi** (supra) and **Dayanand** (supra) binds all. Ratio, if any, laid down in the said decisions of Benches of lesser strength is debatable and we are not persuaded to follow the same.

e). Md. Eliyas, thus, has not suffered any legal grievance and has absolutely no legal peg for a justiciable claim to hang on.

32. No. 10 – Kazi Md. Jahirul Hassan:

a). Claiming that this petitioner was appointed on 20th December, 2019 as an Assistant Teacher in Physics in Abdul Motalib High Madrasah, Dhunki, district Howrah, Mr.

⁴⁶ 2024 SCC OnLine SC 3826

⁴⁷ 2026 SCC OnLine SC 909

⁴⁸ (2006) 4 SCC 1

⁴⁹ (2008) 10 SCC 1

Bhattacharya appearing on his behalf argued that the terms of NOTIFICATION-II were duly followed and the Committee erred in returning a contra-finding.

b). The specific case pleaded in the counter affidavit of the respondents is that of non-adherence to the terms of NOTIFICATION-II. Neither the DME, WB nor the DloS concerned was informed of the steps taken by the Managing Committee to conduct the selection process as well as the norms and the procedure for selection as per clause 5 of NOTIFICATION-II.

c). Pleadings in the writ petition being deficient, we permitted filing of additional/supplementary affidavit to provide the relevant particulars in terms of the order dated 19th November, 2025. Though this petitioner filed two applications to bring on record additional documents – one prior to and the other post the order dated 19th November, 2025 – and a “STATEMENT WITH ALL ORDERS”, the contents thereof do not advance his case.

d). It is revealed from the earlier application supported by an affidavit dated 17th November, 2025 that the Managing Committee of Abdul Motalib High Madrasah had initiated recruitment process for appointment on 12 (twelve) posts of Assistant Teachers by publishing a combined advertisement on 12th July, 2019.

e). An appointment letter dated 20th December, 2019 issued to this petitioner reflects a conditional appointment. Expressly, it was mentioned that salary would be admissible as and when such appointment is approved by the competent authority; also, appointment, joining and payment of salary would be subject to the result of pending case, if any, in this regard before this Court.

f). Similarly worded appointment letters bearing the same reference no. (09/2019) and even date (20th December, 2019) issued to two others, viz. Rubina Amin [appointed as Assistant Teacher in Arabic (Pass)] and Sk. Samsul Bari [appointed as Assistant Teacher in Mathematics (Hons/PG)] have been placed on record by such application.

g). It is interesting to note that not only are the joining letters of this petitioner, Rubina Amin and Sk. Samsul Bari verbatim same (except the posts on which they were appointed), the dates of joining of all 3 (three) are also the same, i.e., 28th December, 2019. Moreover, from a letter dated 31st December, 2019 of the Secretary, Abdul Motalib High Madrasah addressed to the DloS concerned seeking approval of service of all 12 (twelve) teachers, it appears that all of them joined on 28th December, 2019. Although not impossible, it seems quite strange that all 12 (twelve) appointees would join on the same date.

h). There is, however, more than what meets the eyes. This petitioner filed another application supported by an affidavit dated 11th December, 2025 in pursuance of our order dated 19th November, 2025. Such application also has the letter dated 31st December, 2019, referred to above, as an annexure.

i). As per the subsequent application, Abdul Motalib High Madrasah has a sanctioned strength of 33 (thirty-three) teachers. Since 12 (twelve) vacancies were to be filled simultaneously, it seems to be clear that more than 1/3rd of the sanctioned posts were vacant. If indeed a recruitment process had been undertaken in accordance with law culminating in the appointees reporting for joining on 28th December, 2019, one would have expected expedition in seeking approval of the services of the teachers. However, it defies logic as to why the letter dated 31st December, 2019 of the Secretary, Abdul Motalib High Madrasah was served in the office of the DloS concerned on 18th February, 2020. We sought an explanation from Mr. Bhattacharya, but in vain. He could not throw light on why the Secretary delayed his approach.

j). Service of the letter dated 31st December, 2019 as late as on 18th February, 2020, more particularly after this Court in **Sk. Mohd. Rafique** (supra) had upheld the MSC Act as *intra vires* on 6th January, 2020, is sufficient to arouse suspicion [in light of the appointment letters bearing the same reference number, the verbatim same joining letters of the 3 (three) appointees referred to above and all 12 (twelve) appointees joining on the same date] and to support a reasonable inference that the documents relating to appointment, joining and seeking approval of service of the appointees have been ante-dated to lend colour of a prior recruitment process which is *ex facie* illegal, a nullity and thus cannot confer any right on the beneficiaries.

k). We, therefore, unhesitatingly record that the entire exercise is vitiated by manifest fraud. The appointment of this petitioner, in view of the ante-dated documents, pollutes the stream of public employment and strikes at the foundation of a fair and transparent recruitment process.

l). Thus, Kazi Md. Jahirul Hassan is held to have failed to disclose any legal right, much less its infringement, warranting interference.

33. No. 11 – Sk. Saifuddin:

a). The name of this petitioner appears in the compilation chart provided by Mr. Ahmadi combined with Raj Kumar Bag as a co-petitioner in WP (C) 557 of 2024, and not against a separate serial number.

b). It is claimed that he was appointed as a Group D Staff on 20th January, 2016 in GWH Madrasah pursuant where to he joined on 1st February, 2016.

c). The reason for not entertaining the claim of Raj Kumar Bag applies *mutatis mutandis* to this petitioner. The *Ad hoc* Managing Committee for GWH Madrasah, constituted in terms of the interim order dated 17th June, 2014 and continued by the final order dated 24th July, 2014 of the Division Bench of the High Court, lacked the authority to initiate the recruitment process.

d). The *Ad hoc* Managing Committee having undertaken the recruitment process without authority, the claim of Sk. Saifuddin must also fail.

34. No.12 – Mosaddek Hossain:

a). This petitioner figures in the compilation chart provided by Mr. Ahmadi along with Abdur Rahman Gazi as a co-petitioner in WP (C) 653 of 2024, and not against a separate serial number.

b). It is claimed that he was appointed as a Laboratory Attendant on 30th January, 2016 in SHMTAAH Madrasah, district North 24 Parganas pursuant where to he joined on 8th February, 2016.

c). Whatever has been found against Abdur Rahman Gazi squarely applies to this petitioner too.

d). Proper recruitment procedure not having been followed, the claim of Mosaddek Hossain cannot be entertained.

35. No. 13 – Md. Mir Mosarraf Hossain:

a). The claim of this petitioner (not included in the compilation chart provided by Mr. Ahmadi) is being considered based on a justified appeal made by Ms. Choudhury. Referring to paragraph 7 of our order dated 19th November, 2025, Ms. Choudhury submitted that 5 (five) cases of nonteaching staff were allowed to be projected. Since the

cases of only 3 (three) non-teaching staff have been projected and argued, she prayed for an opportunity. We found Ms. Choudhury to be right in her submission; hence, we proceed with consideration of the claim of this petitioner which stands on a slightly different footing.

b). This petitioner's claim is that he was appointed on 8th October, 2015 on the post of Clerk in Milangarh Sajjadia High Madrasah⁵⁰, district Malda. The appointment letter dated 8th October, 2015 issued to this petitioner reads as follows:

"By the order of the Management as per decision on Dated 08/10/2015, vide meeting No.13/M.C./2015, I am to inform you that you are appointed to act as Clerk of the Madrasah in the vacancy of Non Teaching Group-C staff in the Madrasah under the 10% Management Quota of the above mentioned Govt. Notification (Item No.6).

Salary will be admissible as and when the letter of your appointment is duly approved by the competent authority with the salary of Rupees 8,840/(Basic Pay) including Grade Pay and Other Allowances per month as per G.A. Rule in the Scale of Pay Rupees 5,400/--25,200/- and Grade Pay of Rupees 2,600/- with effect from the date of joining in the said Madrasah.

You are also requested to join the duty of the Madrasah within seven (7) day.

It is noted that all these would be subject to the result of pending case if any in this regard before the Hon'ble Calcutta High Court/Supreme Court."

c). A letter written by this petitioner on 8th October, 2015, addressed to the Secretary of MSH Madrasah, reveals that he joined his post on 14th October, 2015. The discrepancy is telling, which is not explained.

d). In any event, the appointment letter cautioned this petitioner that his appointment and joining would be subject to the result of the pending case before the High Court/this Court. This is clear indication that the appointment was conditional.

e). Insofar as the mode and manner of appointment of this petitioner is concerned, it is clear that he was accommodated in the 10% management quota permitted by clause 6 of NOTIFICATION-I. Clause 6 reads as follows:

"6. Not more than 10% of the total sanctioned posts including the post of the Headmaster/Headmistress/Assistant Headmaster/Assistant Headmistress of the concerned school may be kept reserved and to be filled up from the members of the minority organization to which the educational institution belongs. No separate advertisement will be required. But the minimum academic qualification, professional qualifications, teaching experience, age limit and citizenship as specified for recruitment for the post shall not be relaxed under any circumstance."

f). Bare perusal of clause 6 evinces that no advertisement was required to be issued. Anyone being a member of the minority organisation to which the educational institution belongs, subject to fulfilment of academic and professional qualifications, age and citizenship, could be appointed as per the choice of the Managing Committee. This clause, introduced subsequent to striking down of the provisions of the MSC Act, effectively negated merit-based selection at least in respect of 10% of the sanctioned posts thereby offending the mandate flowing from law.

g). However, because of his conditional appointment, this petitioner has no legally protected right which can be judicially enforced. With the decision in **Sk. Mohd. Rafique** (supra), the MSC Act was upheld and NOTIFICATION-I (*qua* the recognised aided madrasahs) and NOTIFICATION-II, which held the field in the interregnum, stood impliedly repealed and ceased to be operative. Since this petitioner's appointment was subject to

⁵⁰ MSH Madrasah

the result of pending cases, if any, before the High Court/this Court, allowing of Civil Appeal No.5808 of 2017 rendered such appointment *nonest*, being contrary to law.

h). Even otherwise, though not challenged, clause 6 of NOTIFICATION-I is wholly unconstitutional. Appointment on a post entailing expenditure from the public exchequer cannot be made save by a procedure consistent with the principle of equality and equal opportunity enshrined in the Constitution. Such clause sanctions a closed-door appointment process for posts funded from the public exchequer, thereby taking it outside the ambit of safeguards for public employment. A regime where public money is used to sustain private patronage in appointments cannot, thus, be countenanced.

i). Keeping these principles in mind, it seems that this petitioner stole a march merely because he is a Muslim. Why any other Muslim aspirant was not considered, is not forthcoming. Competition among eligible members of the Muslim community would have brought about a semblance of fairness, transparency and legitimacy in the recruitment process, which at least could be urged as a factor for sustaining clause 6.

j). Appointment without facing any competition being the anti-thesis of Articles 14 and 16, a complete exemption from competition is indefensible once Government aid is received. Aid without accountability is constitutionally unsustainable. Minority right under clause (1) of Article 30 of the Constitution does not and cannot include the right to burden the exchequer with appointments made through a non-competitive, opaque process.

k). Md. Mir Mosarraf Hossain's appointment being based on clause 6 of NOTIFICATION-I cannot, therefore, persuade us to hold that the same was validly made.

36. The stage has now reached to record our conclusions.

37. A wholesome consideration of the materials placed on record completely contradict the claims of the 13 (thirteen) petitioners that they were validly appointed in the madrasahs concerned. Spurious claims have been raised by these 13 (thirteen) petitioners, which obviously are devoid of any merit. The appointments in question are a blot on the system; they must, therefore, be erased and not protected.

38. The above 13 (thirteen) petitioners, it was claimed, were the worst victims of arbitrary action. If this be the *high-water mark* of arbitrariness alleged, the cases of the other petitioners must necessarily be still weaker and undeserving of attention. One can only speculate as to what merit, if any, the cases of the others disclose to justify invocation of the writ jurisdiction of this Court for relief. Since none of these 13 (thirteen) petitioners has set up any case for interference, we are not inclined to look into the claim of any of the other petitioners.

39. We now proceed to consider the argument of Mr. Ahmadi, recorded in paragraph 18. Such an argument commands attention for providing an additional reason in law to invalidate the appointments of all the petitioners who came to be appointed after 14th March, 2016, without this Court's leave.

40. In this connection, we bear in mind the distinction carved out by this Court between quashing of an order and staying operation of an order. In **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association**⁵¹, a 3-Judge Bench explained:

10. ... While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the

⁵¹ (1992) 3 SCC 1

passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.

41. In view of the order dated 14th March, 2016 granting stay, the judgment and order of the Division Bench under appeal, in which the judgment and order dated 12th March, 2014 of the Single Judge had merged, did not get “*wiped out from existence*”. However, definitely the same was the operative judgment and order until 14th March, 2016; and, as soon as the stay was granted, it became inoperative. The order of stay read with the subsequent order dated 17th May, 2018, referred to above, thus, created a vacuum. Neither the MSC Act nor NOTIFICATION-I or NOTIFICATION-II could operate, which were issued in the aftermath of the two judicial decisions (Single Bench and Division Bench) of the High Court. To overcome the stalemate regarding filling up of vacancies, the Managing Committees of the madrasahs seeking to fill up vacant posts ought to have approached this Court to guide them as to which law should they follow. They could not have, on their own, proceeded with the appointment process perceiving NOTIFICATION-I or NOTIFICATION-II to be still valid and operative *qua* the madrasahs. As a stream cannot rise above its source, NOTIFICATION-I and NOTIFICATION-II, owing its existence to the judgments of the Single Judge and Division Bench of the High Court dated 12th March, 2014 and 9th December, 2015, respectively, could not remain operational once the latter judgment was stayed. Indeed, appointments came to be made in a couple of cases post reservation of judgment in Civil Appeal No.5808 of 2017 by this Court. The undue haste in making the appointments without waiting for pronouncement of the reserved judgment and/or the ante-dating of documents to evade the consequences thereof, speak for itself. Finding merit in Mr. Ahmadi’s argument, and apart from what we have held above as to unsustainability of the petitioners’ claims, we also hold that any appointment made in any madrasah after 14th March, 2016 without obtaining express permission of this Court is also *ex facie* illegal and cannot be sustained.

42. Consequently, we do hereby reject the claims of all the petitioners. Since the claims stand rejected, there is no question of these petitioners being entitled to any arrears of salary and allowances. Appointments not having been made either in accordance with NOTIFICATION-I or NOTIFICATION-II, the State cannot be fastened with any liability to release payment. Orders passed on the writ petitions restraining the respondents from dislodging these petitioners from service and/or directing payment of admissible salary and allowances stand vacated forthwith.

43. For the reasons aforesaid, the entire batch of writ petitions fails and are, hereby, dismissed.

44. Since the interim orders have been vacated, the vacant sanctioned posts may now be filled up as per the recommendations of the Commission.

45. The writ petitions being thoroughly misconceived, we would have been justified in imposing costs. However, since we are not directing release of arrears of salary and allowances and also taking a lenient view, we refrain from burdening the petitioners with costs.

46. Connected applications, if pending, shall stand disposed of.