

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 10588 of 2025

CNI Girls Primary School

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Kamalesh Bhattacharyya
: Mr. Biswarup Biswas
: Mr. Aninda Bhattacharya

For the State : Mr. Indrani Chakraborty, Ld. AGP
: Mr. Shaunak Ghosh

Heard on : **31.07.2026**

Judgment on : **17.09.2026**

Uploaded on : **17.09.2026**

Rai Chattopadhyay, J. :-

- 1.** The matter relates to approval of appointment of the petitioner/a Christian Minority School. The petitioner/Christian Minority School has challenged an order of the Commissioner of School Education, West Bengal dated September 18, 2024 in the instant writ petition.
- 2.** Before entering into the findings of the respondent in the said impugned order, the relevant factual background may be stated as hereinbelow. The petitioner/school states that the school has six sanctioned teaching posts and all fell vacant due to retirement of the approved teachers in those sanctioned posts. The school authority commenced recruitment process to fill up the six vacant posts of teachers by strictly following the special Rules for recruitment in Christian Minority institution. The petitioner school

says that there is provision under the Rules for *post facto* approval of appointment of teachers who have been selected and appointed by the school authority, after their joining the post. The school authority submitted a panel of six teachers after completion of the recruitment process for approval of the respondent/District Inspector of Schools, Primary Education, Kolkata/respondent No. 2. The petitioner school is aggrieved that the respondent No. 2 though approved appointment to five teachers out of the six empanelled, withheld approval of one that is the respondent No. 5, for filling up the vacant post left by the approved teacher Smt. Karuna Tudu, which was to be filled up by the said newly appointed teacher. According to the school authority, the erstwhile teacher namely Smt. Karuna Tudu was an approved teacher who was serving against the said sanctioned post. The post fell vacant due to retirement of the said approved teacher Smt. Karuna Tudu. Hence, the school authority, who is the recognized authority as per law for selection and appointment of teacher in the said minority institution, undertook selection process, selected total six assistant teachers and appointed all the said six successful and selected teachers in the school. It is stated that respondent No. 5/Ms. Rina Mondal, one of such assistant teachers appointed by the school authority, against the vacant sanctioned post, has been working in the school since January, 2021. The school has submitted that the respondent authority has acted only arbitrarily and unreasonably by allowing approval of appointment of five out of the six assistant teachers so appointed by the school and withholding approval of one of them.

3. It is further submitted that the first round of litigation was by filing writ petition No. WPA 10818 of 2024 by the school authority praying inter alia for an order to forthwith approve the appointment of Ms. Rina Mondal the 6th teacher (respondent No. 5 in the instant writ petition). The said round of litigation ended vide

order dated June 13, 2024 with direction by the Court upon the respondent/Commissioner of School Education, West Bengal to consider and dispose of the petitioner's representation dated February 21, 2024 in this regard.

4. The resultant order is that dated September 18, 2024 passed by the Commissioner of School Education, West Bengal which is challenged in the instant writ petition.
5. It transpires from the impugned order dated September 18, 2024, that the said respondent authority called for the following documents from the school authority vide the letter dated July 25, 2024 :-

"1. The documents showing that the school is enjoying special rules by the State Government.

2. Recruitment Rules which the School Authority followed for recruitment of Assistant Teacher and reason thereof.

3. Sanctioned strength of teachers/staff of the school with supporting documents.

4. Documents related to the recruitment procedure.

5. Remaining documents as per their undertaking on 27/06/2024."

***** ** ** ** *****

"After perusing the documents it has surfaced that the school authority followed the notification no. 198-SE/EE/10R-1/2015 dated 3rd, March, 2016 as recruitment rules for the recruitment of six teachers at a time by giving wide publication in newspaper on 08/10/2020. On that day the school has two approved teachers and with these six teachers, the number of teachers reached to 8(eight)."

6. The respondent states that the school submitted some of those, documents, as sought for, but not all. The respondent authority has found in the said impugned order inter alia that, 6 teachers have been recruited by the school in accordance with the notification dated March 3, 2016 [198-SE/EE/10R-1/2015], by publishing notification in newspaper on October 8, 2020; on the said date the school had 2 approved teachers in service. Thus the

total number of teachers, including those for whose appointment, the notification was published, had reached to 8; the respondent authority has conceded to the fact that by order of the National Commission for Minority Educational Institutions, dated June 13, 2007, the petitioners school was conferred minority status; however, it has been held that in spite thereof, the school authority had not taken any steps for sanction of the teacher's strength, from any competent authority; the respondent in the said impugned order is not agreeable to accept that sanction of posts of teachers prior to conferment of the minority status upon the institution, should bear any validity even after the school being declared as a minority institution; he therefore writes in the impugned order that reliance by the school upon some documents of teachers of the school, prior to sanctioning the minority status as sanctioned strength, is not acceptable to him; paragraph 3 of the notification dated March 3, 2016, has been amply relied on, which is quoted bellow:-

"Appointment shall be made against the regular sanctioned vacant posts against which the salary in the form of basic pay alongwith other usual allowances have been allowed from Government exchequer before issuance of this order or to be allowed as per specific Government Order. However, no steps shall be taken for filling up the sanctioned vacant post where the Pupil Teacher Ratio of the school is less than 40:1."

7. The said respondent authority has stated further that number of students in the school in 2020 were 259, whereas in 2021 the number were 263. On the date of advertisement [2020] the pupil-teacher ratio was 32.3:1 and in the year of appointment [2021] that was 32.8:1; he says in the impugned order that none of the data complies with the requirements of the notification, as both fall below the ratio 40:1, as provided therein. That, appointment of teacher not fitted in accordance with the statutory ratio of pupil, and teacher, is not permissible, the respondent authority has stated in the said impugned order.

- 8.** Final decision of the respondent authority in the said impugned order is that appointment of Ms. Rina Mondal is not permissible in accordance with law, as she falls below the pupil teacher ratio bracket in the school; further that, the vacancy occurred due to retirement of the erstwhile teacher namely Karuna Tudu, cannot be considered as a vacancy of sanction strength of the school, for the reasons that no document could be produced showing Karuna Tudu to have received salary from the government exchequer and that vacancy occurred long ago, prior to conferment of minority status to the institution, which cannot be treated as sanctioned strength of the school.
- 9.** For these reasons as stated above, the prayer of the school authority for approval of appointment of the present respondent No.5/teacher, was rejected by the respondent/Commissioner of School Education, West Bengal, in the said impugned order dated September 18, 2024.
- 10.** Mr. Kamallesh Bhattacharyya, learned advocate for the petitioner has submitted that the said impugned order dated September 18, 2024 is baseless and the decision of the authority is based on no evidence. He submits on the basis of letter of the District Inspector of Schools, Secondary Education, 24 Paraganas dated April 15, 1969 that service of Smt. Karuna Tudu was approved with effect from April 18, 1969. He submits that the Smt. Karuna Tudu retired from the school on August 30, 1997. Since thereafter, the said post has fallen vacant and the present petitioner was appointed in place of Smt. Tudu, an approved whole time teacher of the school.
- 11.** Mr. Bhattacharyya, by referring to another order of the District Inspector of Schools dated December 29, 2022 has submitted that, not only a single post was vacant due to retirement of Smt. Karuna Tudu but already there was vacancy available on account of

retirement of Smt. Pratibha Naskar, who retired on June 30, 1997 against the said vacancy of Smt. Pratibha Naskar another teacher namely Sri Sandip Kumar Routh was appointed.

- 12.** Similarly, with reference to the order of the District Inspector of Schools, Primary Education, Kolkata, it has been shown that petitioner Smt. Anikita Goswami was appointed in the post which fell vacant due to retirement of Smt. Binita Ghosh (October 31, 2006), Romario Mondal was appointed in the vacant post earlier occupied by Smt. Chandra Sur retired on October 31, 2020. Similarly, against an post which stood vacant due to retirement of Smt. Anjali Das retired on April 30, 2009, the petitioner Smt. Sudipa Das has been appointed and the petitioner Smt. Sriparna Mallick has been appointed to the vacant post left by Smt. Rebeka Banerjee retired on April 30, 2003.
- 13.** Mr. Bhattacharyya has submitted that in the manner as stated above, the other five assistant teachers who were appointed through the same selection process and had been on the same panel as that of the present petitioner, their appointment was approved by the respondent/District Inspector of Schools Primary Education, Kolkata. For this writ petitioner, the respondent allegedly tends to have certain reservation not to approve her appointment, due to certain untenable grounds, Mr. Bhattacharyya has submitted. On the basis of the documents as relied on by the petitioner as discussed above, Mr. Bhattacharyya has stated that the finding of the respondent authority that Karuna Tudu in whose place Smt. Rina Mondal petitioner is intended to be accommodated, has never received salary from Government Exchequer, is an unfounded and perverse finding of the respondent authority, based on no materials.
- 14.** Mr. Bhattacharyya has raised strong objection as to the finding of the respondent authority in the impugned order that the pupil-

teacher ratio in the school shall not require appointment of the present petitioner. It is submitted that the respondent authority has committed error in considering the students strength of the school for the year 2020 and 2021 and not the latest data. According to the petitioner, at present, the students' strength of the school stands to be 297.

15. At this juncture, Mr. Bhattacharyya has referred to the schedule of the Right of The Children to Free and Compulsory Education Act, 2009 to submit that for 1st class to 5th class the norms and standards as provided in the statute regarding number of teachers required is five teachers and one head teacher for a school where above 200 children are studying. In such view of the matter, Mr. Bhattacharyya has submitted that considering the students strength of the school which is 297, the pupil-teacher ratio in the school duly conforms with the provisions under the Rules as stated above, that is 40:1. Mr. Bhattacharyya, learned advocate has referred to an order of this Court dated August 25, 2023 in ***Shri Dinabandhu Chongdar versus the State of West Bengal and others (WP.St 147 of 2010)*** which has been subsequently affirmed by Hon'ble Supreme Court to submit that in case of a similarly situated person, the Hon'ble Division Bench has been pleased to grant relief of approval as prayed for by him. The respondent's arguments are based principally on the ground of the pupil-teacher ratio allegedly not having been in conformity with the prescribed Rules, the number of students at the time of publication of advertisement in 2020 and recruitment held in 2021, being much less. The other points urged by the respondent authority is with regard to the irregular procedure of appointment of the petitioner if not the same has been alleged to be an illegal one.
16. Having heard learned advocates for the respective parties and perusing the documents on record including the impugned order

dated September 18, 2024, the Court finds that the order of the Commissioner of School Education, West Bengal as above is based principally on three grounds. Firstly, that the vacancy in which the school appointed the respondent No. 5 is not a sanctioned vacancy for the school and the previous incumbent therein has not been a salaried person from the Government Exchequer; secondly, that the previous incumbent in the post now retired, has been superannuated much prior to the date of conferment of minority status to the school and lastly that in accordance with the strength of students back in the year 2020 and 2021, the pupil-teacher ratio does not really support employment of the petitioner as a teacher in the school.

- 17.** So far as the respondent's contention regarding the erstwhile incumbent in the post Smt. Karunda Tudu is concerned that she may not have been a duly approved teacher or been paid with salary from Government Exchequer, appears to be a perverse finding in view of the letter of the District Inspector of Schools, 24 Paraganas dated April 15, 1961. That is, an approval letter of Smt. Karuna Tudu duly sanctioned by the respondent/DI. Also, there are other documents available on record to show that the respondent authority duly possessed service records of the previous incumbent, like as said, the approval letter of Smt. Karuna Tudu and also the option exercised by Smt. Tudu dated March 07, 1990 for benefits under ROPA, 1990, leave sanctioning memo issued by the SI, in favour of Smt. Karuna Tudu, monthly return from the school authority, acquaintance role of the school, approval of appointment of teachers of the petitioner/school including Smt. Karuna Tudu duly counter-signed and attested by the SI, etc. These documents, having been in possession of the respondent authority, the finding as above by the Commissioner of School Education appears to be *de hors* these documents, hence perverse.

- 18.** The discussion as above, duly answers the second ground of objection of the Commissioner of School Education in the said impugned order, that is, Smt. Karuna Tudu has not been engaged within the sanctioned strength of the school. Had she not been in the sanctioned strength of teachers in the school, the District Inspector of Schools, 24 Paraganas would not have issued an approval order of her appointment as discussed above that is, dated April 15, 1961. Approval of Smt. Karuna Tudu in scale and her continuance with all service benefits is clearly indicative of the fact that the post she held was a permanent sanctioned post. Therefore, the said post when fell vacant, is required to be filled up with fresh appointment against the same. The initiative of the petitioner school for appointment of the teachers including the present petitioner is only in furtherance of such requirement of the schools. The Commissioner of School Education finds without consulting with any of the documents or considering the facts on record, by stating that the petitioner's appointment in the vacant post where Smt. Karuna Tudu used to work was beyond sanctioned strength of the school, appears only to be arbitrary. In this regard, it is necessary to mention that appointment of the rest of the five persons who were appointed along with the present petitioner, has already been approved by the respondent authority Appointment of Sri Sandip Kumar Routh in the vacant post where Smt. Pratibha Naskar used to work, fortifies and strengthens the case of the present respondent No. 5. That is, for the reason that Sri Routh has been accommodated against a retired teacher who has retired even prior to Smt. Karuna Tudu, against whose post the present respondent No. 5 has been accommodated.
- 19.** An alleged ground of delay is also forthcoming in the said impugned order. The respondent authority has submitted that Smt. Karuna Tudu used to work in the post much prior than conferment of minority status to the institution. However, with

conferment of minority status to the institution, its basis structured requirements do not change. It can never be understood that with conferment of minority status, there has been change in number of students (to be lesser) or sanctioned posts of teachers have been reverted back immediately thereafter.

- 20.** Lastly, so far as the respondent's contention regarding the pupil-teacher ratio is concerned, this Court is of considered view that the respondent authority should act with adequate and required dynamism in considering such type of issues. In taking into consideration the students strength of the year 2020 and 2021 in the year 2024 is impractical not to serve the requirement of the school as on the date. It is undisputed that as on the date of consideration of the issue by the respondent Commissioner of School Education, West Bengal on September 18, 2024, student strength of the school was 497 that is, much higher than what was in the year of advertisement or recruitment. Accordingly, it was but only natural for the respondent authority to take into consideration the present strength of students to ascertain the number of teachers required for the purpose of imparting education in the school.
- 21.** The schedule (norms and standards for a school) of the Right of Children to Free and Compulsory Education Act, 2009 has specifically prescribed under Clause 1(a) that in a school having children above 200 for classes 1st to 5th, the pupil-teacher ratio (excluding the head teacher) shall not exceed 40 that is, in other words in a school where the students strength for classes 1st to 5th is more than 200 the pupil-teacher ratio should be 40:1 (excluding the head teacher). This being the specific statutory provision and considering the material on record that the students strength of the school being near about 300 the respondents authority cannot justifiably and successfully plead that in consideration of the pupil-teacher ratio of the year 2020 or 2021 petitioner's

appointment is not sanctioned by the prescribed law. On the contrary, with reference to the statutory provision as above it is specifically found that the appointment of the present petitioner is most justified as the pupil-teacher ratio in the school satisfied the statutory criteria of being 40:1, only after her appointment to the school.

22. On the entire discussion as made above, this Court is of considered view that the instant writ petition should succeed and the petitioner's prayer for approval of its teacher that is, respondent No. 5 should be allowed.

23. Hence, writ petition No. WPA 10588 of 2025 is allowed with the following directions:-

i) The impugned order of the Commissioner of School Education, West Bengal dated September 18, 2024 is set aside.

ii) The concerned respondent that is, the District Inspector of Schools, Primary Education, Kolkata/respondent No. 2 is directed to immediately grant approval of appointment to the respondent No. 5, an empanelled successful candidate, appointed by the petitioner/school as the teacher.

iii) Appropriate pay fixation be made for the respondent No. 5 in the said school by the respondent No. 2 and arrear salary, if any, may be paid by the same to the respondent No. 5.

iv) The entire exercise as above, should be concluded by the respondent No. 2 within eight (08) weeks from the date of communication of this judgment.

24. Writ petition No. WPA 10588 of 2025 is thus, allowed and disposed of along with applications pending, if any.

- 25.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)