

# Calcutta High Court

HON'BLE JUDGE(S): **RABINDRANATH SAMANTA, J**

**KRISHNENDU BISWAS V. STATE OF WEST BENGAL**

WPA - 24767 of 2022, decided on 26/04/2023

**Constitution of India , Art.21, Art.21A, Art.226— Service benefits - Claim for - Petitioner engaged as Community Tutors/Bridge Course Instructors subsequently renamed as Shiksha Mitras were engaged to carry out project namely Sarva Shiksha Mission - Clarificatory memo stated that contractual employees doing jobs relating to Sarva Shiksha Abhiyan were entitled to get benefit in addition to enhanced remuneration - Also, employees would remain engaged till they attain 60 years of age and State Govt. would bear expenditure if Govt. of India stops funding PBSSM Project before cessation or engagement of attaining 60 years of age - State Project Director issued memorandum by which engagement of Shiksha Mitras in such educational centres ceased and were re-designated as education volunteer temporarily on contractual basis for a temporary period of 2 years - Said Memorandum was violative of previous Govt. Order and clarificatory memorandum and were violative of Arts.21 and 21-A - Order approving arbitrary memorandum was vitiated with illegalities and arbitrariness and same quashed - Directions issued to State respondents to allow petitioner to perform duties as a Shiksha Mitra in educational institution till age of 60 years and to extend all service benefits to petitioner.**

(Para 10, 24, 25, 27, 28, 30)

Case Referred :

Chronological Paras

(2021) WPA 16713 of 2016, Dt. 26-11-2021

Para No.( 6, 20)

Name of Advocates

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Samim Ahammed, Ms. Ambiya Khatun for Petitioner; Biswabrata Basu Mallick, Sanjib Das, Madhusudan Mukhopadhyay for Respondent.

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1. **ORDER :-**Challenging the legality of the order dated 30 June, 2022 passed by the State Project Director, Paschim Banga Sarva Shiksha Mission rejecting his claim, the petitioner by preferring this writ petition seeks similar service benefits as available to Para Teachers, Voluntary Resource Persons (VRPs), Shiksha Bandhus and others under Sarva Shiksha Avijan.
2. The background facts which led to the filing of the writ petition may be adumbrated as under: The petitioner is a Shiksha Mitra. Initially, he was engaged as a Bridge Course Instructor in a Bridge Course Centre in a school on 5

August, 2004 to assist backward children in their education. Since his joining, he has been discharging his duties diligently. Presently, he is working as an Education Volunteer at Kechuadanga B.C. Vidyaniketan (HS).

The Government of India launched a scheme namely Sarva Shiksha Abhiyan in the year 2000-01 to provide elementary education to all children of the age group of six to fourteen. All the Shiksha Mitras including the petitioner are working under the said scheme. The scheme was introduced to extend the benefit of alternative schooling to those children who left out school.

In West Bengal, this alternative schooling programme was launched in different mode and the persons who are actually carrying out the scheme are designated as Para Teachers, Shiksha Mitras, Special Educators, Volunteer Resource Persons and Shiksha Bandhus. All of them were engaged on contractual basis for a limited period. The programme of alternative schooling was launched in different Bridge Course Centres of Upper Primary Sectors and Rabindra Mukhya Vidyalaya.

At the beginning, in order to engage Bridge Course Instructor, the District Project Director invited applications from the intending candidates through Panchayat Samity and Gram Panchayat. Accordingly, Hogalberia Gram Panchayat by notice invited applications from the eligible candidates having qualification of graduation for engagement of Bridge Course Instructors. Ultimately, the petitioner was engaged as a Bridge Course Instructor in Raghunathpur Upper Primary School. His engagement was approved by the Project Director vide memo dated 21 July, 2004.

By a memo dated 28 January, 2005, the Block Development Officer, Karimpur-I Development Block, Nadia made a proposal to the District Project Director to convert the Bridge Course Centre in which the petitioner was working to Rabindra Mukhya Vidyalaya. Accordingly, the Bridge Course Centre was converted to Rabindra Mukhya Vidyalaya.

By a memo dated 4 August, 2004, the District Project Director prescribed procedure in detail for engagement of Shiksha Mitra (the then Community Tutor).

Para Teachers and Shiksha Mitras were engaged under the aforesaid scheme in the year 2004. The duties of Para Teachers were to find out weaker students and to teach them whereas, the duties of Shiksha Mitras, like the petitioner, were to teach the students who were left out from regular schooling. On the other hand, Voluntary Resource Persons and Shiksha Bandhus were engaged as non-teaching staff.

Considering the long and diligent service of Para Teachers, Voluntary Resource Persons, Shiksha Bandhus, Special Educators, the Secretary, School Education

Department (Primary rd Branch) by issuing a memo dated 23 April, 2010 declared that they would be reengaged until they attained the age of 60 years or until Sarva Shiksha Project was wound up. By the memo, the remuneration of those contractual employees was enhanced. The petitioner submits that though he is similarly situated and working under the same scheme, the benefit as extended to the aforesaid persons, was not extended to the Shiksha Mitras.

By a memo dated 9 June, 2010, it was clarified therein that remuneration of contractual teachers and others who were associated with Paschim Banga Sarva Shiksha Mission would be enhanced at the rate of 5% of the existing pay on expiry of every 3 years and they would remain engaged till they attained the age of 60 years even if the Government of India withdrew the scheme. By issuing another memorandum dated 9 August, 2010, by the Officer on Special Duty and Ex-Officio Deputy Secretary, School Education Department it was clarified therein that the persons like the petitioner who were working through West Bengal Council of Rabindra Open Schooling and discharging their duties under Sarva Shiksha Mission would also remain engaged until they attained the age of 60 years. This memorandum also speaks of providing enhanced remuneration at the rate of 5% of the existing remuneration on expiry of every 3 years and also for retiral benefits.

The petitioner complains that even after issuance of the aforesaid memorandums, his honorarium has not been enhanced.

3. By an order dated 16 November, 2010 Special Educators who were working under the same scheme were also extended with the similar benefits but the order is silent about Shiksha Mitras.

4. The petitioner himself and though his association by making representations sought for equal benefits as extended to others under the same scheme, but to no effect.

5. After the Right of Children to Free and Compulsory Education Act, 2009 came into force, the Project Director, Paschim Banga Sarva Shiksha Mission by issuing a letter dated 28 February, 2013 informed all the District Magistrates to engage Shiksha Mitras having requisite qualification as Education Volunteer in Primary and Upper Primary Schools. The petitioner submits that the memo dated 28 February, 2013 is illegal and arbitrary. The petitioner asserts that he is entitled to remain in his service till he attains the age of 60 years. By the aforesaid memo. it was stated therein that the service of Shiksha Mitras re-designated as Education Volunteer would be extended up to 2 years only. The petitioner and other Shiksha Mitras, because of the aforesaid memo dated 28 February, 2013,

were re- designated as Education Volunteer with effect from 9 October, 2013. He joined as Education Volunteer in Kechuadanga B.C. Vidyaniketan as per the direction of the respondent authority. The petitioner alleges that he was compelled to make his endorsement accepting the terms and conditions of engagement that he would have to serve as an Education Volunteer for a period of only 2 years. The petitioner asserts that even after expiry of 2 years, he has been working as Education Volunteer in the said school. In such context, it may be noted here that the Principal Secretary, School Education Department (Primary Branch) by issuing a notification dated 28 March, 2012, decided to extend benefits to all Shiksha Mitras who were working as contractual teachers under Sarva Shiksha Abhiyan to upgrade their academic qualification in terms of the Act of 2009. The petitioner applied for enhancing his qualification which was duly received by the respondent authority on 15 May, 2012, but no opportunity was given to him to enhance his qualification

6. The petitioner has been discharging his duties associated with the Sarva Shiksha Abhiyan or Mission for last 19 years. If he is not extended the benefit to serve under the said scheme for 60 years, the petitioner will lose his employment at the late stage of his life. Claiming that he should be extended the same benefits as available to Para Teachers, Shiksha Bandhus, Special Educators, etc., the petitioner filed a writ petition being WPA 16713 of 2016 against the respondent authorities. By an order dated 26 November, 2021, the writ petition was disposed of by a learned Single Bench directing the State Project Director, Paschim Banga Sarva Shiksha Mission to consider and dispose of a comprehensive representation to be filed by the petitioner within a specified time. However, by the impugned order dated 30 June, 2022, the State Project Director turned down the representation made by him.

7. Under the aforesaid circumstances, the petitioner prays for necessary direction that the impugned order dated 30 June, 2022 passed by the State Project Director be quashed and the petitioner be extended the tenure of service up to 60 years with all other benefits as extended to Para Teachers, Voluntary Resource Persons, Shiksha Bandhus and others under Sarva Shiksha Abhiyan.

8. The respondent No. 2, the State Project Director, Paschim Banga Sarva Shiksha Mission, in his affidavit-in-opposition, states that in view of the increase of out of school and dropout children in the State, Paschim Banga Sarva Shiksha Mission, previously known as Paschim Banga Rajya Prathamik Siksha Unnayan Sanstha, in order to universalize elementary education in the State, drew a MOU with the West Bengal Council of Rabindra Open Schooling (in short, 'WBCROS') in the year 2003-04 which facilitated utilization of State Centres of Rabindra Mukta

Vidyalaya (RMV) under WBCROS to impart training to such out of school and dropout children of the upper primary level, i.e., Class VI to Class VIII.

9. In terms of the MOU, a guideline for alternative schooling for out of school and dropout children was issued vide memo No. 369(20)/CM and AS/PBRPSUS/2003-04 dated 9 September, 2003. As per the guidelines, personnel with appropriate educational qualification were engaged by the concerned Village Education Committee (VEC)/Ward Education Committee (WEC) for imparting training to such children and such trainers were called Community Tutors, subsequently renamed as Shiksha Mitras. Such study centres where the Community Tutors were working were informal in nature and not permanent/regular school and they were paid remuneration by the respective Village Education Committee or Ward Education Committee. Community Tutors were engaged purely on temporary basis for 6 months only to work in the Informal Alternative and Innovative Education (AIE) Study Centres run by Rabindra Mukta Vidyalaya under West Bengal Council of Rabindra Open Schooling which was set up as and when need was felt to provide tutorial support to those children. Engagement of such Community Tutors had no scope for extension/renewal because such Centres were set up on need basis.

10. By a memo dated 12 May, 2006 partially modifying the memo dated 9 September, 2003, the Community Tutors were renamed as Shiksha Mitras, however, provision of their engagement was introduced with enhanced period of 1 year engagement instead of 6 months as stipulated earlier on the condition that there would be break in between vide memo dated 11 May, 2009. As per memo dated 9 September, 2003, remuneration of Shiksha Mitras was Rs. 1,000/- per month and such remuneration was paid by the respective Village Education Committee or Ward Education Committee. Later on, vide memo dated 28 February, 2013, the remuneration of the Education Volunteers was fixed at Rs. 300/- per month per student subject to minimum of 5 students and maximum of 8 students. There was no fixed remuneration or honorarium as they were not like other contractual employees under Paschim Bangal Samagra Shiksha Mission.

11. After the Right of Children to Free and Compulsory Education Act, 2009 came into force on 1 April, 2010 and the West Bengal Right of Children to Free and Compulsory Education Rules, 2012 framed thereunder, all children between the age group of six to fourteen years were to be enrolled in formal schools vide a memorandum dated 15 December, 2010. It was stated therein that Rabindra Mukta Vidyalaya Centres run under the West Bengal Council of Rabindra Open Schooling could not continue after the enactment of the RTE Act. Subsequently, the State Project Director by issuing a memorandum dated 7 February, 2012 directed

that all the existing Alternative and Innovative Education Centres would be closed after 31 March, 2012 and this order was reiterated to the District Magistrates vide memo dated 4 April, 2012. With the closure of all Informal Alternative and Innovative Education Centres and those children being admitted to age appropriate classes in formal classes, services of the then Shiksha Mitras became redundant. By issuing another memorandum dated 30 March, 2012, the services of Shiksha Mitras attached to RMV Centres were extended for another 3 months up to 30 June, 2012 for ensuring maximum/optimum mainstreaming of all out-of-school children in formal schools. After 30 June, 2012, Shiksha Mitras completely ceased to exist with closure of all Alternative and Innovative Centres in the State. Since the erstwhile Shiksha Mitras who were attached to Bridge Course Centres had become out of employment, their services were utilized by temporarily tagging them as Education Volunteers in Primary and Upper Primary Schools obtaining their willingness to perform work to provide training to out of School Children. Accordingly, willing Shiksha Mitras of those Centres were rd engaged afresh vide memo dated 3 July, 2012 as Education Volunteers to assist the regular teachers in imparting special training to the children who were admitted to their age appropriate classes in formal schools. Such engagement was temporary in nature initially for 3 months which was extended up to the maximum period of 2 years provided they fulfilled some other basic criteria. As per this notification, remuneration of the Education Volunteers was fixed at Rs. 300/- per month per student subject to minimum of 5 students and maximum of 8 students. Because of this, their remuneration varied between Rs. 1,500/- and Rs. 2,400/- per month.

12. As per the agreement entered into by the Education Volunteers, they declared that they would not claim further or permanent engagement and the retiral/pensionary benefits from the employer. Besides, they agreed that they would not be eligible for regularization and would be guided by the relevant laws of contract. On such grounds, this answering respondent submits that the claim as made by the petitioner has no substance. Denying and disputing the averments as made in the writ application, this answering respondent submits that writ petition is liable to be dismissed.

13. However, the petitioner in his affidavit-in-reply denies the contents of the affidavit-in- opposition affirmed by the respondent No. 2.

14. It appears from the memo dated 21 July, 2004 (Annexure - P1) issued by the District Magistrate and District Project Director, Nadia, relating to approval of Bridge Course Centres and Bridge Course Instructors, that the petitioner Krishnendu

Biswas was engaged as a Bridge Course Instructor in a Bridge Course Centre namely Raghunathpur Primary School. In this connection, it would be apposite to mention that the Bridge Course Instructors were engaged in the Bridge Course Centres to implement the scheme of universalization of elementary education to the out of school and dropout children under the aegis of Paschim Banga Samagra Shiksha Mission, erstwhile Paschim Banga Rajya Prathamik Siksha Unnayan Sanstha. Admittedly, Bridge Course Instructors who were also called as Community Tutors were renamed as Shiksha Mitras pursuant to a memorandum dated 12 May, 2006 on modification of the earlier memo dated 9 September, 2003. Undisputedly, as per the direction of the District Project Director, the Bridge Course Centres where the petitioner was working was converted to Rabindra Mukta Vidyalaya.

15. It is the assertion of the petitioner that in West Bengal, Alternative Schooling Programme was launched in different mode and persons who were actually carrying out the scheme were designated as Para Teachers, Shiksha Mitras, Special Educators, Voluntary Resource Persons and Shiksha Bandhus and all of them were engaged on contractual basis for a limited period. The programme of alternative schooling was launched in different Bridge Course Centres of Upper Primary Sectors and RMV. It is also his assertion that the duties of Para Teachers were to find out weaker students and to teach them whereas the duties of Shiksha Mitras were to teach the students who left out from regular schooling. On the other hand, Voluntary Resource Persons and Shiksha Bandhus were engaged as non-teaching staff.

16. As admitted by the State respondent, the Shiksha Mitras/Bridge Course Instructors were previously called as Community Tutors. It is the case of the petitioner also that as a Shiksha Mitra, his duty was assigned to bring the dropout children to the educational centres and train them.

17. The bone of contention in the matter on hand hovers round the memorandum dated 7 February, 2011 and memorandum dated 28 February, 2013 issued by the State Project Director, Paschim Banga Samagra Shiksha Mission whereby all existing Alternative and Innovative Education Centres under RMV were closed after 31 March, 2012 and Shiksha Mitras were temporarily engaged as Education Volunteers for a maximum period of 2 years.

18. Learned counsel appearing for the petitioner submits that the memorandum dated 7 February, 2011 by which the educational centres under RMV were closed and the engagement of his client ceased is arbitrary and whimsical since this memo

has taken away the right of the petitioner which accrued in his favour by virtue of memorandums dated 9 June, 2010 and 9 August, 2010. According to learned counsel, enhancement of remuneration and the benefit of engagement till 60 years of age were admissible to his client. Learned counsel submits that by memorandum dated 9 August, 2010, School Education Department clarified that the contractual employees engaged in West Bengal Council of Rabindra Open Schooling are also entitled to get the benefit of additional enhanced remuneration and the benefit of engagement up to the age of 60 years. Learned counsel emphasizes that the educational centres where the Shiksha Mitras are working are still necessary to implement the scheme to provide elementary education to the children of the age group of 6 to 14 years, especially those children who are out of school or dropout.

19. On the other hand, learned counsel appearing for the State respondent submits that after Right of Children to Free and Compulsory Education Act, 2009 came into force with effect from 1 April, 2010 and the West Bengal RTE Rules, 2012 framed thereunder, all children of the age group of 6 to 14 years should be enrolled in formal schools and not in Alternative and Innovative Education Centres. According to learned counsel, after the advent of this Act, the informal education centres where the Shiksha Mitras were working have now been closed down and their engagement has automatically come to an end. Learned counsel points out that since the Shiksha Mitras were out of employment, the State, being sympathetic with them, engaged them as Education Volunteers initially for 3 months and maximum up to 2 years. Learned counsel submits that the Education Volunteers by entering into agreement, declared that after the expiry of the term of engagement, they would not claim either for regularization of their service or for permanent engagement.

20. As stated above, the petitioner, who was initially engaged as Bridge Course Instructor was called as Community Tutor. Subsequently, such designation was renamed as Shiksha Mitra pursuant to a Government memorandum dated 12 May, 2006 on modification of the earlier memo dated 9 September, 2003. However, the respondent No. 2, the State Project Director, Paschim Banga Sarva Shiksha Mission, in his affidavit-in-opposition filed in connection with WP 16713(W) of 2016, while gave details of the job assigned to different teaching and non-teaching staff on contractual basis, has admitted that the duty of Shiksha Mitra was to provide tutorial support to the out of school children in Informal Alternative and Innovative Educational Centres run by Rabindra Mukta Vidyalaya. As the relevant documents on record evince, for the purpose of engagement of a Shiksha Mitra, a candidate must possess a Bachelor Degree. As it is evident from the documents on record, Shiksha Mitras who were working in

various education centres namely, Rabindra Mukta Vidyalaya under the West Bengal Council of Rabindra Open Schooling, played important role to bring out of school or dropout children to those education centres and impart tutorial support to them. Even after the Right of Children to Free and Compulsory Education Act, 2009 came into force, the State recognized the importance of the role of the Shiksha Mitras. After the aforesaid Act of 2009 came into force, the State Government by issuing a notification published in Calcutta Gazette on 28 December, 2011, created additional posts of teacher for maintaining pupil-teacher ratio in Primary Schools and Junior High/Higher Secondary Schools, the details of which were enumerated therein. By this notification, it has been stated that the Governor was pleased to declare that during recruitment of the newly created posts, the maximum 10% of such posts shall be filled up by Para Teachers, Shiksha Bandhus, Shiksha Mitras, Shiksha Sebis, Sahayaks, Sahayikas, Samprasarakas, Samprasarikas under Sarva Shiksha Abhiyans or in Shishu Shiksha Kendras and Madhyamik Shiksha Kendras run by Panchayat and rural development department. The importance of the education workers, namely, Para Teachers, Shiksha Bandhus, etc. was further recognized by the State Government by issuing two notifications - one dated 9 June, 2010 and another dated 9 August, 2010.

21. The notification dated 9 June, 2010 inter alia reads as under:

"(i) No other allowance will be admissible to the Para Teachers, Shiksha Bandhus, VRPs and other associated with the PBSSM and the Contractual Teachers except enhancement @ 5% of the remuneration, at every interval of 3 years, after the enhancement done as on 01-06-2010.

(ii) These persons will remain engaged till they attain 60 years of age, and the State Government will bear the expenditure if the Government of India stops funding the PBSSM Project before their cessation of engagement attaining 60 years of age."

22. On the other hand, a memorandum dated 9 August, 2010 issued by the School Education Department to the State Project Director, Paschim Banga Sarva Shiksha Mission speaks as under:

"I am directed to inform you that the Contractual employees engaged in West Bengal Council of Rabindra Open Schooling/State Council of Educational Research and Training with the approval of PBSSM doing jobs relating to SSA are entitled to get the benefit in addition to the enhanced remuneration as allowed by you vide Memo Nos. .07.2010 438/6/PBSSM/2001-2010 dated 24 and 473/6/ADMN/PBSSM/2009-10 dated 14.7.2010.

i) The persons will remain engaged till they attain 60 years of age and the State Govt. will bear the expenditure if the Govt of India stops funding the PBSSM Project before their cessation of engagement on attaining 60 years of age.

ii) On attaining 60 years of age or the time of cessation of employment they will be paid an ex-gratia retirement benefits of Rs. 1.00 Lakhs only on lump sum basis.

iii) No other allowance will be admissible to them except enhancement of remuneration @ 5% at every interval of 3 years after the enhancement done as on 01.06.2010. This is in pursuance of Finance Department's Order under U.O.

No. Group "P" 1429 dated 23.04.2010 and I am directed to request you to issue order accordingly. Yours faithfully,

Sd/- S. Ghosh

O.S.D. and Ex-Officio Deputy Secretary 9/8/2010

Sd/- Illegible

O.S.D. and Ex-Officio Deputy Secretary."

23. The notification dated 9 June, 2010 and the clarificatory memo dated 9 August, 2010 were issued after the Right of Children to Free and Compulsory Education Act, 2009 came into force with effect from 1 April, 2010.

24. The clarificatory memo dated 9 August, 2010 clearly speaks that contractual employees engaged in West Bengal Council of Rabindra Open Schooling with the approval of the Paschim Banga Samagra Shiksha Mission doing jobs relating to Sarva Shiksha Abhiyan are entitled to get the benefit in addition to the enhanced remuneration as allowed vide memorandums dated 14 July, 2010 and 24 July, 2010. Besides, the employees will remain engaged till they attain 60 years of age and State Government will bear the expenditure if the Government of India stops funding the PBSSM Project before the cessation or engagement of attaining 60 years of age. There is no cavil of doubt that the Community Tutors/Bridge Course Instructors subsequently renamed as Shiksha Mitras were engaged in Rabindra Mukta Vidyalaya under West Bengal Council of Rabindra Open Schooling to carry out the project namely Sarva Shiksha Mission by bringing the out of school or dropout children to the educational centres and provide tutorial support to those children. In such context, it will be apposite to mention that though the Government Order dated 9 June, 2010 does not specifically spell about the Shiksha Mitras, but the words "other associated with PBSSM" encompass the education workers like Shiksha Mitras.

25. As quoted above, the State Project Director, Paschim Banga Samagra Shiksha Mission by issuing a memorandum dated 7 February, 2011 closed all the existing Alternative and Innovative Education Centres under the Rabindra Mukta Vidyalaya after 31 march, 2012 and thereby engagement of Shiksha Mitras in such educational centres ceased. However, by issuing Government Order and memorandum subsequently, the Shiksha Mitras, who became out of employment, were redesignated as education volunteers and they were temporarily engaged initially for 3 months and subsequently, up to 2 years.

26. Now, the question which falls for determination is whether the State authority can take away the right accrued to the petitioner as Shiksha Mitra by virtue of the Government Order dated 9 June, 2010 and a clarificatory memo dated 9 August, 2010 by issuing a notification dated 7 February, 2011 and reengaging the petitioner by changing the designation as education volunteer for a period of only 2 years.

27. As the object of Sarva Shiksha Abhiyan demonstrates, Shiksha Mitras were associate with the noble mission to provide free and compulsory education to all children, especially the out of school and dropout children. It is needless to mention that after amendment of Article 21A of the Constitution, getting free and compulsory education by all children in the age of six to fourteen years is a fundamental right as enshrined in Article 21A of the Constitution. In such backdrop, the Shiksha Mitras who were discharging their duties to carry out the noble ideal under Article 21A of the Constitution and who acquired security of engagement by the Government Order dated 9 June, 2010 and clarificatory memo dated 9 August, 2010 cannot be denied the legal entitlements without due process of law. By discharging the duties as Shiksha Mitras to educate out of school or dropout children through the engagement granted to them by the concerned District Magistrate/District Project Director, their livelihood has been associated with the job they were performing. If the State authority takes away such valuable right accrued to the petitioner as Shiksha Mitras, the State authority will have to specify the reasons with statutory authority as to why such right was taken away. The notification dated 7 February, 2011 by which Alternative and Innovative Education Centres where Shiksha Mitras were working were closed does not speak about the right accrued to the Shiksha Mitras by the Government Order dated 9 June, 2010 and clarificatory memorandum dated 9 August, 2010. The memorandum by which the Shiksha Mitras were re-designated as education volunteer temporarily on contractual basis for a temporary period of 2 years is also violative of the previous Government Order dated 9 June, 2010 and clarificatory memorandum

dated 9 August, 2010. As such Government Orders or memorandums issued by the State authority trampling down the right of the petitioner are violative of Articles 21 and 21A of the **Constitution of India**. In a welfare state like our country, it is not contemplated that the Right of Shiksha Mitras who got the job security up to the age of 60 years with enhanced rate of honorarium would be taken away whimsically or arbitrarily.

**28.** In view of the above, the impugned order dated 30 June, 2022 which approves the arbitrary memorandum dated 7 February, 2011 and memorandum dated 30 March, 2012 is vitiated with illegalities and arbitrariness and the same is liable to be quashed.

29. It appears from the averments of the writ application and the documents on record that the petitioner has been discharging his duties as an education worker in Kechuadanga B.C. Vidyaniketan (HS).

**30.** With the aforesaid observations, the writ petition may be disposed of by passing the following order:

The impugned order dated 30 June, 2022 passed by the State Project Director, Paschim Banga Sarva Shiksha Mission is hereby quashed.

The State respondents are directed to allow the petitioner to perform duties as a Shiksha Mitra in the educational institution namely, Kechuadanga B.C. Vidyaniketan (HS) or any other educational institution forthwith after the communication of this judgment and order. The engagement of the petitioner shall remain up to the age of 60 years. The State respondents are further directed to extend all the service benefits to the petitioner as is available to Shiksha Mitras in terms of the Government Order dated 9 June, 2010 and clarificatory memorandum dated 9 August, 2010 immediately after communication of this judgement and order.

The State respondents are further directed to pay the arrear honorarium to the petitioner which is admissible to Shiksha Mitras treating his engagement as a continuing one within a period of 8 weeks from the date of communication of this judgment and order.

The relevant terms of the memorandum dated 7 February, 2011 and the memorandum dated 30 March, 2011 which restrict or affect the engagement of the petitioner as Shiksha Mitras are hereby set aside.

31. With the aforesaid directions, the writ petition stands disposed of.

32. Parties may act on the Server Copy of this judgment and order duly

downloaded from the Official Website of this Court.

33. Urgent Photostat/ certified copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

**Order Accordingly**