

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) Diary No(s). 36427/2024

MASTARA KHATUN & ANR.

Petitioner(s)

VERSUS

DIRECTORATE OF MADRASAH EDUCATION & ORS.

Respondent(s)

(With IA No. 196217/2025 - CONDONATION OF DELAY IN REFILEING /
CURING THE DEFECTS and IA No. 196216/2025 - EX-PARTE STAY)

WITH

Diary No(s). 35840/2024 (X)

(With IA No. 196225/2025 - CONDONATION OF DELAY IN REFILEING /
CURING THE DEFECTS and IA No. 196224/2025 - EX-PARTE STAY)

Date : 18-08-2025 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) : Mr. Gaurav Choudhary, AOR

For Respondent(s) :

UPON hearing the counsel the Court made the following

O R D E R

1. Reference to at least a couple of orders of this Court passed by coordinate Benches, of which one of us (Dipankar Datta, J.) was a member, has been made in this petition¹ under Article 32 of the Constitution. In fact, the cause of action pleaded in this petition for approaching this Court has its roots in an order dated 02.02.2023² passed by a coordinate Bench (cor. S. Ravindra Bhat and Dipankar Datta, JJ.) on a petition for contempt³ whereby a three-member Committee was constituted, to be chaired by a retired Judge of the

1 W.P. (C) 36247/2024

2 (2023) 18 SCC 529

3 Contempt Petition (C) No.352 of 2022

High Court at Calcutta⁴, for looking into claims of teachers/staff of Madrasahs who had been appointed by the Managing Committees while the 2008 Act stood outlawed, and it is such Committee which has rejected the claims of the petitioners.

2. However, when this writ petition is taken up for consideration, we are informed by learned counsel for the petitioners that writ petitions⁵ of teachers/staff claiming relief on exactly similar lines as those claimed in this writ petition were listed before a coordinate Bench (cor. Abhay S. Oka and Augustine George Masih, JJ.) whereupon notice was issued on 30.08.2024 together with interim relief to the extent that the services of the respective writ petitioners should not be disturbed till the matters are taken up for hearing. It is also informed that such writ petitions, as per order dated 15.07.2025 passed by another coordinate Bench (cor. Manoj Misra and Ujjal Bhuyan, JJ.), are due to be listed for further consideration before the said Bench tomorrow.

3. We need not explore the reason for the learned counsel to cite this order.

4. Nonetheless, few facts need to be noted. A Division Bench of the High Court *vide* judgment and order dated 09.12.2015 had dismissed intra-court appeals of, *inter alia*, the State of West Bengal and the West Bengal Madrasah Service Commission while upholding the decision of a Single Judge dated 12.03.2014 declaring and striking down the West Bengal Madrasah Service Commission Act, 2008⁶ as *ultra vires* Article 30 of the Constitution. It is the admitted case of the petitioners that this Court, by its order dated 14.03.2016

4 High Court

5 W.P. (Civil) No. 566/2024, being the lead matter

6 2008 Act

while issuing notice on a special leave petition⁷, had stayed the operation of the order of the Division Bench during the pendency thereof. Ultimately, *vide* judgment and order dated 06.01.2020⁸, a three-Judge Bench of this Court reversed the decision of the Division Bench of the High Court, upheld the 2008 Act and allowed the civil appeal.

5. Action was initiated for contempt of the order dated 06.01.2020 whereupon the order 02.02.2023, as aforesaid, disposing of the contempt petition came to be passed. There have been multiple unsuccessful attempts to have such order recalled and reviewed. As pleaded in the writ petition, even a curative petition is pending.

6. Insofar as the present petitioners are concerned, they claim to have been appointed on different dates in 2018 as Matron and Night Guard of the concerned Madrasah. Looking at the fact that the order of the Division Bench under challenge before this Court was stayed by an order dated 14.03.2016 and ultimately set aside on 06.01.2020, it defies logic and reason as to how these two petitioners could have at all been appointed in the interregnum and, that too, without there being any semblance of a recruitment process that conforms to Article 16 of the Constitution.

7. Be that as it may, this is a tentative view on the merits of the writ petition.

8. We are, however, completely taken aback at how the Registry of this Court functions while listing writ petitions invoking jurisdiction under Article 32 of the Constitution involving common issues. In listing such writ petitions, the

⁷ SLP (C) No.6661 of 2016, giving rise to Civil Appeal No. 5808/2017

⁸ (2020) 6 SCC 689

Registry ought to follow either the 'quorum rule' or the 'roster rule'. Placing writ petitions raising more or less common issues before separate Division Benches is beset with the risk of conflicting decisions being rendered which, having regard to the mounting arrears and the time constraints of the Court, should be avoided at all costs.

9. Registry is directed to place this order before the coordinate Bench where W.P. (Civil) No. 566/2024 and other batch matters are due to be listed for hearing tomorrow in terms of the earlier order dated 15.07.2025.

10. Re-list these matters after two weeks.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS

SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)