

(1982) 01 CAL CK 0024

In the Calcutta High Court

Case No : F.M.A.T. No's. 1380 of 1980 and 1499 of 1981

Ad-Hoc Committee District School Board, Hooghly and Others **APPELLANT**
Vs

Gopal Chandra Manna and Others
 President, Ad Hoc **RESPONDENT**
Committee, District School Board, Midnapore and Others Vs
Gurudas Bera and Others

Date of Decision : 11-01-1982

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 309
Government of India Act, 1935 — Section 241(2)(b)

Citation : 86 CWN 464

Hon'ble Judges : M.M. Dutt, J;A.K. Sarkar, J

Bench : Division Bench

Advocate : A.P. Chatterjee, Santosh Kumar Chatterjee for the Appellants in F.M.A.T No. 1380 of 1980, for the Appellant;A.P. Sarkar and Apurbalal Basu for the State in F.M.A.T No. 1380 of 1980 S.B. Bhunia and Asoke Maity for The District School Board, Midnapore in F.M.A.T. No. 1499 of 1981 Debi Pal and Saradindu Samanta for Respondents in F.M.A.T No. 1980 of 1980 Debi Pal and Asoke Ganguly for Respondents in F.M.A.T. No. 1499 of 1981, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—The appellants, the District School Board, Hooghly, the Ad-hoc Committee of the District School Board and its President have, in this appeal, challenged the propriety of the judgment of Sabyasachi Mukharji J making absolute the "Rule Nisi issued on the application of 51 primary teachers, being respondents nos. 1 to 51 herein, under Article 226 of the Constitution. In the writ petition, the case of the respondents-writ petitioners who are primary teachers was that they passed the School Final and or Higher-Secondary Examinations more than 6 to 7 years age and they could not prosecute their studies any further due to poverty, financial difficulty and other problems. They, however, became duly qualified for appointment as primary teachers. A large number of posts of primary teachers fell vacant under the District School Board,

Hooghly in or about 1972. An advertisement was published by the District School Board, Hooghly in the Ananda Bazar Patrika inviting-applications from qualified candidates for filling up the said vacancies. -The respondents-writ petitioners applied. for the posts, and they were select-ted by the Selection Committee and their names were included in the panel for. primary teachers of different circles under the District School Board Hooghly. They were appointed in deputation vacancies arising out of deputation of teachers of primary schools far.undergoing training in: Junior Basic "Training Institutes from 1974-1978, but they" were not appointed in permanent vacancies in the posts of primary teachers. It was the case of the respondents writ petitioners that all of them worked in deputation vacancies for more than.one occasion. The Director of Public -Instruction, West Bengal by-his Memo No. 6932 (67) dated. December 19, 1974 issued the following Circular and or direction :

Government of West Bengal Education Directorate : Primary Branch

Memo No. 6923 (67)

From : D. P. I., West Bengal

Date 19.12.1974

To District, Inspector of Schools (Pry. Edn.)

Subject : Instruction regarding Appointment of teachers serving in Deputation Vacancies.

The undersigned has to inform him "that- approved empanelled candidates appointed in deputation vacancies by the Dist. School Board may be absorbed in permanent posts during their Service or within one year of expiry of the deputation term even if the validity of the panel where their names occur expires or a fresh panel is prepared in,the meantime.

Sd/- S. N. Das for D.P.I., West Bengal

2. On September 7, 1977, the Government of West Bengal issued an order directing that all panels for appointtment of primary teachers would remain inoperative with effect from August 30, 1977 and no appointment would, be made out of them. Further, it was directed that appointments made from the panels after August 30, 1977 would be deemed to be cancelled. By a subsequent Government order dated September 27, 1977, the ban imposed on appointment of primary school teachers was relaxed in case of (a). further appointment on deputation and (b) ultimate absorption in respect of those teachers who had once before been appointed in deputation vacancies from the panel. Again, by a Government order dated January 28, 1978, the previous order dated September 27, 1977 with regard to ultimate absorption of teachers who had once before been appointed in deputation vacancies from the panel was directed to be kept inoperative until further orders. The said order dated January 28, 1978 was, however, withdrawn by the order dated August 36, 1978. Thereafter, the.

following order dated November 3, 1978, which is the impugned order,, was issued by the Government :

Government of West Bengal Education Department Primary Branch. No. 1771-Edn (P) 9A-2/76

Dated, Calcutta, the 3rd Nov. 1978. From : Shri M. M. Singha Roy Deputy Secretary to the Govt. of West Bengal.

To : The Director of Primary Education, West Bengal.

Sub : Permanent absorption of Primary School Teachers who worked in deputation vacancies.

The undersigned is directed to refer to this Deptt. Memo No. 1496-Edn (P) dated 30.8.78 on the above subject and to state that the matter has been reviewed by Government and it has been decided that pending Government's full examination of the entire policy regarding ultimate absorption of deputation vacancy teachers on the mode and practice of such absorption, the final absorption of candidates who worked as Primary teachers for one or repair terms in deputation vacancies should be kept suspended until further orders.

It is also requested that information wanted in para 2 of this Deptt. Memo No. 1653-Edn (P) dated 7.10.78 may be furnished in order to examine the issue.

Meanwhile this Deptt. G. O. No. 1496-Edn (P) dated 30.8.1978 referred to above should be treated as cancelled.

Sd/- M.M. Singha Roy, Deputy Secretary.

A copy of the impugned order dated November 3, 1978 has been annexed to the writ petition and marked Annexure "F". The respondents-writ petitioners have inter alia challenged the legality of the order (Annexure "F") in the writ petition.

3. It appears that a panel was prepared sometime in 1972-73 and the respondents-writ petitioners were included in the said panel after selection. It is not disputed that the respondents writ petitioners worked and have been working in deputation vacancies from time to time since their empanelment. About 300 candidates were included in the said panel. Of the said 300 candidates, 100 were appointed permanently as primary teachers by the District School Board Hooghly. The remaining 200 candidates were appointed in deputation vacancies from time to time. Out of the said 200 candidates, 152 candidates were permanently appointed. The remaining 67 candidates including the respondents-writ petitioners have not been absorbed in permanent vacancies although they have been working in deputation vacancies since 1973. Instead, on April 24, 1978 applications were invited for the preparation of a fresh panel after selection and thereafter the impugned order was issued. The respondents-writ petitioners claimed that by virtue of the Circular of the Director of Public Instruction, West Bengal, dated December 19, 1974 which has been set out above, it was incumbent upon the District School Board to appoint them permanently to the

posts of primary teachers. It was the contention of the respondents-writ-petitioners that the impugned order issued by the Government of West Bengal dated November 3, 1978 suspending the operation of the Circular or direction of the Director of Public Instruction dated December 19, 1974 was illegal, inoperative and void. In the circumstances, the respondents-writ petitioners inter alia prayed for the quashing of the impugned order dated November 3, 1978. They also made other prayers with which, however, we are not concerned in this appeal.

4. The Government respondents including the director of Public Instruction, that is, the respondents nos. 1, 2, 6, 7 and S- and the appellants opposed the Rule Nisi by filing separate affidavits. In the affidavit-in-opposition affirmed by Shri Labanya Kumar Banerjee, the Assistant Secretary, Government of West Bengal, Department of Education (Primary Branch) on behalf of the Government respondents, it has been averred that the Government was within its Jurisdiction to cancel its order by the impugned order dated November 3, 1978. In the affidavit of the appellants affirmed by Shri Satibhushan Das, the claims of the respondents-writ petitioners have been denied and it has been averred that the Government is empowered to change and modify its earlier order and the District School Board acted according to the Government orders.

5. The learned Judge, after considering the facts and circumstances "of the case and the submissions made on behalf of the parties, made the Rule Nisi absolute directing, inter alia, that the respondents-writ petitioners who were otherwise qualified to be appointed as primary teachers should first be appointed in permanent vacancies of primary teachers, provided they were within age and were willing to serve in terms of the letters of appointment. Further, it was directed that so long as the respondents-writ petitioners were not absorbed in permanent vacancies, no new appointment should be given. The appellants, being aggrieved by the said order of the learned Judge have preferred the instant appeal. No appeal has, however, been filed by the State Government.

6. Before we consider the respective contentions of the parties and the legality of the impugned order, it may be recorded that Mr. Arun Prokash Chatterjee, learned Senior Standing Counsel appearing on behalf of the appellants has given an undertaking to this Court that 67 primary teachers including the 51 respondents-writ petitioners who have been working in permanent vacancies by virtue of the order of the learned trial Judge will be absorbed permanently. It has, however, been submitted by Mr. Chatterjee that as similar claims have been made by primary teachers working in deputation vacancies under the District School Boards of other districts and some other Rules are pending in this Court, we should adjudicate such claims of the primary teachers working in deputation vacancies including the respondents-writ petitioners so as to avoid multiplicity of litigation and future disputes and complications, it is stated by him that whatever might be our decision, the-51 writ petitioners who are the respondents in this appeal, will be absorbed in permanent vacancies and appointed permanently. In

view of the said undertaking and the submissions, we propose to decide the rights of the primary teachers working in deputation vacancies and their claims for being absorbed permanently in permanent vacancies on the strength of the said Circular dated December 19, 1974 of the Director of Public Instruction.

7. The question that falls for our consideration is whether the Government has any authority to suspend the said Circular of the Director of Public Instruction dated December 19, 1974 by the impugned Government order dated November 3, 1978. The Government of West Bengal framed certain rules in exercise of its power u/s 66 of the Bengal (Rural) Primary Education Act, 1930. The said rules were amended by the notification dated October 26 1971. Under the amended rules, the minimum qualifications, inter alia, for a head teacher of a primary school are School Final Pass and two years' continuous service as a teacher in a recognised primary school. The academic qualification of an assistant teacher is also School Final Pass. In both cases, training shall be treated as an additional qualification. Rule 3(1) of the Rules as amended, provides as follows :

3(1) A Board shall appoint teachers, whether temporarily or substantively, only from the panel of qualified teachers for the district forwarded by the Director of Public Instruction, West Bengal and in accordance with the directions, if any, given by him.

The next rule to which we may refer is rule 3E and it reads as follows :

3E. A panel of teachers for a district shall remain valid, unless exhausted earlier, for eighteen months from the date of its preparation, but the State Government may extend the period of validity of a panel by a period not exceeding six months. When a panel is exhausted or ceases to be valid the Director of Public Instruction, West Bengal, shall proceed to prepare a fresh panel in accordance with the provisions of these rules.

8. It appears from rule 3(1) that the Board has been conferred with the power of appointment of teachers, but such power of appointment shall be exercised in accordance with the directions, if any, given by the Director of Public Instruction, West Bengal. The Director of Public Instruction is also entrusted with the formation of the panel of teachers from which the teachers will be appointed. The directions that may be given by the Director of public Instruction are under rule 3(1) regarding the appointment of teachers. rule 3E prescribes the period during which a panel of teachers will remain valid. Such period of validity may be extended by the Government, but not exceeding six months. So the power of the State Government under rule 3E is only limited to the extension of the period of the validity of the panel that may be formed by the Director of Public Instruction. Thus it appears that the powers of the Director of Public Instruction and that of the State Government are distinct. While the Director of Public Instruction has the power to form the panel of teachers and to give directions regarding the appointment of teachers from the panel, the State Government can only extend the validity of the panel.

9. By the Circular dated December 19, 1974, the Director of Public Instruction gave a direction with regard to the appointment of teachers appointed in deputation vacancies during their service or within one year of the expiry of the deputation term even if the validity of the panel where their names occur expired or a fresh panel was prepared in the mean time. This direction as contained in the said Circular of the Director of Public Instruction is in accordance with rule 3(1) of the Rules and that is binding on the District School Board.

10. It appears that the State Government has, from time to time, indirectly suspended the operation of the said Circular and there-after, withdrew such suspension. Ultimately, by the impugned order dated November 3, 1978 the Government suspended the operation of the said Circular; such suspension seems to be permanent in character, for steps were taken for the preparation of a fresh panel of primary teachers before the impugned order was issued. It has been urged by Dr. Debi Pal assisted by Mr. Saradindu Samanta, learned Counsel appearing on behalf of the respondents-writ petitioners that the State Government has no power to suspend the said Circular. In our opinion, the contention has much force. We have already discussed the respective powers of the Director of Public Instruction and of the State Government as conferred by rule 3(1) and rule 3E. Neither of these rules invests the State Government with the exercise of any power interfering with the directions of the Director of Public Instruction in the matter of appointment of primary teachers. Such exercise of power by the State Government is clearly ultra vires rule 3(1) and rule 3.

11. It is, however, contended on behalf of the District School Board by the learned Senior Standing Counsel that the direction given by the Director of Public Instruction in the said Circular is an administrative order and can be changed or withdrawn by a subsequent administrative order. It is submitted that the "said Circular has not laid down any condition of service but it has only created a privilege and does not confer any right Counsel submits that even assuming that it creates a conditions of service, service under the Government or a statutory body is a question of status and not of contract and, therefore, such administrative orders can be unilaterally changed. Further, it is submitted by him that the said Circular is beyond the power of the Director of Public Instruction.

12. The order or direction that is contained in the Circular dated December 19, 1974 is no doubt an administrative order, but such administrative order is not dehorned and statutory rule, but was issued in accordance with the provision of rule 3(1) of the Rules. Under rule 3(1), it is the duty of the Director of Public Instruction to give directions, whenever necessary, with regard to the appointment of primary teachers, and the said Circular contains such a direction under rule 3(1). There can be no doubt that an administrative order can be changed or withdrawn by a subsequent administrative order, but such change or withdrawal can only be made by the proper authority. We have already discussed that any direction that is given by the Director of Public Instruction under rule 3(1) cannot be interfered with by the State Government, "or the Government

has not been conferred with any power to issue directions or orders regarding the appointment of primary teachers. In the face of rule 3(1), we are not impressed by the argument of the learned Senior Standing Counsel that the Director of Public Instruction had no authority to issue the Circular dated December 19, 1974.

13. In this connection, it is also pertinent to consider whether the said Circular has merely created a privilege or has conferred a right upon the primary teachers working, in deputation vacancies. According to the learned Senior Standing Counsel, it has merely created a privilege and has not conferred any right on the primary teachers. He submits that under the said Circular, the primary teachers working in deputation vacancies had mere chances of being absorbed in permanent vacancies. But such chances are not synonymous with the right to be appointed to permanent vacancies and the circular cannot be regarded as creating any right in favour of those primary teachers, nor does the Circular lay down or affect any condition of service. In support of this contention, the learned Senior Standing Counsel has placed reliance on the decision of the Supreme Court in *State of Mysore v. G. A. Purohit*. 1967(1) SLR 753, where it has been observed that chances of promotion are not conditions of service [See also *K. B. Bellubbi M Union of India*. 1972 Lab I.C. 105 (Mysore)]. This contention has been made on behalf of the District School Board with a view to meeting the argument of the learned Counsel for the respondents writ petitioners that the Circular cannot be withdrawn or suspended with retrospective effect interfering with the rights of the primary teachers. Therefore. the question is whether any right was created or accrued to the primary teachers by virtue of the Circular dated December 19, 1974 Before proceeding further, we may notice some facts.

14. It is not disputed that while the primary teachers had been working in deputation vacancies, there were a number of permanent vacancies in the posts of primary teachers under the District School Board, Hooghly, Some of the primary teachers were absorbed in permanent vacancies by virtue of the Circular dated December 19, 1974. but all of them could not be so absorbed or appointed to permanent posts presumably in view of the fact that the said Circular was suspended on more than one occasion. No grievance appears to have been made by the primary teachers as they were working deputation vacancies, but when the Government suspended the said direction of the Director of Public Instruction as contained in the said Circular and prior to that, invited applications for the formation of a new panel by publishing an advertisement dated April 24, 1978, the primary teachers who were yet to be absorbed in permanent vacancies filed the writ petition before this Court out of which this appeal arises. We are told that a few other writ petitions have been filed by the primary teachers of other districts.

15. On the face of the Circular, if may be conceded, no right was created. But during the period the Circular remains in force right may accrue to the primary teachers working in deputation vacancies In order that a primary teacher can

avail himself of the benefit of the Circular dated December 19, 1974 certain conditions are to be fulfilled, namely, (1) he must be an approved empanelled candidate appointed in deputation vacancy, (2) there is a vacancy in the permanent post during his service in the deputation vacancy, and (3) such vacancy in the permanent post has occurred within one year of the expiry of the deputation term. The eligibility for being absorbed in a permanent post will accrue to a primary teacher on the happening of the above contingencies. So long as the contingencies do not happen or, in other words, the conditions are not fulfilled, a primary teachers can have no claim to be absorbed in a permanent post But as soon as the conditions are fulfilled, there is accrual of a right to be appointed to a permanent post. The primary teachers, who are the respondents-writ petitioners had been working in the deputation vacancies, and it is an admitted fact that during the continuance of their service there were vacancies in permanent posts before the said Circular was suspended by the impugned order of the Government dated November 3, 1978. These vacancies still exist. So the primary teachers could very well claim to be absorbed in permanent vacancies as rights accrued to them for making such claims by virtue of the said Circular.

16. Now coming back to the contention of the learned Senior Standing Counsel that the Circular dated December 19, 1974 being an administrative order, it can be withdrawn or changed by a subsequent administrative order which is the impugned order dated November 3, 1978. In *Shri Ram Prasad (Deceased) by his Legal Representative Vs. The State of Punjab*, , the Maharaja of Patiala extended the rules governing the conditions of service of Government Servants to the employees of the State Bank of Patiala. It was held by the Supreme Court that the act of extension being an executive act it could be changed by a similar executive act. In *Roshan Lal Tandon Vs. Union of India (UOI)*, , it has been observed by Ramaswami J that statutory rules may be framed governing the conditions of service of Government servants and can be altered unilaterally by the Government In other words, the legal position of the Government servants is more. one of status than of contract.

17. There can be no doubt that executive instructions or administrative orders or statutory rules governing conditions of service can be changed unilaterally. At the same time, it is a well settled principle of law that vested rights cannot be taken away or curtailed or conditions of service of a Government servant cannot be altered to his prejudice with retrospective effect by statutory rules, unless it is expressly or by necessary implications permitted by the statute concerned [See *Ex. Major N. C. Singha vs. Director General" Armed Forces* AIR 1972 SC 629; *The Accountant General and Another Vs. S. Doraiswamy and Others*, . It is equally a well settled principle of law that by an executive instruction or administrative order vested right cannot be altered. In this connection, we may refer to the decision of the Supreme Court in *S. B. Patwardhan vs. State of Maharastra*, AIR 1977 SC 2851, where the Supreme Court observed : These instructions unlike rules regulating recruitments and conditions of service framed

under the proviso to Art. 309 of the Constitution or S 241 (2)(b) of the Government of India Act, 1935, cannot have any retrospective-effect." Much reliance has been placed by the learned Senior Standing Counsel on the decision of the Supreme Court in *Raman and Raman Ltd. Vs. The State of Madras and Others*, . In that case, it was held that orders that were Issued u/s 43A of the Motor Vehicles Act, 1939 were administrative orders and not law and could not add to the considerations prescribed u/s 47 of the said Act on the basis of which the tribunal was empowered to issue or refuse permit. Such administrative orders not being law did not affect the vested right of the appellant before the Supreme Court. We fail to understand in what way the Supreme Court decision in *Raman and Raman* helps the contentions of the appellants. On the contrary, it reiterates the accepted view that by administrative orders vested rights cannot be affected.

18. By the impugned order dated November 3, 1978 the absorption of the deputation vacancy-teachers has been directed to be kept suspended until further orders. This means that although the primary teachers had been working in deputation vacancies and acquired a right to be appointed in permanent posts by virtue of the said direction of the Director of Public Instruction as contained in the Circular dated December 19, 1974, they would not be appointed. The order of suspension has the affect of recalling the said Circular inasmuch as a panel was going to be prepared and applications for the preparation of such panel were already invited as pointed out above. We may also, at this stage, state that Mr. Chatterjee has handed over to us a copy of the Memo No. 2137 SC/P dated June 30, 1981 issued by the Director of Primary Education, West Bengal (the post of Director of Public Instruction, West Bengal redesigned as the Director of Primary Education, West Bengal), whereby the said Circular dated December 19, 1974 has been rescinded with effect from the date of its issue. It is, therefore, manifestly clear that the Government as also the Director of Public Instruction have sought to interfere with the accrued rights of the primary teachers to be absorbed in permanent vacancies under the District School Board, Hooghly. We have already held that the Government has no power to interfere with any order or direction given by the Director of Public Instruction under rule 3(1) of the Rules. Apart from that, the Government and also the Director of Public Instruction have no authority whatsoever to interfere with vested rights by an administrative order. The said Memo No 2137-SC/P dated June 30, 1981 issued by the Director of Primary Education, West Bengal cancelling the said Circular dated December 19, 1974 is, therefore, illegal. The said memo has been issued by the Director of Primary Education during the pendency of the appeal presumably with a view to avoiding any argument in this appeal as to the power of the Government to interfere with the said Circular under which the primary teachers have acquired a right to be appointed in permanent vacancies. In our opinion, however, the attempt either by the Government or by the Director of Primary Education has been futile inasmuch as they have tried to interfere with accrued or vested rights of the primary teachers working in deputation vacancies, which they cannot.

19. With regard to the point as to the accrual to the primary teachers working in deputation vacancies of the right to be appointed permanently by virtue of the Circular dated December 19, 1974, we may consider another argument of the learned senior Standing Counsel. The learned Senior Standing Counsel points out that in the said Circular it is directed by the Director of Public Instruction that "approved empanelled candidates appointed in deputation vacancies by the Dist. School Board may be" absorbed in permanent posts..." and submits that no right can accrue to the primary teachers in view of the word "may which means that it is discretionary with the District School Board either to appoint or not to appoint such primary teachers permanently. It is contended that in the circumstances, the primary teachers cannot claim to be absorbed in permanent vacancies on the strength of the said Circular under which it is not obligatory for the District School Board to permanently appoint the primary teachers working in deputation vacancies.

20. The word "may" is ordinarily construed as permissive or discretionary, but it can also be construed as imperative depending upon the context of the provision in which it is used. In *Banwarilal v. Union of India*. AIR 1963 SC 191 & the Supreme Court observed as follows :

There is no doubt that the word "may" generally does not mean "must" or "shall". But it is well settled that the word "may" is capable of meaning "must" or "shall" in the light of the context. It is also clear that where a discretion is conferred upon a public authority coupled with an obligation the word "may" which denotes discretion should be construed to mean a command.

21. Keeping in view the above construction of the word "May" let us consider the contention of the appellants. It has been already found that the said Circular dated December 19, 1974 was issued by the Director of Public Instruction as enjoined by rule 3(1) of the Rules. Under rule 3(1), it is only the Director of Public Instruction who can give directions with regard to the appointment of primary teachers. Such directions are, obviously, to be given to the District School Board which is the appointing authority. When vacancies in the posts of primary teachers occur, such vacancies are to be filled up in accordance with the directions of the Director of public Instruction out of the panel prepared by him. The Director of Public Instruction has to say how and in what manner the vacancies will be filled up. He cannot, in our opinion, leave the matter to the discretion of the District School Board. In case the said Circular is construed to have conferred upon the District School Board, Hooghly; discretion to absorb permanently the primary teachers working in deputation vacancies, the District School Board, in that case, may pick and choose some of the primary teachers working in deputation vacancies for such permanent appointments and also appoint others who have never worked in deputation vacancies. Such appointments will be arbitrary and discriminatory offending the provision of Articles 14 and 16 of the Constitution. So the construction of the word "may" in the said Circular may lead to a manifest illegality in the exercise of a

discretionary power. Viewed in this context, the word "may" in the said Circular cannot, in our opinion, be construed as denoting discretion, but it should be construed as "shall" or imperative. The contention of the appellants is, accordingly, rejected.

22. By a different process of reasoning we may also arrive at the same result as to the invalidity of the impugned Government order dated November 3, 1978. It has been already noticed how the operation of the said Circular dated December 19, 1974 was, from time to time, suspended without any satisfactory reason. By the impugned order the said Circular has been suspended, such suspension being permanent as found by us earlier, on the ground of "Government's full examination of the entire policy regarding ultimate absorption of deputation vacancy teachers on the mode and practice of such absorption". Even assuming for argument's sake that the Government had the authority to give directions regarding appointment of primary teachers and supersede any direction given by the Director of Public Instruction under rule 3(1), we fail to understand how after taking steps for the preparation of a fresh panel, the Government sought to examine the policy regarding ultimate absorption of deputation-vacancy-teachers. The subsequent memo No. 2137 SC/P dated June 30, 1981 issued by the Director of Public Instruction during the pendency of this appeal, cancelling his Circular dated December 19, 1974 runs counter to the ground of suspension as mentioned in the impugned Government order. Thus it may be said that there was no reason for the impugned order and, accordingly, there is much force in the contention of Dr. Pal that it was issued arbitrarily so as to set at naught the rights of the primary teachers working in the deputation vacancies. It is well settled that executive actions affecting the rights of others even prospectively must be supported by valid reasons or, in other words, it must not be arbitrary. In the Supreme Court case of *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, , Bhagwati J speaking for the Court observed "Wherever therefore there is arbitrariness of the executive or of an authority" under Article 12, Art. 14 immediately springs into action and strikes down such state action. In fact, the concept of reasonableness and non arbitrariness pervades the entire constitutional scheme and is a golden thread which runs-through the whole of the fabric of the Constitution." The impugned Government order as also the said memo dated June 30, 1981 suffer from the infirmity of arbitrariness and, as such, cannot stand. So the same conclusion as to the invalidity of the impugned order is reached on the ground that it is arbitrary and without any valid reason. No other point has been urged on behalf of the parties.

23. Before we part with "his appeal, we may refer to rule 3(1) of the Rules which, it is expected, should be kept in view by the District School Board in appointing and posting primary teachers to different Schools.

24. In the circumstances, the judgment of the learned Judge is affirmed and this appeal is dismissed. There will, however, be no order as to costs.

FM.AJ. No. 1499 of 1981.

25. In this appeal, the facts and the points involved are the same as In the other one being F. M. A. T. No. 1380 of 1980. Mr. Bhunia, learned Counsel appearing on behalf of the appellants-the Ad-hoc Committee of the District School Board, Midnapore and its President-adopts the argument of the learned Senior Standing Counsel. He has, however, urged one additional point. It is contended by him that as the respondents primary teachers in this appeal have appel for being included in the panel pursuant to the advertisement dated April 24, 1978, they should be deemed to have waived their right to be absorbed in permanent vacancies. We are unable to accept the contention. It is an accepted principle, of law that waiver is contractual. It is true that the respondents primary teachers have applied in response to the said advertisement, but there is nothing to show that they have been offered to be included in the panel and that they have accepted such offer. To say that merely because a person applies for a post, he will be deemed to have waived his right to the post on other grounds is too wide a proposition to accept. The contention is unsound and is rejected.

26. For the same reasons as in F. M. A. T. No. 1380 of 1980, this appeal is also dismissed. There will, however, be no order as to costs.

A.K. Sarkar, J.

I agree.