

(2012) 01 CAL CK 0030
In the Calcutta High Court

Case No : Writ Petition No. 13907 (W) of 2007 with Can 9761 of 2009

Adwait''ya Bera and Ors

APPELLANT

Vs

State of West Bengal and Ors

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 — Section 4,
4(1), 4(2), 4(4)
West Bengal Primary School Teachers Recruitment Rules, 2001 — Rule 8

Citation : (2012) 01 CAL CK 0030

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Sudipto Moitra, Mr. P.K. Khanra, Ms. B. Roy In W.P. No 13907 W of 2007 With 9761 of 2009 Adwait''ya Bera and Ors Mr. Kishore Dutta, Mr. Samiran Mondal, Mr. Sourav Sen In W.P. No 22028 W of 2009 with Can 10402 of 2011, Ms. Rina Banerjee In W.P. No 22839 W of 2009, Mr. Arindom Banerjee, Mr. Bharat Bhusan, Mr. Rupayan Dev In W.P. No 22620 W of 2009, In W.P. No 22622W of 2009, Mr. Pratik Dhar, Mr. Ritwik Pattanayak In W.P. No 22154W of 2009 With Can 10602 of 2011, Mr. Rabilal Moitra, Mr. Samarjit Dey, Mr. Amitabrata Roy In W.P. No 22009 W of 2009 With Can 10831 of 2011, Mr. Hiranmoy Paik, Mr. Sanjoy Ghosh In W.P. No 22804 W of 2009 With Can 9246 of 2011 With Can 5427 of 2011, Mr. Rabilal Moitra, Mr. Samarjit Dey, Mr. Amitabrata Roy In W.P. No 22295 W of 2009 With Can 10832 of 2011, Mr. Rasamoy Mondal, Mr. Shamim ul Bari In W.P. No 23915 W of 2007 With Can 9335 of 2010 With Can 197 of 2011 With Can 10519 of 2010, Mr. Kishore Dutta, Mr. Samiran Mondal, Mr. Sourav Sen In W.P. No 22574 W of 2009, Mr. Kishore Dutta, Mr. Samiran Mondal, Mr. Sourav Sen In W.P. No 22581 W of 2009, Mr. Rabilal Moitra, Mr. Samarjit Dey, Mr. Amitabrata Roy In W.P. No 22288 W of 2009, for the Appellant; Subhabrata Dutta, For the State, Mr. Kamalesh Bhattacharya, Mrs. Moupiya De Basu For the Council In W.P. No 13907 (W) of 2007 with Can 9761 of 2009, Mr. Kamaluddin For the Council In W.P. No 22028 (W) of 2009 with Can 10402 of 2011, Mr. Swapan Kr. Mazumdar For the Council In W.P. No 22839 (W) of 2009, Mr. Tapabrata Chakraborty For the State, Mr. Tulsidas Maity, P.K. Ghosh For the Council In W.P. No 22620 (W) of 2009, In W.P. No 22622(W) of 2009, Mr. Kamaluddin For the Council In W.P. No 22154(W) of 2009 With Can 10602 of 2011, In W.P. No 22009 (W) of 2009 With Can 10831 of 2011, In W.P. No 22295 (W) of 2009 With Can 10832 of 2011 Mrs. Sipra Majumdar For the State In W.P.

No 22804 (W) of 2009 With Can 9246 of 2011 With Can 5427 of 2011, Mr. Tulsidas Maity For the Council Mr. Kamalesh Bha(W.P. Nocharyya For the State In W.P. No 22574 (W) of 2009, In W.P. No 22581 (W) of 2009, In W.P. No 22288 (W) of 2009, for the Respondent

Judgement

Harish Tandon, J.—In almost all these bunch of the writ petitions, the petitioners prayed for an order commanding the respondents to allow them to sit in the written test/interview conducted by the concerned District Primary School Council for filling up the post of the Assistant Teacher in the Primary School within their respective districts. Almost in all the writ petitions, by way of an interim order, the concerned District Primary School Council was directed to allow the petitioners to sit for an interview/ written test and some of the petitioners of these bunch of writ petitions are found successful and have been figured in the panel of the successful Candidates, but their appointments are withheld because of the pendency of the instant writ petition.

2. The point which hinges for consideration is whether the petitioners who are successful Candidates and have been empanelled but their appointments are withheld because of the pendency of the writ petitions, Can be directed to be appointed to the post of an Assistant Teacher, even if their Candidature is not sponsored by the employment exchange.

3. In West Bengal Recruitment Rules of 2001, promulgated in exercise of the power conferred under 106 of the West Bengal Primary School Education Act, 1973, Rule 8 thereof provides that the concerned District Primary School Council shall invite the names of the eligible Candidates from the concerned Employment Exchanges for the purpose of screening out the successful eligible Candidates who are better suited to the post of an Assistant Teacher in a Primary Schools. Therefore, the zone of consideration was restricted amongst the sponsored Candidates and not otherwise. Admittedly, all the petitioners of these bunch of writ petitions are not sponsored Candidate but have approached the court against such action of the respondent authorities in restricting the zone of consideration amongst the sponsored Candidates in clear contravention to the law declared by the Apex Court In Case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, wherein it has been held that apart from inviting the names of the Candidates from the Employment Exchange there should be a wide publication in the newspaper or announce on radio, television and employment news bulletins, so that all the Candidates who considered themselves to be eligible for such appointment may be provided an opportunity to offer their Candidature for such post.

4. After the judgment rendered by the Supreme Court in case of K.B.N. Visweshwara Rao (supra) the point came up for consideration before the Division Bench of this court in case of Tanmoy Ramaya Lahiri Vs. State of West Bengal

reported in (2008) 3 WBLR (Cal) 108 whether Rule 8 of the aforesaid Recruitment Rules where zone of consideration is restricted amongst the sponsored Candidates is ultravires to the Constitution or not. The Division Bench in the said report held:

13. We also wish to view this problem from a different angle. Employment Exchange is set up by the Government to record and register unemployed youth and their respective qualifications so that they may be considered for employment maintaining seniority. The impugned rule obligates the Council to inform the concerned Employment Exchange so that appropriate number of eligible Candidates are sponsored by Employment Exchange and they are considered for employment. If we consider the Employment Exchange rules we would find that a complete procedure is prescribed to maintain transparency and to avoid chance of discrimination. An eligible Candidate once registered with the Employment Exchange Cannot be ignored in the matter of sponsoring by superseding him at the time of consideration. Here the sponsored Candidates are admittedly senior to the appellants. They were sponsored for the post. Chance of the appellants would come after the sponsored Candidates and at the appropriate time they would also be considered for the appropriate post as per their eligible qualifications. We do not find the impugned rule as irrational or illogical, rather it protects the interest of similarly circumstanced persons having them registered with the concerned Exchange. Thus we find reasonable justification in restricting consideration only through Employment Exchange and by maintaining seniority.

5. The point, thereafter, appears to have been rested that unless the names of the Candidate is sponsored under Rule 8 of the aforesaid rules, non sponsored Candidate could not claim themselves to be brought within the zone of consideration, until the another Division Bench in case of *Biswajit Das & Ors. Vs. State of West Bengal & Ors.* passed in M.A.T. 237 of 2010 delivered judgment on 29.09.2011 wherein the Rule 8 of the aforesaid rule was declared to be constitutionally invalid. The subsequent Division Bench noticed the judgment rendered by the earlier Division Bench in case of *Tanmoy Ramaya Lahiri (supra)* and declared the said judgment to be not a good law in view of the judgment rendered by the Apex Court in case of *K.B.N. Visweshwara Rao (supra)*

6. It has been laid down by the special bench of this court in case of *Bholanath Karmakar and Others Vs. Madanmohan Karmakar and Others*, that where there is a conflicting judgments of the Apex Court by two benches of the equal strength, then the one which is more apt, well suited to the facts and circumstances of the case in hand, or appears to be more rational and logical Can be adopted and applied either by a third co-ordinate bench or by a single bench in these words:

10. When faced with contrary decisions of the Supreme Court, the first course to be adopted by the High Court is to ascertain which one of them is decided by a larger Bench and to govern itself by such larger Bench decision, if any. This has

been laid down by the Supreme Court itself in a series of decisions and must be taken to be the settled law and reference may be made, among others, to the decision of the Supreme Court in *Union of India (UOI) and Another Vs. K.S. Subramanian*, , even though, it may be noted, a two Judge Bench of the Supreme Court in *Javed Ahmed Abdul Hamid Pawala Vs. State of Maharashtra*, has thought that "it may be inappropriate for a Division Bench of three Judges to purport to overrule the decision of a Division Bench of two Judges". But when such contrary decisions of the Supreme Court emanate from Benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different cases of circumstances. This in fact is a course which was recommended by our ancient Jurists "*Srutirdwaidhe Smritirdwaidhe Sthalaveda Prakalpate*" - in case there be two contrary precepts of the *Sruties* or the *Smritis*, different cases are to be assumed for their application. As Jurist Jaimini said, contradictions or inconsistencies are not to be readily assumed as they very often be not real but only apparent resulting from the application of the very same principle to different sets of facts

Prayoge Hi Virodha Syat". But when such contrary decisions of co-ordinate Benches Cannot be reconciled or explained in the manner as aforesaid, the question would arise as to which one the High Court is obliged to follow.

11. One view is that in such a case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow but it must follow the later one. According to this view, as in the case of two contrary orders issued by the same authority, the later would supersede the former and would bind the subordinate and as in the case of two contrary legislations by the same Legislature, the later would be the governing one, so also in the case of two contrary decisions of the Supreme Court rendered by Benches of equal strength the later would rule and shall be deemed to have overruled the former. P.B. Mukharji, J. (as his Lordship then was in his separate, though concurring, judgement in the Special Bench decision of this Court in *Pramatha Nath Mitter and Others Vs. Hon'ble The Chief Justice of the High Court at Calcutta in the State of West Bengal and Others*, took a similar view. S.P. Mitra, J. (as his Lordship then was) also took such a view in the Division Bench decision of this Court in *Sovachand Mulchand Vs. The Collector of Central Excise and Land Customs and Others*, . To the same effect is the decision of a Division Bench of the Mysore High Court in *New Krishna Bhawan v. Commercial-tax Officer*, AIR 1961 Mys 3 at p. 7 and the decision of the Division Bench of the Bombay High Court in *Vasant Tatoba Hargude and Others Vs. Dikkaya Muttaya Pujari*, A Full Bench of the Allahabad High Court in *U.P. State Road Transport Corporation Vs. The State Transport Appellate (Tribunal), U.P. Lucknow and Others*, has also ruled to that effect. The view appears to be that in case of conflicting decisions by Benches of matching authority, the law is the latest pronouncement made by the latest Bench and the old law shall change yielding place to new.

12. The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view, is better in point of law. Sandhawalia, C.J., in the Full Bench decision of the Punjab and Haryana High Court in *Indo Swiss Time Limited Vs. Umrao and Others*, took this view with the concurrence of the other two learned Judges, though as to the actual decision, the other learned Judges differed from the learned Chief Justice. In the Karnataka Full Bench decision in *Govindanaik G. Kalaghatigi Vs. West Patent Press Co. Ltd. and Another*, the minority consisting of two of the learned Judges speaking through Jagannatha Shetty, J., also took the same view (*supra*, at p. 95) and in fact the same has been referred to with approval by Sandhawalia, C.J., in the Full Bench decision in *Indo-Swiss Time* (*supra*).

13. This later view appears to us to be in perfect consonance with what our ancient Jurist Narada declared - Dharmashastra Virodhe To Yuktiyukta Vidhe Smrita - that is, when the Dharmashastras or Law Codes of equal authority conflict with one another, the one appearing to be reasonable, or more reasonable is to be preferred and followed. A modern Jurist, Seervai, has also advocated a similar view in his *Constitutional Law of India*, which has also been quoted with approval by Sandhawalia, C.J. in *Indo-Swiss Time* (*supra*, at p. 220) and the learned Jurist has observed that "judgements of the Supreme Court, which Cannot stand together, present a serious problem to the High Courts and Subordinate Courts" and that "in such circumstances the correct thing is to follow that judgement which appears to the Court to state the law accurately or more accurately than the other conflicting judgement."

7. The aforesaid judgment of the Special Bench was further considered and applied by Full Bench in case of *New India Assurance Co. Ltd. Vs. Tara Sundari Phauzdar*, where the Full Bench in paragraph 55 and 56 observed:

55. Conflict between judgments of the Apex Court rendered by co-ordinate Benches creates certain uncomfortable situation for the High Courts. Article 141 makes the decision of the Apex Court binding of all Courts. But conflicting decisions, if bind the High Court, then High Court would be at a fix as to which one is to be followed. At one point of time it was the latter decision that was to be followed, at one point of time it was the earlier decision, which was to be followed. But, these views have now been replaced. Now the High Court has to undertake an uncomfortable job of preferring one and not the other or others. The principle of preference is guided by the system of acceptability of the preferable judgment by the High Court on the basis which of them lay down of the law elaborately and accurately. It is the decision, which appears to the High Court to have elaborately and accurately dealt with the law, is to be preferred.

56. The Full Bench of Allahabad High Court in *Ganga Saran Vs. Civil Judge, Hapur, Ghaziabad and others*, held that if there is conflict between the judgments of the Supreme Court consisting of equal authorities, incidence of time is not a relevant factor. The High Court must follow the judgment, which appears to lay

down law elaborately and accurately. The Full Bench of Punjab and Haryana High Court in *Indo Swiss Time Limited Vs. Umrao and Others*, had taken the same view. A Division Bench of Allahabad High Court in *New India Insurance Co. Ltd. v. Jagdish Prasad Pandey* (1998) 1 TAC 600 : (1997 All LJ 2415) taken the same view following *Indo Swiss Times* (supra) by Punjab and Haryana High Court. The Punjab and Haryana High Court had taken the view that when judgments of superior Court are of co-equal Benches, namely, of matching authority, then their weight inevitably must be considered by the rationale and the logic thereof and not by mere fortuitous circumstances of the time and date on which they were rendered. Both of the conflicting judgments Cannot be binding on the Court below. Inevitably a choice, though a difficult one, has to be made. On principle, the High Court is to follow the judgment, which appears to lay down the law more elaborately and accurately. A Special Bench of this High Court in *Bholanath Karmakar and Others Vs. Madanmohan Karmakar and Others*, had also followed the same principle and held that it is highly embarrassing for the High Court to declare one out of two or more decisions of the Supreme Court to be more reasonable implying thereby that the other or others is or are less reasonable. But if such a task falls upon the High Court because of irreconcilable contrary decisions of the Supreme Court emanating from Benches of co-ordinate jurisdiction, the task, however, uncomfortable, has got to be performed."

8. Therefore, if the ratio laid down in the *Tanmoy Ramaya Lahiri*(supra) by the earlier division bench is considered then the petitioners being not a sponsored Candidate is not entitled to any relief but if the ratio laid down in a subsequent division bench in case of *Biswajit Das* (supra) then the petitioner being a non-sponsored Candidate Cannot be denied from a zone of consideration but at the same time it is to be considered whether the selection conducted amongst the sponsored Candidates as well as the Candidate who approached the court and were allowed to be brought within the zone of consideration by an interim order passed in a different writ proceedings before this court offends the equality clause enshrined under Article 14 and 16 of the Constitution of India.

9. Thus what relief could be granted to the petitioner in the instant writ petition when the selection process is restricted amongst the sponsored Candidates and the Candidates who appeared in terms of an interim order of this court whereas there might be other eligible Candidates who could have been brought within the zone of consideration, if there would have been a publication in a widely circulated newspaper as indicated by the apex court in case of *K.B.N. Visweshwara Rao* (supra). The petitioners submitted that once they are found successful and eligible for the post of the Assistant Teacher, then their Candidature should not be Cancelled for want of sponsorship from the concerned Employment Exchange. It is further contended that the action of the respondent authorities to restrict the zone of consideration amongst the sponsored Candidates are contrary to the law declared by the Supreme Court in case of *K.B.N. Visweshwara Rao* (supra) and the rules by which such consideration is restricted amongst the sponsored Candidate is declared by the subsequent

division bench of this court in case of Biswajit Das (supra) as constitutionally invalid. It is thus contended that there is no impediment in passing an order for appointment of the petitioners to the post of Assistant Teacher in the Primary School as they have been found successful and their names are included in the panel of the successful Candidates. In support of their aforesaid contentions following judgments are relied upon by the petitioners:

- (i) Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others,
- (ii) Manik Chandra Das Vs. State of West Bengal and Others,
- (iii) Union of India (UOI) and Others Vs. N. Hargopal and Others,
- (iv) Tanmoy Ramaya Lahiri Vs. State of West Bengal reported in (2008) 3 WBLR (Cal) 108.
- (v) Sanjit Kumar Sheet Vs. The State of West Bengal and Others,
- (vi) Arun Kumar Nayak Vs. Union of India (UOI) and Others,
- (vii) Union of India (UOI) and Others Vs. Miss Pritilata Nanda,

10. On behalf of the respondents it is contended that the subsequent Division Bench in case of Biswajit Das (supra), even after holding that Rule 8 of the Recruitment Rules is constitutionally invalid, did not grant any relief to the petitioners as they were not the sponsored Candidates. It is further contended that the Division Bench in case of Debendra Nath Mondal Vs. Ratan Kumar Das and Others, refused to grant any relief to a non-sponsored Candidate as it would cause a breach of Article 14 & 16 of the Constitution in India. It is further contended that if there is a statutory rules, the authorities are bound to fill up the vacancies in terms of the said rules and if the name of the petitioners are not sponsored by the Employment Exchange his Candidature could not be considered as has been held in case of Man Singh Vs. Commissioner, Garhwal Mandal, Pauri and Others, .

11. From the respective contentions as aforesaid it appears that the division bench of this court in case of Debendra Nath Mondal (supra) held that if the non-sponsored Candidates are allowed to participate in the selection process, the same would further offends Article 14 & 16 of the Constitution of India in as much as fair play, justice and equality is a basic structure of constitution. In the said case, the Managing Committee permitted the appellant therein to appear in the selection process, although the recruitment procedure provides for calling the names from the Employment Exchange. In such perspective it is found that the Managing Committee Cannot adopt a pick and choose policy by permitting one non-sponsored Candidate to participate in the selection process when there is a chance of many meritorious Candidates who otherwise could offer their Candidature to such post if there would have been a publication in widely circulated newspaper or other media in terms of the law laid down in K.B.N.

Visweshwara Rao (supra) judgment.

12. The Subsequent Division Bench in case of Manik Chandra Das Vs. State of West Bengal and Others, after noticing an unreported judgment of the Apex Court rendered in case of Abu Taher Vs. Abdul Wahab and Ors held that the name of the Candidate Cannot be excluded from the consideration merely because his name is not sponsored by the Employment Exchange in these words:

8. The basic question involved in this matter is permissibility of extending the field of choice so as to cover persons offering the Candidature to posts under public employment when rules whether Administrative or Statutory require considerations of the Candidature of those persons only, who are sponsored by the concerned Employment Exchange.

16. It may also be mentioned herein that in Abu Taher vs. Abdul Wahab & Ors., Civil Appeal No. 1203 of 2001 arising out of SLP [C] No. 227 of 2000, the Hon"ble Supreme Court was pleased to set aside a Division Bench judgment of this Court with the following observations:

Mr. Krishnamani, appearing for the appellant contended that the aforesaid conclusion of the Division Bench of Calcutta High Court is erroneous in view of the decisions of this Court in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, and Raj Kumar and Others Vs. Shakti Raj and Others, We find sufficient force in the aforesaid contention and as such the name of appellant Cannot be excluded from consideration merely because his name had not been sponsored by the Employment Exchange....."

21. Following the decisions of the Supreme Court as mentioned hereinabove and in view of the law laid down by the Supreme Court in the case of K.B.N. Visweshwara Rao (supra), we also hold that the appropriate authority of the department or undertaking or establishment shall consider the cases of all the Candidates who have applied for filling up any vaCant post or posts along with the Employment Exchange sponsored Candidates strictly in accordance with law in order to ensure equal opportunity in the matter of employment to all the eligible Candidates and any executive order or circular issued by any authority in this regard has to be read and/or followed subject tot he aforesaid law laid down by the Hon"ble Supreme Court.

23. The Candidature of the appellant/writ petitioner should be considered by the concerned respondents along with other eligible Candidates sponsored by the Employment Exchange, if the same has not already been done.

13. In case of Union of India (UOI) and Others Vs. Miss Pritilata Nanda, the point involved therein was whether the appointment of the Candidate should be Cancelled on the ground that his/her name was not sponsored by the Employment Exchange when he/she was allowed to participate in the selection process by the competent authority. The Apex Court while accepting and

applying the ratio lay down in case of K.B.N. Visweshwara Rao (supra) observed:

16. A reading of the plain language of Section 4 makes it clear that even though the employer is required to notify the vacancies to the employment exchanges, it is not obliged to recruit only those who are sponsored by the employment exchanges. In Union of India (UOI) and Others Vs. N. Hargopal and Others, , this court examined the scheme of the 1959 Act and observed:

It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency of the Employment Exchanges. Far from it, Section 4(4) of the Act, on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the Employment Exchanges to fill in a vacancy merely because that vacancy has been notified u/s 4(1) or Section 4(2). In the face of Section 4(4), we consider it utterly futile for the learned Additional Solicitor General to argue that the Act imposes any obligation on the employers apart from notifying the vacancies to the Employment Exchanges.

It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges.

17. In K.B.N Visweshwara Rao's case, a three-judge Bench of this Court considered a similar question, referred to an earlier judgment in Union of India v. N. Hargopal (supra) and observed:

It is common knowledge that many a Candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the Candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving Candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the Candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the Candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter

of employment would be available to all eligible Candidates.

18. By applying the ratio of the above noted judgments to the case in hand, we hold that the concerned authorities of the Sought Eastern Railway Committed grave illegality by denying appointment to the respondent only on the ground that she did not get her name sponsored by an employment exchange.

14. The Supreme Court in case of Union of India (UOI) and Others Vs. N. Hargopal and Others, was considering Section 4 of the Employment Exchanges (compulsory notification of vacancies) Act, 1959 to have restricted the employment through the Employment Exchange only. By noticing Sub-section 4 of Section 4 of the said Act the Apex Court held:

6. It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the Employment Exchanges.

9. The further question is whether the instructions issued by the government that in the case of government departments the field of choice should, in the first instance, be restricted to Candidates sponsored by the Employment Exchanges offend Articles 14 and 16 of the Constitution. Shri P. Parmeshwara Rao, learned counsel appearing for some of the respondents strenuously urged that such a restriction would offend the equality clauses of the Constitution, namely, Articles 14 and 16. He urged that when Parliament had gone into the question and decided that there should be no compulsion in the matter of appointment by way of restriction of the field of choice, it was not open to the government to impose such compulsion. He argued that it would be unreasonable to restrict the field of choice to those sponsored by the Employment Exchanges. In a country so vast as India, in a country where there was so much poverty, illiteracy and ignorance, it was not right that employment opportunities should necessarily be channeled through the Employment Exchanges when it is not shown that the network of Employment Exchanges is so wide, that it reaches all the corners of this vast country. He argued that it is futile to expect that persons living in distant places could get themselves registered with Employment Exchanges situated far away. The submission of Shri Parmeshwara Rao is indeed appealing and attractive. Nonetheless, we are afraid we Cannot uphold it. The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to receive applications for employment where and when he pleases, and chooses to make appointments as he likes, a grave element of arbitrariness is certainly

introduced. This must necessarily be avoided if Articles 14 and 16 have to be given any meaning. We, therefore, consider that insistence on recruitment through Employment Exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily press, for example, is also equally ineffective as it does not reach everyone desiring employment. In the absence of a better method of recruitment, we think that any restriction that employment in government departments should be through the medium of employment exchanges does not offend Articles 14 and 16 of the Constitution. With this modification of the judgment of the High Court, the appeals and the special leave petitions are disposed of. No orders are necessary in the writ petition."

15. The Division Bench in case of Sanjit Kumar Sheet Vs. The State of West Bengal and Others, also held that the selection to a post couldn't be a restricted amongst the sponsored Candidate of the employment exchange. The point involved in Man Singh (supra) before the Supreme Court was that the name of the appellant therein was wrongly placed in Serial No.3 in the waiting list as the other Candidate secured more marks than him and such mistake was rectified by the authorities concerned. In such perspective, it was held that the mistakes are capable of being rectified and mere continuance to the work for a long time does not give any indefeasible right to become a permanent employee. It was not a case of a consideration of the Candidature of a person being the non-sponsored Candidate along with the sponsored Candidate.

16. In view of the law enunciated above more, particularly in case of Pritilata Nanda (supra), it Cannot be said that the petitioners should not be given an appointment being the non-sponsored Candidate after having found eligible and successful in the recruitment process.

17. It is the settled law that the judgment is applicable to the facts of the said case as the little difference in the facts would tilt the decision opposite to what has been decided. As noticed the Division Bench in case of Biswajit Das(supra) did not grant relief to the appellants therein as there was an interim order passed by the Single Judge in the writ petitions directing the authorities to complete the selection process commenced in the year 2006 in terms of the Recruitment Rules that governs a process on the date the same was initiated. It is observed by the Division Bench that since the petitioners did not challenge the said interim order they Cannot be granted relief contrary thereto. Thus the relief was denied on the basis of the aforesaid facts and circumstances which is not the case at present in hand.

18. While granting the relief to the present petitioner and after noticing the judgment of the Division Bench in case of Biswajit Das(supra) where Rule 8 of the Recruitment Rules is declared constitutionally invalid, any action on the basis of the aforesaid rule should fall. But where the large number of appointments are

already made and the persons are already working, any judgment upsetting their appointments without giving them an opportunity of hearing would further amount to the violation of principle of natural justice as enshrined in the constitution.

19. It is to be reminded that a person who does not assert his right Cannot be granted benefit for being a fence sitter. The petitioners who are litigating before the court by asserting their right Cannot be denied of any relief after having been found eligible and successful in the selection process merely because as it would amount to deny of an opportunity to those who could not approach the court or was not aware of such recruitment process.

20. By following the ratio as laid down in Pritilata Nanda(supra) I disposed of the aforesaid writ petitions directing the respondent authorities to give an appointment to those writ petitioners who are found successful and are included in a panel of the successful Candidates but their appointments are withheld because of the pendency of the instant writ petition. The concerned authority is directed to grant necessary approval for such appointment. The authorities are further directed to fix the pay of each of the petitioners upon giving notional benefits with effect from the date of the appointment of a Candidate who is immediately above the Serial No. of each of the petitioners. Entire exercise as directed above shall be completed within 8 weeks from the date of the communications of this order.

21. The writ petitions are thus disposed of.

22. In view of the disposal of the writ petition, the connected applications filed in the respective writ petition are disposed of accordingly.

23. There shall, however, be no order as to costs.

24. Let urgent photostat certified copy of the judgment, if applied for, be given to the parties on priority basis.