

(2012) 10 CAL CK 0071
In the Calcutta High Court
Case No : F.M.A. No. 995 of 2011

Asoke Sawoo

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 16, 16(1)

Citation : (2012) 4 CALLT 393 : (2013) 2 WBLR 229

Hon'ble Judges : Tarun Kumar Das, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : L.K. Gupta, Mr. Ekramul Bari, Mr. Shamin-ul-Bari, Mr. S.M. Ali, Mr. K.M. Hossain and Ms. Tanuja Basak, for the Appellant; Biswaroop Biswas for the School Authority, Mr. Kamalesh Bhattacharyya and Mr. Bidhan Biswas for the State FMA No. 995/2011, Mr. Tapan Kumar Mukherjee and Mr. Nilotpal Chatterjee for the State in FMA No. 998/2011, FMA No. 999/2011, FMA No. 1001/2011, FMA No. 1002/2011 and MAT No. 139/2011 and Mr. Rabindra Narayan Dutta for the State FMA No. 1000/2011, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—These appeals arise out of a common judgment and order passed by a learned Judge of this Court whereby several writ petitions have been disposed of. We have heard all the appeals analogously alongwith the connected Stay Applications since common questions of law are involved in these appeals. The appellants in these appeals are either the School Authorities or the individuals. The factual and legal issues centre around the applicability of the Rules relating to the appointment to the post of Non-Teaching Staff in High or Higher Secondary Schools in West Bengal. While deciding the writ petitions by the judgment and order under appeal, learned Single Judge held that in view of the West Bengal School Service Commission (Amendment Act, 2008 which came into force on 14th January, 2009 vacant posts of Non-Teaching Staff should be filled up under the aforesaid Act of 2008 and the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of

Non-Teaching Staff) Rules 2009.

2. Mr. L.K. Gupta, learned senior counsel of the appellants submitted that the process of selection for filling up the vacant posts of Non-Teaching Staff had commenced in terms of the provisions of West Bengal School (Recruitment of Non-Teaching Staff) Rules, 2005 (hereinafter referred to as the "2005" Rules) and therefore the provisions of the West Bengal Schools Service Commission (Amendment) Act, 2008 have no manner of application in the matter of selecting candidates for filling up the vacant posts in question in Aided Non Government Schools.

3. The question which arises for consideration is the applicability of the provisions of the West Bengal School Service Commission (Amendment) Act, 2008 and West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff Rules, 2009 in the matter of recruitment to the vacant post of Non-Teaching Staff where the process of selection had already commenced under the provisions of the 2005 Rules. In other words, the question is, where a vacancy has arisen and steps have been taken with a view to fill up that vacancy under the Rules which were operative at the time when the vacancy arose and subsequently, those Rules have been replaced by new Rules, whether the vacancies are to be filled up in accordance with the earlier Rules which were prevailing at the time when the vacancy arose or under the new Rules or amended Rules.

4. The basic question regarding the applicability of the amended provisions of any law in respect of filling up of the post has been considered in different cases on the basis of the particular fact-situation and the governing provisions of law.

5. In several cases it has been held that the law prevailing on the day of accrual of vacancy will govern the selection or the process of promotion. In Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, Hon'ble Apex Court held that transfer or promotion on the basis of year-wise panel was to be made on the basis of the Rules in force on the date of vacancy. Relevant extracts from the aforesaid judgment are set out hereunder:-

Para-9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion in the post of sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than the respondents Nos. 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the Zonal basis and not on the statewide basis and therefore, there was no question of challenging the new rules. We have not the slightest

doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

6. In *State of Rajasthan Vs. R. Dayal and Others*, Hon''ble Apex Court held:-

posts which fell vacant prior to the amendment of the Rules would be governed by the Original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose. (The relevant rules contemplated a year-wise selection for promotion)

7. In *Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others*, Supreme Court held:--

Para-6...We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein...

8. In the case of direct recruitment also, the rules for recruitment may well be amended and the applicability of such amended rules in the case of subsequent recruitment to existing posts has been differently viewed in judicial pronouncement.

9. One view is that the amended rules in the absence of any provision to the contrary will not apply to recruitment, the process for which has already commenced. It is the commencement of the process which is considered to be the deciding factor.

10. In the case of *P. Mahendran and others Vs. State of Karnataka and others*, , process of direct recruitment of Motor Vehicles Inspectors had commenced In 1983 under the Recruitment Rules of 1962. The Rules were amended in 1987, but till then the recruitment process had not been completed. The Hon''ble Supreme Court held that as the amendment was not retrospective, the process had to be completed in accordance with law as it stood at the commencement of the selection. Hon''ble Supreme Court further held that though by making an application the candidate does not acquire any right to the post but a right is created in his favour for being considered for the post in accordance with the terms and conditions of the advertisement and the existing recruitment Rules. This right cannot be affected by amendment of the Rules unless the amendment is retrospective in nature. The relevant portions from the aforesaid judgment are quoted hereunder:-

Para-5...Since the amending rules were not retrospective it could not adversely affect the rights of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending rules came into force, the amended rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the rules before its amendment moreover construction of

amending rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

"Para-7 "In view of the above the appellants" selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection...

11. In the case of school teachers in West Bengal a Division Bench of this Court in the case of Snehansu Jas Vs. State of West Bengal and Others, has held that the selection process would commence with the invitation of applications after obtaining the initial approval of the District Inspector and the rules then prevalent would apply.

12. The second view in the case of recruitment of Teachers or Non-Teaching Staff under the old rules is that the completion of the selection process and the submission of the panel to the District Inspector of Schools for approval is the material stage and any amendment thereafter cannot upset the steps taken.

(i) Abdul Mannar Laskar v. State of West Bengal & Ors., reported in (2000) 1 CHN 435

(ii) Narayan Baidya Vs. District Inspector of Schools (S.E.) South 24 Parganas and Others,

13. The third view is that unless the panel is approved by the District Inspector of Schools the selection process is not complete. Any amendment of the rule prior to such completion will call for the whole process to be undertaken afresh.

14. In the case of Narayan Baidya (supra), a Division Bench of this Court held that if the selection process had been completed prior to the coming into force of the new Rules the matter would have been different but in the said case by an order dated 29.09.1997 a learned Single Judge directed holding of another interview indicating that the process of selection was not complete and no panel had been prepared. In that view of the matter it was held that the old rules could not remain applicable and no relief could be granted as the new provision had in the meantime come into force.

The Division Bench also added that:-

We have to consider each case on its own factual matrix.

15. The Division Bench proceeded to hold that the fact situation of the case was different as old Rule 28 had been substituted with the new provisions and the normal rule of interpretation of substitution is that it would have effect as it had been in existence from the beginning.

16. In the impugned judgment and order under appeal, learned Single Judge has held that mere amendment of recruitment rules will not affect the ongoing process of selection being strictly in accordance with law, but where the old rules

are superseded by a new set of rules a different situation will arise.

17. It was further held that the previous sanction that was granted by the Additional District Inspector under Rule 8 (1)(b) of the 2005 Rules, by efflux of time must be held to have lapsed with effect from the date of supersession of 2005 Rules. It was pointed out that the 2005 Rules stand superseded not by a simple executive "action but in furtherance of giving effect to a statutory mandate. It was also pointed out that if approval had been granted by the Additional District Inspector and a panel prepared in accordance with the Rules then existing, the new rules of 2009 may not have affected the process that had already been initiated.

18. The Division Bench decision in Narayan Baidya's case proceeded by refusing to exercise discretion in the matter of allowing the Managing Committee to proceed with the incomplete selection under old rules after its supersession and also by holding that where the selection process had not reached the stage of completion of the preparation of panel the old rules cannot be allowed to continue to govern the finalization of the selection already undertaken.

19. It is to be noted that in the case of Narayan Baidya (supra) the Division Bench referred to another Division Bench decisions in Basudeb Bag v. Bhaskar Chandra Kar, reported in (1996)1 CLJ 230 where inspite of supersession of guideline by fresh administrative direction the process of selection already undertaken was allowed to continue in terms of the old rules. It is significant to note that in the case of Narayan Baidya (supra) the normal principle referred to and accepted by the Apex Court in P. Mahendran and others Vs. State of Karnataka and others, after being quoted was not applied only on the basis of the different fact situation. In support of this approach the Division Bench relied upon the decision of the Apex Court in The Regional Manager and Another Vs. Pawan Kumar Dubey, and also to the decision of this Court in Jaya Sen Vs. Sujit Kr. Sarkar,

20. The learned Single Judge in the judgment and order under appeal has noted that the earlier Division Bench decisions in Abdul Mannan Laskar v. State of West Bengal [(2000)1 CHN 435] and Snehansu Jas Vs. State of West Bengal and Others, have been held to be no longer binding precedents by a subsequent Division Bench decision in The Secretary of the Managing Committee, Kalinagar Girls' High School Vs. Archana Ghosh (Saha) and Others,

21. In the case of The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia v. Archana Ghosh (Sana) & Ors. (supra) the Division Bench proceeded on the basis of the decision of the Hon'ble Apex Court in the case of Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, , State of Rajasthan Vs. R. Dayal and Others, and Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others,

22. In the aforesaid decisions, the Hon'ble Apex Court while dealing with the case of promotion held that the date of accrual of vacancy was the material date

and Rules prevalent on that date would govern the process of promotion to be undertaken.

23. In the case of direct recruitment the date of occurrence of vacancy by whichever process it comes about (viz. death, retirement or creation) is not relevant by itself unless the employer takes the decision to fill up the vacancies in accordance with law. Once a decision is taken and the process of selection is initiated the question of continuing applicability of old rules inspite of the introduction of the new rules raises questions affecting the rights of al those who offered their candidature in the fond hope of getting themselves fairly considered.

24. In the case of A.A. Calton Vs. Director of Education and Another, it was held and approvingly quoted in the case of Narayan Baidya (supra):

Para...At every stage in that process certain rights are created in favour of one or the other or the candidates. Section 16F of the Act cannot, therefore, be construed as merely a procedural provision....

25. In the case of The Secretary of the Managing Committee, Kalinagar Giris" High School, Nadia (supra) an attempt was made to bring about certainty governing the recruitment of direct recruits in the absence of any clear legislative mandate to the contrary.

26. It was considered that against the given number of vacancies when a decision is taken to undertake a direct recruitment the process initiated carries with it the promise to be concluded. Any amendment of the Rules, without anything more, during the pendency of the process of recruitment cannot be allowed to upset the pending recruitment process. The process of direct recruitment takes a long time to become final and may be affected by litigation at one stage or other. In the event of a fresh process under the new Rules being subsequently undertaken the candidates to be selected for no fault of their own would be deprived of employment for an indefinite period and some of them may even be affected by the age-bar.

27. In the matter of public employment the prospective candidates can claim and possibly with justification that their fate should be governed by ascertainable, predictable and enforceable rules and/or principle. It will be profitable in this connection to refer to the judgment of the Hon"ble Apex Court in The Manager, Government Branch Press and Another Vs. D.B. Belliappa, wherein it has been held:--

It is now well settled that the expression "matters relating to employment" used in Article 16(1) is not confined to initial matters prior to the act of employment but comprehends all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment, and forms part of the terms and condition of such employment...

28. Articles 14 and 16 of the Constitution eloquently and unequivocally assure the prospective candidates for public employment a certainty In their search for

employment and for that matter, a better life. Should their fate be left to depend upon when the executive chooses to introduce a new Rule even in the midst of an ongoing selection process. That was the concern which the Division Bench in *The Secretary of the Managing Committee Kalinagar Girls' High School, Nadia* (supra) sought to address meaningfully.

29. The learned counsel representing the State Respondents, however submitted that the Government is entitled to conduct selection in accordance with the changed Rules. Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader relied on the decision of the Supreme Court in the case of *State of M.P. and Others Vs. Raghuveer Singh Yadav and Others*,

30. Mr. Mukherjee further submitted that the legislature has taken away the power of the Managing Committee by enacting West Bengal School Service Commission Act, 1997 and West Bengal School Service Commission (Amendment) 2008 Rule of 2009. Mr. Mukherjee specifically submitted that the State Government has every right to amend the law and the law has been amended in view of the West Bengal School Service Commission (Amendment Act, 2008). We fail to understand how the aforesaid decision cited by learned Additional Government Pleader can be of any assistance to the Respondent Authority. There is no dispute that the Government is entitled to conduct selection in accordance with changed rules and make final recruitment but cannot give any retrospective effect to the amended rules unless specifically provided in the amended Act. It has been submitted on behalf of the State Respondents that the power given to an Authority namely on the Managing Committee has already been withdrawn by operation of the law and the said Authority, therefore, cannot be, allowed to exercise its power in the case of recruitment of Non-Teaching Staff by any judicial order.

31. Mr. Mukherjee, learned Additional Government Pleader submitted that the Division Bench judgment of this Court in *The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia v. Archana Ghosh (Saha) & Ors.* (supra) has not been followed and approved by another Division Bench in the case of *Managing Committee of Polerhat High School Vs. State of West Bengal*, . Mr. Mukherjee submitted that in view of the aforesaid conflicting decisions of the Division Bench of this Court, the view taken by the Division Bench in the case of *Narayan Baidya* (supra) should be followed since in the aforesaid decision, the effect of section 9 of West Bengal School Service Commission Act 1997 was considered.

32. In the present case, the learned Single Judge, by the impugned judgment and order under appeal, disagreed with the Division Bench judgment of this Court (to which one of us was a member) in the case of *The Secretary of the Managing Committee, Kalinagar Girls High School Nadia* (supra) and refused to follow the same.

33. Let us now first examine whether it is open to the Single Judge to disregard

the law enunciated by the Division Bench in the case of The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia (supra). The Division Bench in the aforesaid case of The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia (supra) relied upon three Supreme Court judgments namely Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others, Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, and State of Rajasthan Vs. R. Dayal and Others, which held that the law to be applied in a case for filling up a vacancy must be the law existing on the date on which the vacancy arose. But in the impugned judgment the learned Single Judge has referred to six judgment of the Division Bench of this Court and observed as follows:--

Para 30. On a conspectus of the aforementioned 6 (six) Division Bench decisions of this Court, it does appear to me and I say so with utmost respect for the learned Judges comprising the Benches that the law declared on the point is not consistent.

34. The learned Judge, however, did not attempt to bring about consistency. Having said that the learned Judge on the basis of the judgment in Bholanath Karmakar and Others Vs. Madanmohan Karmakar and Others, felt that in such a state of confusion he was not inclined to follow the Division Bench judgment in The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia (supra) on the following reasoning:

Para-31. In my humble understanding of the aforesaid decisions, the Division Benches have from time to time either laid down the law in wide terms or in a constricted manner. The decision in Basudeb Bag (supra) has been sought to be explained in Narayan Baidya (supra). Abdul Mannan Laskar (supra) has followed the latter decision. Snehanasu Jas (supra) does not expressly disagree with Narayan Baidya (supra)

Laskar (supra) but answers the reference in a manner that seems to me to be inconsistent with the said decisions. Over a period of time, different test have been applied. While Snehanasu Jas (supra) lays stress on commencement of selection process for non-applicability of the amended rules, the previous two decisions considers completion of selection process to be the test. Archana Ghosh (supra), on the contrary, ruled that the rules existing at the time the concerned vacancy arose ought to be followed for filling up the same. Snehanasu Jas (supra) and Abdul Mannan Laskar (supra) though have not been declared per incuriam in Archana Ghosh (supra) but the very observation therein that the same do not operate as binding precedent is sufficient to create confusion in the mind of a learned Single Judge. The decision in Contai Kshetra Mohan Vidya Bhaban (supra) has again followed Archana Ghosh (supra). Apart from the decisions in Basudev Bag (supra), Abdul Mannan Laskar (supra) and Contai Kshetra Mohan Vidya Bhaban (supra), each of the Division Benches in Narayan Baidya (supra), Snehanasu Jas (supra) and Archana Ghosh (supra) have taken a view which appears to me to be inconsistent with the view taken in a previous

decision by a Bench of coordinate jurisdiction. A Single Judge would thus be hesitant in preferring one to the other, being technically bound by all the decisions of the Division Benches, particularly when it is not the law that amongst several decisions must be preferred to the former [see: *Bholanath Karmakar and Others Vs. Madanmohan Karmakar and Others*, . Since all the earlier Division Bench decisions of this Court are not consistent and the views expressed therein do not admit of any reconciliation, but each of them is binding on me. I do feel free to follow that decision which according to me is better in point of law having regard to the dicta in *Bholanath Karmakar (supra)*. I have thus no hesitation in overruling the contention of Mr. Bari that the view expressed in *Archana Ghosh (supra)* [since accepted by the Division Bench in *Contai Kshetra Mohan Vidya Bhaban (supra)*] being the recent and later view ought to be followed."

35. The question which the learned Judge ought to have posed was whether he was free to come to a conclusion different from *The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia (supra)* which had relied upon three Supreme Court judgments namely, *Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others*, , *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, and *State of Rajasthan Vs. R. Dayal and Others*, . Since the learned Judge was sitting singly, he was bound by the decision of the Division Bench in the case of *The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia (supra)*. If the learned Single Judge was of the view that the Division Bench in the case of *The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia (supra)* had erroneously invoked and applied the aforesaid three Supreme Court judgments namely *Arjun Singh Rathore (supra)*, *Y.V. Rangaiah & Ors. (supra)* and *State of Rajasthan (supra)* even then he had to follow *The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia (supra)* unless the rules permitted him to make a reference to the Chief Justice to constitute a larger bench to consider the correctness of *The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia (supra)*. The principle of preference of one view out of the different views of the Division Bench cannot apply where the law declared by the Supreme Court is considered and applied by a Division Bench of the High Court. Even if it is wrongly interpreted and applied by the Division Bench all that a Single Judge could do is either follow it or recommend a reference as indicated above.

36. *Bholanath Karmakar & Ors. (supra)* is not a precedent as the judgment itself says:--

Para-19. But even then, we would not like to decide the question finally as the determination of the question is not unavoidably necessary for the disposal of this case and sitting in this Special Bench, decision whereof would be binding on all smaller Benches of this Court until overturned by a larger Bench or by the Supreme Court, we should not decide the question unless such determination is indispensable. We would, therefore, have the question open to be decided on a

more suitable occasion where such a question would squarely fall for determination. Here in this case, even if we accept the view that in case of conflict of decision of Supreme Court rendered by Benches of co-ordinate jurisdiction, the High Court is obliged to follow the later, we would have to govern ourselves by the later decision in *Udyan Chinnubhai (supra)*. And if we accept the other view that in such a case the High Court may prefer one to the other, we would prefer the later decision in *Udyan Chinnubhai (supra)*, to the earlier decision in *Yeshwant Deorao (supra)*, as observations in *Udyan Chinnubhai (supra)*, on the relevant questions are more elaborate and would more appositely apply to a decree for partition which cannot in law come into existence until drawn up on requisite stamp papers, whenever the judgment might have been pronounced. We would accordingly govern ourselves by the decision of the Supreme Court in *Udyan Chinnubhai (supra)*, and for the reasons stated hereinabove we would hold that a decree for partition does not become enforceable within the meaning of Article 136 of the Limitation Act, 1963 until engrossed on the requisite stamp papers and the period of limitation, therefore, cannot begin to run until such stamp papers are furnished.

37. Reliance has been placed on two Division Bench judgments of this Court, namely (1) *The Managing Committee of Polerhat High School Vs. State of West Bengal*, and (2) *Sankar Das v. The State of West Bengal & Ors.*, reported in (2011)1 WBLR (Cal) 326, which have, in the facts and circumstances, approved the principle applied in the judgment under appeal but we find in difficult to appreciate the submission that because of these judgments, the judgments of the Supreme Court in *Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others*, , *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, and *State of Rajasthan Vs. R. Dayal and Others*, cannot be applied here. We are of the considered view that the principles laid down in the above referred Supreme Court judgments are fully applicable to the facts and circumstances of the instant case. It may also be noted that the *Polerhat High School Case* has not dealt with the question as to whether the judgments of this Court referred to above and on which reliance was placed in *The Secretary of the Managing Committee, Kalinagar Girls" High School Nadia (supra)* is not in line with the principles laid down in the said decisions of the Supreme Court. It is necessary to extract paragraphs 12 and 18 from the decision of *The Managing Committee of Polerhat High School (supra)*.

"Para-12. Law by now is quite well settled that once the recruitment process has been set on motion and the post being advertised, interview having been held and developments take place--then only for the limited purpose the existing Rules prevalent at the relevant point of time would be applicable. Otherwise not."

"Para-18. To put it more succinctly, the said Division Bench in *The Secretary of The Secretary of the Managing Committee, Kalinagar Girls" High School. Nadia (supra)* has missed the crux of the issue and the decision returned thereunder, is virtually does not impinge on the issue in question having no effect, leave alone

any binding effect by way of a proper Judicial pronouncement in connection with a fact in issue."

38. These paragraphs do not, in our view, contain reasons which can persuade us to depart from the principles laid down by the Supreme Court in the above referred judgments.

39. The relevant paragraphs in Sankar Das v. The State of West Bengal & Ors. (supra) are paragraphs 48, 49, 50, 51 & 53 which are set out hereinbelow:

Para-48. Elaborate deliberations have been made on the said issue. Volumes have been spoken. The Division Bench in The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia v. Archana Ghosh (Saha) & Ors. (supra) has felt that the decision of the First Bench (Coram: Ashok Kumar Mathur, C.J. & Girish Chandra Gupta, JJ.) in Snehansu Jas Vs. State of West Bengal and Others, and Abdul Mannan Laskar v. State of West Bengal & Ors., 2000 Vol. (1) Cal HN 435 rendered by Sinha. J. (As His Lordship then was) and Ansari, JJ. "do not operate as binding precedent on this Court" in view of the decisions of the Supreme Court in Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others, and Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, as also State of Rajasthan Vs. R. Dayal and Others, "

"Para-49. In a coordinate Bench, we would be required to see as to whether the decision of the said Division Bench of The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia v. Archana Ghosh (Saha) & Ors. (supra) can have any persuasive value on us, leave alone of any binding precedent."

Para-50. The Division Bench of this Court in The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia v. Archana Ghosh (Saha) & Ors. (supra) has relied under the impression that the earlier "Division Bench decision of this Court in Abdul Mannan Laskar V. State of West Bengal & Ors. (supra) cannot have any binding precedent in view of the reading of the Apex Court decisions by the Speaking Voice of the said Division Bench (Chattopadhyay, J.).

"Para-51. In our forensic appreciation of the entire, issue that surfaces before us, we are of the clear and unambiguous opinion that the said Division Bench in The Secretary of the Managing Committee, Kalinagar Girls' High School Nadia v. Archana Ghosh (Saha) & Ors. (supra) has lost the essence of the very fine issue in question and on a broad spectrum basis came to its finding the effect "... Selection process impugned in the present appeal should be allowed to be completed under the 2005 Rules which were In force when the vacancy in question arose in the concerned school..."

"Para-53. This situation has been beautifully dealt with by Dipankar Datta J. in W.P. No. 16383 (W) of 2010, Asoke Sawoo v. State of West Bengal & Ors. We can do no better than simply quote from His Lordship in Paragraph 38 of the Judgment.

38. With the introduction of the 2009 Rules, the 2005 Rules stood superseded.

The effect of such supersession of the previous rule directly fall for consideration. In a way, all the decisions dealing with amendment of rules and not supersession of rules are distinguishable.

40. Here also, there is no reason as to in what respect The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia (supra) wrongly appreciated or applied the Supreme Court decisions.

41. It is however, not worthwhile to delve further into the questions involved in view of the subsequent larger Bench decision. The subsequent decision is a decision by a three Judge Bench of Justice Tulsi Roy Vs. Sri Krishanu Roy and Others,

42. One of the points referred to the said larger Bench was as follows:--

Para-3. Whether the West Bengal School Service Commission (Selection of person for Appointment to the post of Non-teaching Staff) Rules, 2009 is applicable in respect of vacancy where the selection of the selected candidate has been set aside by a writ-Court for non-compliance of the formalities mentioned by the Supreme Court in the case of Excise Superintendent (supra), notwithstanding the fact that the process of the initial selection for the post concerned started at a point of time, when the aforesaid Rules of 2009 had not come into operation.

43. The larger Bench answered the question as follows:--

Para-23 After the coming into operation of the new Rules, if any illegal appointment earlier made is set aside by a Court, a duty is cast under the new Rule 8 to report such vacancy and to fill it up in accordance with the Rules. However, in a given situation, where due to pendency of the Court proceedings challenging the process of selection as illegal, for any reason, no appointment was made but the proceedings for selection remain stayed and the Court ultimately passes direction for selection after advertising, the process should restart from that stage and should be completed in accordance with the old Rule and in those cases, the process of selection having already been commenced, there is no scope of including those vacancies while preparing the report of vacancy in terms of Rule 8 simply because the vacancy has not been filled up yet.

44. We are conscious of the principle that one Division Bench should not differ from another Division Bench in similar circumstances. However, we are of the view that when the Supreme Court has laid down a principle then the High Court, irrespective of the status of the Bench, is bound to follow the Supreme Court decisions as mandated in Article 141 of the Constitution.

45. The Division Bench of this Court in the case of The Secretary of the Managing Committee, Kalinagar Girls' High School, Nadia (supra) has only followed the principle laid down earlier by the Supreme Court in Arjun Singh Rathore (supra), Y. V. Rangaiah & Ors. (supra) and State of Rajasthan (supra) since the Division Bench is bound to follow the principles laid down by the Supreme Court even

disregarding the law laid down earlier by the Division Bench of this Court in view of clear mandate of Article 141 of the Constitution.

46. In this connection, reference may also be made to a Division Bench judgment of the Bombay High Court in Bhanaji Raoji Khoji [Bhanaji Raoji Khoji v. Joseph De Brito [1905 VII BLR 995] where Sir. Lawrence Jenkins. Chief Justice, speaking for the Bench, laid down the following principle:--

The Judge of a lower Court cannot ordinarily entertain a reasonable doubt on a point clearly decided by the ruling of the High Court of his Presidency unless the authority of the decision can be questioned by virtue of anything said or decided in the Privy Council.

47. The judgment of the Apex Court is a binding precedent and constitutes the law declared as having binding effect on all courts within the territory of India. Observations of the Supreme Court in the case of C.N. Rudramurthy Vs. K. Barkathulla Khan and Others, are very much relevant.

In Para-6 of the aforesaid decision, Supreme Court held:--

6...Indeed it is a matter of judicial discipline that requires that when this Court states as to what the law on the matter is, the same shall be binding on all the Courts within the territory of India. This mandate of Article 141 of the Constitution is not based on any doctrine of precedents, but is an imprimatur to all courts that the law declared by this Court is binding on them...Thus, it was not at all open to the High Court to have tried to explain the decision of this Court and ought to have implicitly followed the decision of this Court...

48. In the aforesaid circumstances, we are constrained to hold that the learned Single Judge has erroneously decided the issues raised in the Writ Petitions and therefore, we are unable to affirm the same. Following the decisions of the Supreme Court mentioned hereinbefore we hold that the selection process should be initiated and completed under the Rules which were in force when the vacancy in question arose.

49. Accordingly, in the present case we hold that the vacant posts of Non-Teaching Staff which are subject matter of the present appeals, should be allowed to be filled up under the 2005 Rules which were in force when the respective vacancies in question arose in the Schools concerned.

50. We therefore, set aside the impugned judgment and order under appeal passed by the learned Single Judge and allow the appeals as well as the connected stay applications.

51. Since a considerable time has already lapsed due to the illegal stand taken by the respondent authorities, we direct the concerned respondent authorities to complete the selection process for filling up the vacant posts of Non-Teaching Staff which are the subject matter of the present appeals without any further delay and positively within a period of 8(eight) weeks from date so that formal

Appointment Letters to the Selected Candidates can be issued by the concerned School Authorities within 10 (ten) weeks from date positively.

52. In the facts of the present case, there will be, however, no order as to costs.

Let urgent Xerox certified copy of this judgment and order, if applied for be given to the learned Advocates of the parties on usual undertaking.

Tarun Kumar Das, J.

I agree.