(1993) 03 CAL CK 0009

In the Calcutta High Court

Case No : C.O. No. 10599 (W) of 1991

Biswajit Bose and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 29-03-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226, 37
West Bengal Co-operative Societies Act, 1983 — Section 42(1)

Citation : 98 CWN 40

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Malay Basu, Swapan Dutta and D. Saha Roy, for the Appellant; Milan Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Gitesh Ranjan Bhattacharjee, J.—All the six writ petitioners were employed with the respondent no. 2, the West Bengal Central Co-operative Land Development Bank Ltd. as supervisors (Civil) under N.C.D.C. - III, storage project for a period of one year on contract service term on a consolidated pay of Rs. 1600/- per month and they are still working in that capacity. The petitioners applied for employment against the advertisements published in the Statesman dated the 9th June, 1985 and the 20th January, 1988 inviting application from candidates holding at least Diploma in Civil Engineering and having adequate experience in supervision and construction of/Reinforced Concrete Framed Typed buildings including sanitary, water supply and road works as well as preparation of bills, estimates etc. The petitioners were called for interview and after selection they were offered employment as Supervisors (Civil) under National Co-operative Development Corporation-III (NCDC-III) storage project, for a period of one year on contract service term on a consolidated pay of Rs. 1600/- per month. They joined the head office of the bank at 25-D. Shakespeare Sarani, Calcutta-78 on different dates in between January, 1988 and January, 1989. They were thereafter posted in different districts; Since then they have been working continuously without any break in the aforesaid capacity as Supervisors (Civil) and although the initial term of their appointment was for one year yet the same was extended from time to time, and sometimes such extension was made even alter the expiry of the term with retrospective effect. It has so happened that on a good number of occasions the petitioners or some of them had worked for sometimes as usual after the expiry of the term without any formal extension. At the time of their appointment the petitioners also required inter alia to submit release order from their ''present'' employer, if any, at the time of joining and to execute an agreement containing the terms and conditions of the employment. Annexure to the writ petition is a Memo dated the 10th January, 1989 issued by the Managing Director of the Bank (respondent no. 2) extending the tenure of appointment of the petitioner no. 1, Shri Biswajit Bose for one year with effect from 5th January, 1989 with the existing terms and conditions. The said Annexure also contains a copy of the Memo dated the 9th February 1990 whereby extension was given to the petitioner no. 6, Shri Rathin Chakraborty for a period of 3 months with effect from 27th January, 1990 on the existing terms and conditions of his service; his earlier term having expired on the 26th January, 1990. By the said Memo the petitioner was also asked to convey his consent sufficiently before the expiry of the above term of extension. Be that as it may the petitioner an 23nd November 1990 made a joint representation to the managing director of the bank ventilating their grievance and requesting for regularising their services and for grant of regular scale of pay applicable to regular staff of the Bank. By an order dated the 15th March, 1991 the Managing Director of the Bank increased the consolidated pay of the petitioners with effect from the 1st January, 1991 at the rate of 20% subject to a maximum of Rs. 300/- per month. It was also stipulated that such enhancement would be deemed to be an ad hoc allowance in addition to the existing ad hoc allowances. The pay of the petitioners accordingly stood raised to Rs. 1900/- per month. Then again by an order under Memo No. 898/32 dated the 3rd July, 1991 the Managing Director of the Bank informed that the Board of Directors of the Bank had approved that the consolidated pay of the petitioners who were working in the Bank on contract basis was increased with effect from 1st May, 1991 by Rs. 500/- per month and the petitioners would have to make a fresh agreement with the Bank and the changes of emoluments would be given effect on execution of fresh bond. The petitioners have been aggrieved by this order of the Bank so far it relates to execution of fresh agreement bond and not in respect of the enhancement of their emoluments by Rs. 500/-. It is the contention of the petitioners that the petitioners are to be regarded as on regular service of the Bank since after the expiry of the initial term of appointment and by the impugned order dated the 3rd July, 1991 requiring the petitioners to execute fresh agreement bond the respondents are trying to bring back the petitioners under contract service once again which is exfacie illegal, arbitrary, mala fide and unreasonable. Accordingly they have filed this writ petition for various reliefs including a declaration that the petitioners are in regular employment under respondent no. 2 and are entitled to all consequential benefits of service attached to the post of Supervisor (Civil) as well as for a writ of mandamus, commanding the respondents to regularise the services of the petitioners and also for rescinding and/or withdrawing the purported order dated the 3rd July, 1991 so far as it directs execution of fresh agreement bond, etc.

2. The writ petition is contested by the respondent no. 4, who is thee Managing Director of the West Bengal Central Co-operative Land Development Bank. It is the contention of the respondent inter alia that the petitioners are on purely contract service under NCDC-III project scheduled too expire in June, 1992 and this project is financed by the World Bank and on the expiry of the project the Bank will not be in a position to continue the appointment of the petitioners, firstly because there would be no job for the petitioners to perform and secondly because the resources of the Bank would not permit the Bank to bear the expenses of maintaining the employment of the petitioners. It is also the contention of the respondent no. 4 that this writ petition is not maintainable because the Bank being a Co-operative Society registered under the West Bengal Co-operative Societies Act is neither ''State'' nor ''Authority'' within the meaning of the terms under Article 12 and under Article 226 of the Constitution and as such no writ lies against it. It may be mentioned here that by an interim order this Court directed that the execution of the agreement by the petitioners in terms of the order dated 3rd July, 1991 would not prejudice the rights and contentions of the parties in the proceeding and an interim order was also granted restraining the respondents from terminating the services of the petitioners without the leave of the court.

3. Now let us see what is the status of the respondent no. 2, the West Bengal Central Co-operative Land Development Bank. This bank is a cooperative society registered under the West Bengal Co-operative Societies Act. The objects of the society is to be found in para - 4 (1) of the bye-laws of the society which is re-produced below :

Objects : 4 (1)(a) - To grant loans to the Society members of the Bank and to individual members through the Branch Units of the Bank on such terms as the Board of Directors of the Bank shall decide. Provided that grant of loan to any member other than primary Land Development Banks shall be done with the knowledge of the Primary land Development Bank in the area of operation.

(b) To promote working of or to organise branch units of this bank for furtherance of long term credit or to organise Co-operative Primary Land Mortgage/Development Banks.

(c) To inspect and supervise the work of the affiliated banks/societies and loanee members and to manage and control the affairs of the branch units and the properties mortgaged/hypothecated to them.

(d) To assist and advise affiliated societies and rich units of this Bank to further their interests in every way, and

(e) To undertake through affiliated primary banks an branch units the work of financing the growers under spectacle schemes approved by the Government, NABARD or other component authority constituted by Government or legislation for development of agriculture and allied activities and to take such other actions as are conducive to the expansion of long term credit movement in West Bengal.

The bye-laws also provide inter alia in para - 4 (2)(d) for appointment of such staff as the society bank considers necessary for the conduct of its own affairs and for supervision of affiliated societies. The membership of the bank is categorised in 4 classes. Class A membership is open to the State Government, Class B membership to primary land development banks, Class C membership to co-operative societies executing the scheme of the bank and body corporates with the approval of the State Government and Class D membership to individuals above 18 years of age with certain restrictions. Para-17 of the bye-laws relates to share capital of the bank. The nominal share capital of the bank is Rs. 20,00,00,000/- (Rupees twenty crores) of which Rs. 8,00,000/- is to be subscribed by Class A members, Rs. 10,50,00,000/- by Class B members, Rs. 1,00,00,000/- by Class C members and Rs. 50,00,000/- by Class D members. The nominal share capital however may be increased or the proportion of the number of shares allotted to each class of members may be altered by a resolution of the general meeting with the sanction of the Registrar of the Co-operative Societies. Para-36 of the bye-laws inter alia provides that the supreme authority of the bank shall vest in the General Body of members Under para-46 of the bye-laws the Board of Directors shall consist of 9 elected members and such number of state nominees as may be nominated by the Government as per provisions of the Act and the Rules. It is also provided therein that the Managing Director of the bank shall be ex-officio Director of the Board. Para-52 of the bye-laws provides that the Board of Director shall appoint a person to be the Managing Director of the bank for the conduct of the affairs of the bank and the State Government shall have power to appoint a Managing Director of Bank on such terms and conditions as may be laid down by the State Government. Para-50 inter alia provides for election of Chairman and Vice-chairman by the Board of Directors. Para-53 provides that subject to the general control of the chairman of the bank the Managing Director shall conduct the business of the bank and shall for this purpose exercise the powers as laid down in the Act and the Rules framed thereunder. It is stated that a Government officer is always appointed by the Government as Managing Director of the bank.

4. As we have already seen the petitioners were all appointed on con tract basis under NCDC-III project. Annexure-X2 to the supplementary affidavit filed on behalf of the petitioners is a leaflet under caption THREE DECADES OF DEVELOPMENT BANKING issued by the respondent bank on the occasion of the inauguration of the bank''s new training centre it is stated therein that the West Bengal Central Co-operative Land Development Bank Ltd. is a State level co-operative society engaged in the business of providing credit on long terms for agriculture and rural developments. It is further stated therein thus :

The Land Development Banks have a class of their own in the comity of bankers. The West Bengal Central Co-operative Land Development Bank is no exception. Although very much in the business of providing credit, it is not a bank according to the Banking Regulations Act but is guided by the Co-operative Societies Acts and Rules of the State. In its conduct of the business of rural development as well, it has some distinction in the sense that the credit provided by it is borrowed capital and its ability to continue in the business is in execrably liked to its ability to recover its loans. Since the sphere of its activity is the rural sector where little surplus funds are generated, the Land Development Bank sells debentures to mobilise funds as a matter of course. It is only in recent times that mobilisation of deposits from the public by the primary land development banks has made a small beginning, while the sale of debentures still remains very much the staple diet of the bank. These debentures, of varied terms are subscribed mainly by the NABARD and granted by the Government of West Bengal which also holds major share in both the apex bank as well as in its constituents units. The State Government''s assistance is also made available to the banks in other forms like manpower, subsidy for different agriculture schemes etc.

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What started as a new venture in the mid-60s develop into a full grown movement in the mid-70s when the bank''s lending business diversified into countless directions like minor irrigation, farm mechanisation, horticulture, floriculture, fisheries development etc.

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Today, as many as 300 different non-farm based activity receive finances from the bank which benefit a large section of rural people not directly engaged in farming.

Regarding infrastructure development for marketing of agricultural produce, the bank took an ambitious two part project for development of cold storages and rural godown in the State with financial assistance from the NCDC. Termed as the NCDC-II project for which assistance from the International Development Association was made available 17 cold storages, each of 4000 M.T. capacity, were financed by the bank which were constructed by different co-operative marketing or cold storage societies at a total cost of Rs. 12.45 crore (bank loan - Rs. 7.47 crore). The other part of the scheme, known as the NCDC-II project consisted of 632 rural godown which were constructed by the village level Co-operative Marketing Societies with loans from the bank for a total of Rs. 15.56 crore. It may be mentioned in this connection that it was the NCDC which proposed and provided finance for the construction of the well-equipped, modern and self-sufficient training centre by the bank to cater to the endless training needs of personnel engaged in the supply of credit and implementation of schemes. The institute of co-operative management of agriculture and rural development, completed with financial assistance from the NCDC and generous help from the Calcutta Improvement Trust, is the successful culmination of that proposition.

The march for rural development has, of course not stopped here. The bank has on its anvil new projects galore of which mention may be made of just one, viz, rural housing. A new dimension will be added to activities of the Land Development Bank when it will be able to attend to the two basic needs of rural society viz., food and shelter, with the launching of this new project.

5. At this stage it may be noted that the learned Advocates for both sides have attracted my attention to a number of judicial pronoucements which I proceed to discuss now. A full court of the Orissa High Court in Banabihari Tripathi vs. Registrar, Co-operative Society, (A.I.R. 1989 Orisssa 31) in connection with the question whether a society registered under the Societies Registration Act could be regarded as an authority within the meaning of Article 12 of the Constitution took note of the principles which have been quoted from the Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, by the Supreme Court with approval in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, in the following language :

(1) One thing is clear that if the entire share capital of the corporation is held by Government it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of (he State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with Governmental character.

(3) It may also be a relevant factor............. whether the corporation enjoys monopoly status which is State conferred or State protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the fuctions of the corporation are of public importance and closely related to Governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference of the corporation being an instrumentality or agency of Government

6. In the said decision the High Court also took note of the following observation of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, :

The concept of State has undergone drastic changes in recent years, Today State cannot be conceived of simply as a coercive machinery wielding the thunderbolt of authority. It has to be viewed mainly as a service corporation

The following observations of the Supreme Court made in R.D. Shetty vs. The International Airport Authority of India. AIR 1979 S.C. 1623 also received the attention of the High Court in the said decision in Banabihari Tripathi (surpa) :

Today the Government, in a Welfare state is the regular and dispenser of special services an provided sic of benefits, including jobs, contracts sic quotas, mineral rights etc. The Government pours forth sic money benefits, services, contracts quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of business or work. The power of giving licences means power to withhold them and this gives control to the Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. All these mean growth in the Government largesse and with the increasing magnitude and range of Governmental functions as we move closer to a welfare State; more "and more of our wealth consists of these new forms."

After detailed analysis of the various judicial pronouncements the Orissa High Court recorded one of its conclusions in the said decision in Banabihari Tripathi (surpa) in the following language :

If a co-operative bank is borne under or created by statute, then it may acquire the status of an ''authority'' within the meaning of Article 12 of the Constitution. Otherwise, it has to satisfy the essential tests formulated by the various decisions of the Supreme Court for which, however, there cannot be a strait jacket formula. However, it may not be necessary that the society must satisfy all the tests for qualifying to be an ''authority'' and in a given case, only some of the prominent features, may give it that status. But that must be so predominant that on tearing the veil, it may appear that the society is merely a projection of the State, the voice being that of the State and the hands also of the State.

7. In Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, the Supreme Court made the following observation :

There are tests formulated by several cases of the Supreme Court to find out whether an institution is a ''State''. There cannot indeed be strait jacket formula. It is not necessary that all the tests should be satisfied for reaching the conclusion either for or against holding an institution to be ''State''. In a given case some of the features may emerge so boldly and prominently that a second view may not be possible. There may yet be other cases where the matter would be on the border lines and it would be difficult to take one view or the other outright.

The Court then gave the following caution to decide such a question :

In a welfare State, Government control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests to be made, there is possibility of truing every non-Governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experinces in view so as to reach a reasonable conclusion.

8. In Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], it fell for consideration of the Supreme Court whether the National Council of Educational Research and Training (NCERT) is State as defined under Article 12 of the Constitution. In the said decision it was observed thus by the Supreme Court:

Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression ''State''. A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modem concept of welfare state, independent institution, corporation and agency are generally subject to state control. The State control does not render such bodies as ''State'' under Article 12. The State control, however vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive, the combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an important public service being the obligatory functions of the State may largely point out that the body is ''State''. If the Government operates behind a corporate veil carrying out Governmental activity and Governmental functions of vital public importance, there may be little difficulty in identifying the body as ''State'' within the meaning of Article 12 of the Constitution.

Having regard to the object and function of the NCERT and the relevant factors the Supreme Court held that the organisation (NCERT) was not State within the meaning of Article 12.

9. In Raikot Co-operative Marketing-cum-Processing Society Ltd. vs. State of Punjab, AIR 1988 P & H 77, it was noted by the Punjab and Haryana High Court that in view of the provisions of Section 23 of the Punjab cooperative Societies Act the final authority in Co-operative society vests in the general body of the members. A full bench of Andhra Pradesh High Court in Sri Konaseema Co-operative Central Bank Ltd. vs. N. Seetharama Raju, AIR 1990 Andhra Pradesh 171, found that the main object of the Cooperative Central Bank registered under the Andhra Pradesh Co-operative Societies Act was to raise funds to finance its members. The High Court after analysis held that the Bank although it was a registered Co-operative Society was not State within the meaning of Article 12. It

was further held in that decision that a writ petition does not lie to enforce a non-statutory contractual obligation.

10. The Calcutta High Court in In Re: M.L. Shaw and Another, held that the Bengal Chamber of Commerce cannot be treated as State within the meaning of Article 12 even though it is a company brought into being under the companies Act. It was further held in the said decision that in order to be a state within the meaning of Article 12 it must be an authority which means and includes only those whose orders are to be obeyed by the citizens of the state. But then it was also observed therein that by the very word ''authority'' it excludes voluntary association, association created under a general statute just like the companies Act, but it includes statutory authorities, authorities Which are brought into being by an Act and are vested with Governmental duties, namely. Steel Authority of India, Life Insurance Corporation of India, Oil & Natural Gas Commission, Indian Airlines Authority as well as the Bharat Petroleum, to cite some of the instances of the statutory authorities.

11. In Indian Association for the Cultivation of Science vs. Ashoke Kumar, 1992 (1) CLJ 319, it was held by the Calcutta High Court that the Indian Council of Cultivation of Science which is a society registered under the Societies Registration Act with the objects inter alia to cultivate science in all its departments with a view to its advancement by original research and to its varied applications to the arts and comforts of life, and to found, equip and maintain scientific laboratories and library or reading room for general use among the members or the students of the Association, etc. etc. was not an ''authority'' within the meaning of Article 12 or Article 226 of the Constitution, it being an autonomous body not amenable, to writ jurisdiction. In Sudam Vanaji vs. Shetkari Sahakari Sangh Ltd., AIR 1992 Bombay 347 it was held by the Bombay High Court that Co-operative Society is not an authority within the meaning of Article 12 of the Constitution.

12. In Nihar Sengupta vs. Union Territory of Arunachal Pradesh 1989 Lab. I.C. 1866, it was however held by the Gauhati High Court that a cooperative society registered under the Arunachal Pradesh Co-operative societies Act is state within the meaning of Article 12. In Arjed Ali Gazi vs. State of West Bengal 1990 (II) CHN 284 it was held by this Court that a Cooperative Society registered under the West Bengal co-operative societies Act is not State within the meaning of Article 12 of the constitution, but even then where the society has an obligation to comply with statutory rules in the matter of the conditions of service of the employee a writ eill lie for non compliance of such obligation. In Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, it was held by the Supreme Court that the service conditions of the academic staff of an affiliated college are not purely of a private character and it has superadded protection by University decisions creating a legal right-duty relationship between the staff and the management of the college and when there is existence of this relationship, mandamus cannot be

refused to the aggrieved party. In A.M. Ahmed & Company vs. Union of India, AIR 1982 Madras 247 it was held by a Division Bench of the Madras High Court that the National Agricultural Co-operative Federation of India Ltd. (Nafed) which is a Co-operative Society registered under the Delhi co-operative societies Act, in relation to its activity as canalising agency for export of onions to Singapur and Malaysia is an ''authority'' as contemplated in the definition of state in Article 12. The following observation of the Madras High Court at page-256 of the said decision in that connection deserves attention:

20. In the scheme of canalisation, it is really the Government which acts through the canalising agency and the juristic personality owned by the agency is only for the purpose of convenience and cannot be allowed to obliterate the true nature of the reality behind which is the Government. It is because of this true nature of the scheme of canalisation that the Supreme Court had upheld the monopoly right conferred on such agency. There could, therefore, be no doubt that NAFED in respect of its activity as a canalising agent is an authority within the meaning of Article 12 of the constitution.

13. In the present case a controversy has been raised whether the petitioners are in contract service under the concerned respondent and if so whether a writ will lie in respect of such contract service. In that connection the learned Advocates for both sides also referred to several judicial pronouncements which I propose to discuss now. In Sandeep Kumar us. State of U.P.A.I.R. 1992 S.C. 713 certain junior Engineers were working in a project under the control of Executive Officer, City Board, Gaziabad. The nature of work was essentially slum clearance and the project was financed partly by the State of U.P. and partly by World Bank Funds. The Supreme Court found that the scheme under which the petitioners were working was of a very specific nature and there was no permanent need for the work and since it was a project for a particular purpose it would not be possible to direct regularisation of the petitioners in service. The Supreme Court however clarified that the petitioners were entitled to regularisatlon of their service by recruitment through the State Public Service Commission for vacancies other than employment under the project and as and when such vacancies would arise and were duly notified the claim of the petitioners should be considered for appointment subject to their satisfying the requisite qualifications prescribed therefor under the rules and the employer would not stand in the way of regularisation of their service. In State of Gujarat and another Vs. P.J. Kampavat and others, the question that fell for consideration was whether certain appointees under contractual appointment were entitled to be regularised in service. In 1985 the Government of Gujarat thought it expedient to permit the Chief Minister and other Ministers to appoint persons of their choice in their respect the establishments. Accordingly, certain appointments were made in the other of the Chief Minister as direct recruits on purely temporary basis with express stipulation that there services were liable to be terminated at any time without giving any notice or assigning any reasons and that the appointment was for a limited period upto the tenure of Minister''s establishment and the

appointees would not get any right for absorption in regular cadres and they would have to furnish an undertaking to that effect. The Supreme Court observed that it would be evident from a reading of the order of appointment that it was purely a contractual appointment conterminous with the tenure of the Minister''s establishment, at whose choice and instance they were appointed and the order expressly stated that they would not get any right to appointment in regular cadre and that their services were liable to he terminated at any time without giving any notice and/or without assigning any reasons. The Supreme Court also held that the appointment of the appointees was a pure and simple contractual appointment and such appointment did not attract and was outside the purview of the Bombay Civil Service Rules, 1959 and since the tenure of the Ministers at whose instance and whose recommendations they were appointed had come to an end their services also would come to an end simultaneously and that they ought to go out in the manner they had come in.

14. In Tota Mia vs. State of West Bengal Cal L.T. 1990 (2) H.C. 235. 112 petitioners claming to be appointed as contract labourers moved the writ petition contending that they were to be absorbed by the state Government under the range officers of different discricts in West Bengal. It was however held by this count that a person working on contract basis and not a casual labourer who is performing his duties from an unspecified date has no right to be absorbed by the State Government. That was however in the background of a particular memorandum issued by the Government laying down the principles to be followed in the matter of absorption of casual and other categories of workers under the State Government. The court however made it specific that the failure of the writ petition would not stand in the way of future absorption of the petitioners in the regular establishment in accordance with a proposal lying with the Government for absorption of these labourers in regular establishment after creation of new posts. In Anupam Ghosh vs. Union of India, Cal. L.T. 1991 (1) H.C. 300 it was held by this Court that the service of the writ petitioners and conditions thereof flowed from private contract between the parties and in view of the position of law the impugned action of termination of service was not amenable to writ Jurisdiction even if it was held that the employer company was state within the meaning of Article 12. In Dr. L.P. Agrawal Vs. Union of India and others, it was held by the Supreme Court that the concept of superannuation is not applicable to tenure post. Under the recruitment rules the post of Director of the A.I.R.M.S. is a tenure post. The said rules further provide the method of direct recruitment for filling the post. It was held in the said decision that these service conditions made the post of Director a tenure post and as such the question of superannuation or premature retirement of Director could not arise.

State of Haryana and others Vs. Piara Singh and others etc. etc., the Supreme Court made the following observation at page 2139 which de-serves attention:

10. Ordinarily speaking the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service

subject, of course, to a law made by the appropriate legislature.

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The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the Rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirement of Articles 14 and 16. It also means that the state should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the state must be a model employer. It is for this reason it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the Court presumes that there is need and warrant for a regular post and accordingly directs regularisation. While all the situations in which the Court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above.

15. In Dr. V.L. Chandra and others Vs. All India Institute of Medical Sciences and others, a writ petition was filed before the Supreme Court by certain persons who were working in research projects undertaken by the All India Institute of Medical Sciences, but whose services except of one were terminated. The institute had been set up under a Central Act. Ever since its inception the institute had taken up various research projects and had made valuable contribution to the updating of medical knowledge and building up coordinated research activity. For the purposes of carrying out such research programme in conjunction with the World Health Organisation, the Indian Council of Medical Research and other celebrated organisations, both national and international, research projects were undertaken by the institute by employing research. For carrying out of the assignments of research projects the petitioners were employed more than a decade ago and their assertion to the effect that they had been continuously working for more than 10-15 years had not been disputed. The petitioners also asserted that they had worked to the satisfaction of the authorities and the guides and there was no denial of that fact too. It was the case of the petitioners that by working for such a long period continuously and in different projects under different guides, they had picked up the requisite expertise which would be useful in carrying out any normal research project. They contended that having worked for a long period in the Institute they had reached an age in life where they were no more entitled to enter into government service or any other suitable public employment. The Institute set up by statute was intended to carry on research in a continuous way to improve the level of medical knowledge. In the background of the facts and circumstances the Supreme Court made the following observations and directions

at page 41 (ibid) :

7. *** It is true that the institute Is entrusted from time to time with research projects by the World Health Organisation, the Indian Council of Medical Research and other government and semi-government bodies. It is appropriate that a scheme should be evolved by the Institute in coordination with the Health Ministry and the Indian Council of Medical Research so that a team of researchers is built up to meet the general requirements of research. It is quite possible that certain projects would require specialised hands and on such occasions a special team could be set up on casual basis by drawing the competent hands from different instututes for a period but to keep up the tempo of research if a team of researchers is built up, it would be convenient for the institute for purposes of discipline and control as also for efficiency. The Health Ministry must also sponsor continuous research projects in the field of medicine and health and for such purpose several projects should be listed out from time to time and entrusted to the respondent-Institute as also a similar Institute at Chandigarh and to institutes as and when set up elsewhere. This would assist in updating relevant medical information and knowledge, apart from building up a scientific tone and temper for general circulation. We commend that the Institution initiates seriously action in this regard without delay and we suggest that the Ministry of Health and the Indian Council of medical Research collaborate with the institute to work out the same.

8. *** Since we have been told that the respondent-Institute has immediately no scope to employ the petitioners excepting the one that we have named above, we direct that the remaining three petitioners in these two petitions should be provided employment either as researchers or in any suitable alternative employment until their inclusion in a team of researchers is considered. The Indian Council of Medical Research shall take appropriate steps to offer adequate employment to the three petitioners within two months hence. If the question of funding becomes necessary, we direct the Ministry of Health to co-operate and place adequate funds at the disposal of the Indian Council of Medical Research.

The learned Advocate for the petitioners heavily relied on the aforesaid decision and directions of the Supreme Court in V.L. Chandra vs. A.I.I.M.S. (supra).

16. Now let us try to understand the NCDC scheme which the respondent-Bank has undertaken to implement. In this connection, as I have already noticed, the abbreviation NCDC stands'' for the National Cooperative Development Corporation which is a statutory corporation set up by the National Co-operative Development Corporation Act, 1962. The Act, as its preamble exhibits intends to provide for the incorporation and regulation of a corporation for the purpose of planning and promoting programmes for the production, processing, marketing, storage, export and import of agricultural produce, foodstuffs and certain other commodities on co-operative principles and for matters connected therewith. Section 3 of the said Act provides for the establishment of the corporation by the said name by the Central Government by notification in the Official Gazette. The

composition of the General Council of the said corporation as provided in sub-section (4) of section 3 readily gives it the complexion of a governmental body. Section 6 of the Act empowers the Central Government to remove any member from office other than an ex-officio member of the Corporation after giving him a reasonable opportunity of showing cause. The Managing Director of the Corporation is also appointed by the Central Government in consultation with the Corporation u/s 8. The Board of Management of the Corporation as provided in section 10 also has the complexion of a governmental body. Section 12 provides for grants by the Central Government to Corporation. Section 12A empowers the Corporation to borrow money as mentioned therein with the approval of and subject to the direction of the Central Government. Section 15 provides that in all matters including matters of policy, the Corporation shall be guided by such directions as may be given to it by the Central Government. Section 16 requires the Corporation to submit its programme of activities for the forthcoming year as well as a financial estimate in respect thereof to the Central Government for approval. Section 21 empowers the Central Government to dissolve the Corporation by notification in the Official Gazette if it is of opinion that the Corporation has failed to carry out its functions under the Act or that for any other reason it is not necessary to continue the Corporation. The basic objective of the Corporation is to plan promote and finance programmes for processing, storage and marketing of agricultural produce and certain other commodities on co-operative principles. The Expert Committee appointed by the Government of India in pursuance of certain observations made by the Public Accounts Committee (Fourth Lok Sabha) in their 106th report in regard to the need for the continuance of the National Co-operative Development Corporation, etc. recommended not only the continuance of the Corporation but also broad-basing of its functions, activities and organisational set up. One of the recommendations of the Expert Committee was that the activities of the Corporation should be extended to co-operative dairy, poultry and fishery programmes, specially designed for assisting the vulnerable sections of the community. One of the other recommendations was that the Corporation might be enabled to borrow from the open market, on Central Government''s guarantee,'' if necessary, and also from other sources. Amending Act 3 of 1974 was designed to implement the major recommendations of the Expert Committee.

17. Having regard to the formational back-ground of the Corporation and the complexion of its entity and other relevant factors discussed above, there is no difficulty in identifying, without any fear of contradiction, that the National Co-operative Development Corporation is ''State'' within the meaning of Article 12 and also is an ''authority'' within the meaning of Article 226 of the Constitution. Under the specific statute the Central Government established the said Corporation for certain specific purposes mentioned earlier, the purposes being, planning and promoting programmes for he production, processing, marketing, storage, export and import of agricultural produce, foodstuffs and certain other commodities on co-operative principles and for matters connected therewith.

Obviously the objects of the formation and functioning of the corporation include a mission to assist the vulnerable and weaker sections of the rural community. These objects and functions originate and emanate from the responsibility and commitment of the State to implement certain aspects of the directive principles of State policy as enshrined in Part-IV of the Constitution of India. The beneficiaries of the planning and promoting of programmes for the production, processing, marketing, storage, export and import of agricultural produce, foodstuffs and other commodities on cooperative principles for which the NCDC has been established are largely the weaker sections of the society whose livelihood is based on agriculture and rural economy of the country. This may be illustrated by reference to the aims of the NCDC-III project. In this connection reference may be made to a letter dated the 7th July, 1984 written on the subject of NCDC-III World Bank Co-operative Storage Project by the Managing Director of the National Co-operative Development Corporation (NCDC) addressed to different authorities including the Managing Director of the respondent-Bank and the Secretary to the Co-operative Department, Government of West Bengal as well as to the Agricultural Production Commissioner, West Bengal which is an Annexure to the supplementary affidavit affirmed on behalf of the petitioners, particularly to paragraph-3 thereof which runs thus:

Paragraph 3. The project aims at creation of storage facilities in the rural areas and at Mandi level, which would function as decentralised, coordinated rural service centres by incorporating into them an integrated activity mix needed by the rural community, namely, provision of agricultural credit, storage and supply of fertilizers and other farm inputs, storage of agricultural outputs and supply of essential consumer goods. The storage facilities and other services would be weighed in favour of the weaker sections of the village communities.

The Corporation has been set up inter alia with the avowed object of taking measures for ameliorating the living conditions and viability potentials of the rural mass based on agriculture and agricultural yields. Article 39 of the Constitution contained in the Chapter of Directive Principles interalia provides that the States shall, in particular, direct its policy towards securing that the citizens have the right to an adequate means of livelihood and that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Article 38. provides inter alia that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Article 46 provides inter alia that the State shall promote with special care the economic interests of the weaker sections of the people and shall protect them from social injustice and all forms of exploitation. Article 48 provides inter alia that the State shall endeavor to organise agriculture and animal husbandry on modern and scientific lines. The basic objective of the Corporation which is to plan, promote and finance programmes for processing, storage and marketing of agricultural produce and certain other commodities on co-operative principles definitely responds to the directive principle of State policy as enshrined in Article 38 requiring the State to strive to promote the welfare of the people by securing and protecting a social order aiming to ensure social and economic justice. The objective of the corporation so far as it aims at promoting and financing programmes in respect of matters relating to agriculture and agriculture-based economy has also close relationship with the responsibility of the State under the directive principle of Article 39 to secure to the citizens including the weaker sections of the rural community adequate menas of livelihood. The functioning of the corporation is tuned to an expectation to ameliorate the productive potentials of agriculture and to augment the economic returns therefrom with a promise of equitable distribution thereof through co-operative efforts, the beneficiaries whereof will be predominantly drawn from the weaker sections of the population connected with agriculture. The effort of the corporation also answers the responsibility of the State to organise agriculture on modern and scientific lines in consonance with the directive principle relating to agriculture as laid down in Article 48. The function of the corporation also reflects the spirit of Article 46 and is patently aimed at promoting the economic interests of the weaker sections of the people dependent on agriculture, agricultural yields and processes connected therewith upto the marketing stage where alone its productive value is quantified in economic terms, it is therefore unmistakably clear that the National Co-operative Development Corporation has been set up as a social welfare measure intended for the benefit of the weaker sections of the society dependent on agriculture in consonance with the socialistic ideals promised in the preamble of the Constitution of India and also in discharge of the responsibilities of the directive principles of State policy in respect of certain aspects appearing in Articles 38, 39, 46 and 48 of the Constitution of India.

18. Article 37 provides that although the provisions contained in Part-IV shall not be enforceable by any Court yet the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It is therefore obvious that the principles laid down as the directive principles of State policy are required to be treated as a fundamental responsibility of the Government in the governance of the country and the State is required to apply the principles in making laws.

It is evident that the founding fathers of the Constitution did not consider it proper to remain content with the traditional functions of Government on the principle of laissez-faire or as a mere organ of police State but rather assigned prominence to the avowed object of ushering in a welfare State with specific responsibilities outlined in the directive principles of State policy engrafted in Chapter-IV of the Constitution as principles fundamental in the governance of the country. Therefore in considering the question whether any particular exercise of the Government or of an instrumentality or agency of the Government State falls within the ambit of Governmental functions in the context of Article 12 and other Articles in the Chapter of fundamental rights, it will be a lop-sided assessment to confine the concept of governmental activities only to its limited traditional role of a merely coercive machinery in bygone days ignoring that today the Government where it chooses to discharge either directly or through its instrumentality any of the cherished responsibilities laid down in the directive principles of State policy, does so for discharging a governmental function emanating from policies which though unenforceable by Court are nevertheless fundamental in the governance of the country in view of the unequivocal constitutional mandate in that regard. Function undertaken by the Government or by its instrumentality for implementing any State policy which is fundamental in the governance of the country by constitutional mandate cannot be anything else but governmental function in discharge of governmental duties Consequently, the implementation of the NCDC scheme or project is nothing but a governmental function directly having its roots in the constitutional mandate of the directie principles of State policy. Such function of a governmental instrumentality reflecting discharge of State responsibility in the matter of implementation of certain aspects of the directive principles can not be described as falling within the domain of non-governmental or private activity nor can it be termed as trade activity or commercial or profiteering activity of the State. Here, again, it is not a case of exercise of control by the Government over any non-governmental body. It is pure and simple implementation of a governmental function by a State organ manly, the NCDC. It is no doubt true that in the matter of implementation of the scheme the respondent bank has been associated as an implementing, agency but the function of the bank in the matter is specific and it has to implement the scheme of the National Co-operative Development Corporation. In paragraph-12 of the letter dated the 7th July, 1984 addressed by the Managing Director, of the National Co-operative Development Corporation which is an annexure to the supplementary affidavit affirmed on behalf of the petitioners it has been stated inter alia that the construction of godown complexes will be in accordance with standard designs approved by NCDC in consultation with IDA for different capacities and that the contracts for godown construction shall be awarded on the basis of open competitive biddings only and copies of the tender notices, specifications, evaluation, contracts and other relevant documents shall be kept by the SCB/SLDB and submitted on request for periodical inspection by the representatives of IDA/NCDC and further that minor changes in building designs, specifications and other construction standards, to suit local conditions such as climate, availability of material etc. can be made with the prior approval of NCDC. This makes it clear that the respondent-bank was to act only as the implementing agency or instrumentality of the NCDC in respect of the scheme entrusted to it and even for minor changes in building designs etc. prior approval of NCDC was necessary.

19. It is the contention of the petitioners that the State Government holds major share in the respondent-bank and it also guarantees all borrowings made by the bank and help the bank for providing manpower support and that there are members in the Board of Directors representing the State Government and the

Managing Director and Chairman of the bank and many departmental heads are from the State Government. These facts however may not be sufficient to make the bank an ''authority" within the meaning of Article 12 or Article 226 of the Constitution in view of the several decisions discussed earlier. But then it appears clear that the bank in relation to its entrusted activity as an implementing agency in respect of the NCDC project, which is a governmental function, sponsored by a statutory body, namely, the National Co-operative Development Corporation in discharge of its statutory functions relating to implementation of the directive principles of State policy in cerain spheres, is an ''authority'' as contemplated in the definition of State in Article 12. This view that a cooperative society may in relation to its particular activity come within the definition of State in Article 12 is also supported by the Division Bench decision of the Madras High Court in A.M. Ahmed & Co. vs. Union of India (supra) where National Agricultural Co-operative Federation (NAFED) was held to be an ''authority'' as contemplated in the definition of state in Article 12 in relation to its activity as canalising agency for export of onions to Singapur and Malaysia. It may also be noticed here that in the matter of implementation of any NCDC project entrusted to the respondent-bank, the bank has indeed a monopoly role to play inasmuch as it alone has the pivotal responsibility to ensure the implementation of the project. In view of these prominent features obtaining in the case it can be safely held that the respondent-bank in relation to its activity as an implementing agency for the implementation of the NCDC project entrusted to it is an ''authority'' as contemplated in Article 12 and is therefore also amenable to the writ jurisdiction of this Court under Article 226.

20. The next question that falls for consideration is whether matters pertaining to the service of the petitioners under the respondent-bank will be amenable to the writ jurisdiction of this Court. It is the contention of the petitioners that although the initial appointment of the petitioners by the bank was on contract service term for one year yet after the lapse of that one year the petitioners were no more in contract service of the bank and they should be treated to be in regular service in the bank thereafter. The respondent-bank on the other hand denies that petitioners are regular employees of the bank and contends that their term has been extended from time to time and they are still under contract service. It is the contention of the petitioners that if still they are under contract service then the bank would not have thought it necessary to ask the petitioners to execute fresh agreement on the plea of giving them some financial benefits to the extent of Rs. 500/- per month with effect from the 1st May, 1991. It is contended on behalf of the petitioners that by this device the respondents are trying to bring back the petitioners under contract service. One thing however appears to be clear to me that the employment of the petitioners in the NCDC-project was really inteded at least for the duration of the project but this was camouflaged by the bank authorities by giving the petitioners only a contract service for a term of one year. The petitioners were asked to produce at the time of joining Release Certificate from their earlier employers. The paper

advertisement inviting applications for the post, also did not mention that the appointment would be given for any particular tenure or period, not to speak of one year. The advertisement also required experience in supervision and construction works of specified types and prescribed an age limit of 35 years except in case of retired Assistant Engineers in whose case the age limit was upto 60. The fact that the respondent-bank was inviting applications from the young Diploma holders in Civil Engineering upto the age of 35 years without mentioning that the appointment would be given only for one year or for any particular period or tenure or that the appointment would be on contract basis and at the same time requiring adequate experience in supervision and construction works of specified types from the candidates and also subsequently requiring in the appointment letter issued to the selected candidates to produce release certificate from their former employers all militate against the idea that the appointment really could have been on contract basis for one year only. It cannot be reasonably expected that a young Diploma holder below 35 years of age with adequate experience in supervision and construction would come to Join the back on contract ser-vice for one year only on giving up his service elsewhere under another employer and on producing a Release Certificate from the former employer thereby shutting up the door for return to his earlier employment in future. It is therefore evident that neither the advertisement for the posts nor the appointment letter issued to the petitioners offering a term of contract service for one year only discloses the real state of affairs or the real intention of the bank authorities. The bank authorities were appointing the petitioners while they were in the prime of their youth for implementation of the NCDC project and was demanding experience in work and was also requiring them to submit Release Certificate from their employer, implying thereby that the door was being permanently closed for the petitioners to return to their former employment and at the same time seemingly offering them a term of contract service for one year only which action by itself is wholly incongruous with other associated actions of the bank authorities in putting up advertisement without indicating that the appointment would be on contract service for one year only and in inviting applications from young qualified candidates with adequate experience and expecting them to join the service of the bank after permanently giving up their employment elsewhere. Such double faced and mutually incongrous actions on the part of the bank authorities clearly show that taking advantage of their dominating position they were trying to put the allured job seekers under exploitative terms as best as it could be done. In paragraph-10 of the affidavit-in-opposition of the respondent No. 4 affirmed on 25th September, 1991 it is stated that there is no question of regularisation and/or absorption of the petitioners in service beyond the tenure/life of the project inasmuch as the petitioners were not appointed against permanent posts. It is further stated in sub-paragraph (c) of the said paragraph-10 that the petitioners were well aware of the fact that contract service was linked with the project period of NCDC-III and they had never been given any understanding that they would be absorbed in the service of the bank. It is asserted there that the tenure of contract service of the petitioners is linked up with the project period, it is therefore an admitted fact, and I have also reached the same conclusion earlier by analysis of relevant facts and circumstances that the appointment of the petitioners was at any rate meant at least for the period of continuance of NCDC project. But unfortunately the written appointment that was given to the petitionersa was only for one year. Therefore one thing is certain that in the matter of giving the initial appointment as well as in extending the period of service subsequently the respondent-bank did not project the real and the intended term of appointment which really was not for one year but at least for the uncertain period covering the whole of the duration of the NCDC project, in the minimum. The term was extended several times with varying lengths and some enhancements of pay were also granted. Therefore when the apparent terms of the contract in respect of its vital aspects as projected in writing do not reflect the real and the intended terms and when the camouflage of contract service for one year was resorted to as a masquerading device for keeping the appointees always at the mercy and caprice of the employer enjoying an advantageous position, such a device is against public policy and cannot be allowed to serve as a shield for the employer. It is the duty of the court to tear the veil and unearth what is real under the surface of what is apparent only.

21. It has been submitted on behalf of the respondent that the NCDC-III project has already ended and the NCDC-IV project has not yet been finalised an the question of awarding the project to the respondent-bank does not arise and the said scheme may be awarded to any other agency and there is no scope of absorption of the petitioners for work under the NCDC-IV project. It is the further contention on behalf of the respondent that the respondent-bank as an implementing agency only gets a very nominal percentage of the interest for the loan advanced and from that it will not possible to continue the services of the petitioners for long after the NCDC-III project comes to an end. The learned Advocate for the petitioners on the other hand attracted my attention to Annexures-X and X-1 to the affidavit-in-reply dated the 21st December, 1992 affirmed on behalf of the petitioners. Annexure-X-1 there to is a letter dated the 30th May, 1989 addressed by the Managing Director of the respondent-bank to the Registrar of the Co-operative Societies, West Bengal regarding the NCD-IV World Bank Project. In that letter it has been clearly stated that the respondent-bank had agreed in principle to act as the on-leanding channel for the funds of the project of the following items, namely, (1) Storage project, (2) Rehabilitation of processing units so far as it relates to the rehabilitation of cold storages and (3) Continuation of the ACSTI. The Managing Director also asked for the details of the proposed terms and conditions governing the project (NCDC-IV) so that they might participate in the process of finalisation of the same. Annexure-X is a letter dated the 11th April, 1990 addressed by the Managing Director of the respondent-bank to the Registrar of Co-operative Societies, West Bengal wherein it is stated inter alia that the Government has already taken decision to entrust to the respondent-bank the work relating to the three components viz.,

''Modernisation and expansion of cold storages'', ''Expansion of training facilities under ACSTT and ''Establishment of centralised servicing and marketing intelligence wing'' of NCDC-IV project. In the said letter the Managing Director of the respondent-bank asked for immediate communication of the details of the schemes (NCDC-IV) indicating the exact role of the bank in order to enable them to take required action for implementation of the schemes. It is therefore evident that there has been already decisions at appropriate levels for awarding schemes under the NCDC-IV project to the respondent-bank for implementation.

22. We have already seen that in the pamphlet published by the respondent-bank on the occasion of the inauguration for the Bank''s New Training Centre which is Annexure-X2 to the supplementary affidavit affirmed on behalf of the petitioners, it is stated that it was the NCDC which proposed and provided finance for the construction of a well equipped, modern and self-sufficient training centre by the bank to cater to the endless training needs of personnel engaged in the supply of credit and implementation of schemes. The very fact that the bank has started a well-equipped, modern and self-sufficient training centre to cater to the endless training needs of personnel engaged in the supply of credit and implementation of schemes clearly indicates that the schemes will be always there otherwise it would not have been necessary to create a self-sufficient modern training centre obviously on permanent basis. In the said pamphlet the respondent-bank has also emphatically declared that the march for rural development has of course not stopped there and the bank has on its anvil projects galore. That also contained a declaration of the Bank''s charished ambition to attend to the two basic needs of rural society viz., food and shelter. It will thus be seen that the bank has its own ideals to direct its activities in a manner which conforms to some of the ideals embedded in the directive principles of State policy as contained in the Constitution of India. But that by alone may not make the bank, which is a registered Cooperative Society, an instrumentality or agency of the State in respect of its general activities particularly when it can not be said that the Government control in respect of its general activity is deep and pervasive. But then as I have already discussed when the bank functions as an implementing agency for the implementation of the NCDC projects it functions as an ''authority'' as contemplated in Article 12 and is therefore amenable to the writ jurisdiction of this Court under Article 226. I have also discussed that the apparent picture of offering contract service appointment to the petitioners for one year only is nothing but a camouflage although as a matter of fact the appointment was intended at least to be co-extensive with the implementation of the NCDC project. In para-graph-4(a) of the affidavit-in-opposition affirmed by the respondent No. 4 on 25th September, 1991 it has been stated that the writ petitioners are contract service holders and their services may continue till the project continues. In paragraph-4(c) thereof also it is stated that the petitioners can continue in the posts so long as the project subsists and in paragraph 10) it is stated that there is no question of regularisation and/or obsorption of the petitioners in service beyond the tenure/

life of the project inasmuch as they were not appointed against permanent posts and posts were not created on permanent basis nor any permission was given by the Registrar of Co-operative Societies for any permanent creation of posts u/s 42 (1) of the West Bengal Co-operative Societies Act. 1983. It may be mentioned here that the petitioners were also transferred from one place to another as a regular feature of their work.

23. Be that as it may, from an analysis of the facts and circumstances which have elaborately made earlier, it is evident that the appointment of the petitioners was virtually not for any specified period nor for any predetermined duration and it was at rate intended and meant at least for the NCDC project the duration of which was for all practical purposes uncertain. The appointment of the petitioners for a term of one year was nothing but a camoufglage and on tearing the veil it is evident that the Bank authorities taking advantage of their dominating position kept the petitioners in precarious position about their service tenure contrary to the real intention and purpose of their appointment. It is also amply clear that the terms of the contract were intended to be paper terms only, particularly in regard to the duration of employment. Even in regard to the emolument also we have seen there has been increase at times thereby making variation of the term regarding emolument as contained in the initial papers. In the circumstances when the contract itself in respect of its vital aspects appear to be only a camouflage and there has also been increase of emolument subsequently it will be extremely unfair to the petitioners to shut the door of the writ court simply because of the existence of a veil of contract which on analysis of the facts and circumstances turn out to be a device to suppress the real state of affirs and the real nature of appointment. The petitioners who in the prime of their youth and having technical qualification and wide experience as required joined the service of the bank in its NCDC project after permanently leaving their services elsewhere must have done so under some assurance, direct or circumstantial, legitimately engendered by the acts of the respondent-bank authorities and of projections connected therewith which I have elaborately discussed and it will be now an act of gross injustice to throw them out of employment when because of their increase of age and lapse of time it will be quite difficult for them to find out suitable alternative jobs for maintaining their livelihood. In order to prevent such a grave injustice arising out of arbitrary and capricious approach to the matter on the part of the employer functioning as an ''authority'' within the meaning of Article 12, this Court in its writ jurisdiction and in discharge of its responsibility to ensure justice wherever injustice tends to rear its hood, in whatever form may it be, must come forward to afford the needed protection to the sufferers of injustice. As we have already seen, the bank authorities have projects galore on the anvil according to their own announcement. Certain schemes of the NCDC-IV project are also available for implementation through the respondents-bank. In the circumstances, this writ petition is allowed with the direction that the respondent-bank will continue the employment of the petitioners without break either in NCDC-IV project or

otherwise and shall prepare within four months from this date a scheme for absorption of the petitioners in the service of the bank on permanent basis in technical or if necessary, even in non-technical posts with regular scale of pay, maintaining parity with their status and rank and shall ultimately absorb them accordingly. If necessary the Registrar of Co-operative Societies, West Bengal, shall accord sanction for creation of necessary posts by the respondent-bank for implementation of the above directions. The State of West Bengal will also oversee that the above directions are implemented smoothly. There will however be no order for costs on this writ petition.

