

(1982) 02 CAL CK 0005
In the Calcutta High Court
Case No : C.R. No. 10509 (W) of 1980

Dr. Maya Mukherji

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 03-02-1982

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 15, 16, 16(1)
Government of India Act, 1935 — Section 241

Citation : 86 CWN 526

Hon'ble Judges : B.C. Roy, J

Bench : Single Bench

Advocate : R.N. Mitra and Hirak Sen, for the Appellant; P.K. Basu for Respondent Nos. 2, 3 and 4, N.N. Goopto, J.K. Banerjee and P.R. Mondal for the State, for the Respondent

Judgement

B.C. Ray, J.—This petition Is directed against the order issued by the respondent no. 2 on behalf of the Government of West Bengal directing the Public Service Commission, West Bengal to Interview 14 eligible officers mentioned therein in accordance with the programme noted therein, that is, the male candidates would be interviewed on 16th June, 1980 at 11 a.m. and the female candidates would be interviewed en 17th June 1980, at 11 a.m. for selection for promotion to the posts of Principal of the Government Teachers Training Colleges, This order and/of directions has been assailed in this writ application by the petitioner who is at present working as the officer-in-charge in the Bureau of Educational and Psychological Research at 25/3, Ballygunge Circular Road, Calcutta-19 on the ground that the above direction and/or order compartment alising the West Bengal Educational Service as Men's branch and Women's branch is arbitrary, discriminatory and in violation of the provisions of Art. 15 of the Constitution of India. The petitioner was recruited in 1961 as Lecturer in the Bureau through the public service Commission after a joint interview was taken from among several men and women candidates for the specific post of Lecturer in the said Bureau. The petitioner was confirmed in the said post with effect from September 22,

1963 by the Governor. Copy of the said order of the Governor has been annexed as Annexure "C" to the Affidavit-in-opposition sworn on behalf of the respondent Nos. 1 to 3 on 25th March, 1981. Thereafter the petitioner was again interviewed jointly among several male and female candidates by the Public Service Commission and she was selected for the post of Assistant Professor specifically for the Bureau of Educational and Psychological Research. After her selection as an Assistant Professor she was posted in the Men's Branch and joined as professor in the said Bureau and worked as such in the Men's branch all along. It is remarkable that although her confirmation was shown in the Women's branch in the Civil list, but her appointment was vice "Dibakar Das Mahanta", a professor in the Men's Branch. This will also be evident from the letter issued by the Governor dt. 21st March, 1973 annexed as Annexure D" to the said affidavit-in-opposition. The petitioner being the senior most was put in charge of the post of Principal in the Bureau of Educational and Psychological Research as the former Principal Dr. R. C. Das, respondent No. 4, was transferred as Principal of the David Hare Training College Calcutta and subsequently he was appointed as Deputy Director of Public Instruction, Training. She was given financial and other powers as have been attached to the post of Principal as per Governor's letter No. 337 Edn- (CS) dt. 31st March, 1977. This order has been annexed as Annexure "A" to the petition.

2. Since then the petitioner was working in the same capacity upto now and she has been allowed to draw a special pay of Re. 100/- per month for discharging her duties of the Officer-in Charge (Principal) of the Bureau of Educational and Psychological Research. By a letter dated 29th May, 1980, the respondent No. 2 informed the petitioner that the Public Service Commission, West Bengal would interview 14 eligible officers on 16th and 17th June, 1980 and that her name was included in the said list of eligible officers. It is evident from the said letter that all the male officers were included in one group and the interview of this group was fixed on 16th June, 1980 whereas all the Women officers were included in a separate group and interview of them was fixed on 17th June 1980. The criterion of promotion was primarily on seniority basis. The petitioner became suspicious about the possible discrimination on the basis of sex and she was also in apprehension of her interest being prejudicially affected by the manner in which the interview would be taken and selection would be made. On enquiry she came to know that the motive behind the said unusual procedure was to exclude the petitioner from the selection by allotment of 5 posts of principals for selection out of the 7 candidates in the Men's list and only 2 from the Women's list and that the selection would be made primarily on the seniority basis. The petitioner possesses the highest qualification amongst all the 14 candidates and her position in order of seniority is the 5th amongst both men and women candidates taken together. But to deprive the petitioner of any chance of selection as her position was third in the list of women candidates out of which only two candidates will be selected, the impugned order or direction has been made by the Government whereas 3 junior male candidates would get chance of selection

and would eventually be selected in the Men's branch although they happen to be much junior and much less qualified both educationally and in research experience to the petitioner.

3. Although the petitioner appeared in the Interview on 17th June, 1980 she made several representations to the authorities concerned strongly objecting against this illegal classification and the holding of interview on the basis of this classification. On 9th June, 1980, a representation was made to the respondent No. 2 in this matter. The respondent No. 2 sent a letter to the Director of Public Instruction, West Bengal, respondent No. 3 a copy of which has been forwarded to the petitioner on 28th July, 1980. It is evident from the said letter that Government after due consideration regrets that "Dr. Maya Mukherjee's request for a joint interview of the male and female officers in the Men's and Women's branch cannot be entertained by the Government." A Copy of the said order has been annexed as Annexure "D" to the petition. Thereafter the petitioner sent a letter demanding justice to the Secretary, Education Department which has been annexed as Annexure "F" to the petition. No reply was received to the said representation. It has been pleaded that the petitioner has been working in the Men's branch all along. She was initially recruited and confirmed in the Men's branch as Lecturer. There was absolutely no distinction between Men's branch and Women's branch and for all practical purposes, the two branches were treated as amalgamated for the purpose of recruitment, emoluments, conditions of service, promotion and other incidents thereof. The segregation and distinction between the two branches on the basis of sex which was in vogue during the Pre-Independence and Pre-Constitutional days, was no longer maintained and the two branches were treated as one and the same for all practical purposes. The petitioner was confirmed as an Assistant Professor in the vacancy caused by the retirement of Smt. Suhasi Ghosh whose name was borne on, the women's branch in the civil list. But even after her selection as an Assistant Professor and her confirmation in the Women's Branch she was jointly interviewed with mala candidates by the Public Service Commission in October, 1975 in the West Bengal Educational Service for the post of a Professor in the Bureau, It has been submitted that the purported order directing the classification of the appointments in the post of Principal as Men's Branch and Women's Branch and the allotment of vacancies arbitrarily on its basis and the direction to the public Service Commission for holding interview on two different dates on the basis of the said classification is illegal, arbitrary, discriminatory as well as it is (sic)tive of the provisions of Article 15 of the Constitution of, India.

4. On these allegations and averments made in the writ petition the instant Rule was obtained on 10th October, 1980. There was an interim order of maintaining status quo as on that, till 24th November, 1980 with liberty to the petitioner to apply on the same application for extension of this interim order upon notice to the respondents. On 11th December, 1980, the interim order was not extended as the same expired already. By order dated 1st December, 1981 an interim order of maintaining status quo as regards the petitioner was concerned as on

that day was made till the disposal of this Rule and the Rule was specially fixed for hearing on Thursday next.

5. An affidavit-in-opposition has been filed on behalf of the respondents nos. 1 to 3 affirmed by Sri S. Some, Assistant Secretary to the Government of West Bengal, Education Department, College (Sponsored) Branch. In paragraph 4 of the said affidavit it has been averred that at present there were 7 vacancies of the post of Principals at various Government Teacher's Training Colleges both in the Men's Branch and Women's Branch within West Bengal. Accordingly, the Public Service Commission, West Bengal was requested to select suitable candidates from amongst those who were eligible for the post separately for Men's and Women's Branch. The Government all along maintains separate lists formed under West Bengal Service Rule, Part I, Appendix 9, for Men's and Women's Branch respectively in the West Bengal Senior Educational Service. In the instant case both men and women officers are categorised separately as per the said Service Rules and practice consistently followed by the Government in regard to such appointments. The interview for the male candidates was fixed on the 16th June, 1980 and interview for the female candidates was fixed on 17th June, 1980. Such interviews were taken, out the results of the said interviews have not yet been published. As such the petitioner's alleged case of prejudice is still premature and accordingly there is no cause of action for moving a writ petition at this stage. It has also been stated that the Government forwarded the names of the eligible candidates in respect of both the aforesaid lists in order of their respective seniority appearing in the lists concerned. Having appeared at the interview on the basis of the separate lists for Men's and Women's Branch the petitioner should not be allowed to challenge the system of separate selection on the basis of separate lists at this stage. It has been further stated that presently the Bureau of Educational and Psychological Research, Calcutta has been merged with other institutions to form the State Council of Educational Research and Training, West Bengal and the petitioner is holding the charge of the Bureau. It has also been stated that from the service record of the petitioner it will appear that any of her said appointments was not classified either as in the Men's Branch or in the Women's Branch as has been alleged by the petitioner.

6. A supplementary affidavit-in-opposition has been filed on behalf of the respondents 1 to 3 on the 2nd of December, 1981 and the same has been affirmed by the respondent no. 2. It has been disclosed for the first time in paragraph 2 of the said affidavit that the Public Service Commission, West Bengal recommended the names of the 5 officers and one female officer mentioned therein for promotion to the posts of Principal of the Government Teachers' Training Colleges. It has also been stated in paragraph 3 that pursuant to the said recommendation, the State Government issued orders of appointments on promotion in respect of all the officers on the 21st November, 1981 and all of them have joined in their respective posts. It has also been stated that Shri Pradip Chandra Choudhury was appointed on promotion to the post of Principal, Bureau of Educational and Psychological Research, Calcutta, and he has already

joined the said post on the 30th of November, 1981. This has been affirmed as true to the knowledge of the deponent derived from the connected records.

7. Another supplementary affidavit-in-opposition has been filed on 16th December, 1981 affirmed by the respondent no. 2. In paragraph 3 of the said affidavit it has been averred that there are two Govt. Teachers' Training Colleges (B. Ed. College) meant exclusively for women teacher-trainees, like a few Govt. Schools and Colleges exclusively for girls. These institutions have been established to cater to the social needs and protect the interests of the women and girls. In fact, separate institutions for them are being considered as special privilege and official and non official efforts were made in the past in this respect to spread education among the girls and women of our country. As such, the reservation of seats only for the women teacher-trainees in some B. Ed. Colleges has helped them to get preference over their male counterparts. All other Govt. Teachers' Training Colleges (Two meant exclusively for male trainees and five co educational institutions) are recognised as institutions under Men's Branch. It has also been stated that Seniority of a teacher of Govt. Training College means his/her seniority in the respective branch of the West Bengal Educational Service to which he/she belongs. It has also been further stated that such grouping of posts of Principal in Govt. Teachers' Training College is being made for long time and it has never been considered as discriminatory or unconstitutional. It has also been stated that if this grouping of posts is not upheld it will create unprecedented administrative crisis affecting a large number of institutions- not only the Govt. Teachers' Training Colleges, but all other Govt. Colleges also in this State, in regard to the seniority of the men and women teachers and their promotion inter se besides other social problems.

8. The only question that requires determination is whether the grouping of the service of the Teachers' as Men's Branch and Women's branch for the purpose of promotion on the basis of seniority to the post of Principal in the Govt. Teachers' Training Colleges is arbitrary, discriminatory and contrary to the service Rules and violative of Articles 15 and 16 of the Constitution of India. To determine this question it is imperative to consider the relevant service Rules framed by the Government governing the recruitment, conditions of service and promotion in the West Bengal Educational Service. There is no dispute that there are 9 Government Teachers' Training Colleges, namely, (1) David Hare Training College, (2) Government Teachers' Training College, Hooghly, (3) Government Teachers' Training College, Burdwan, (4) Government Teachers' Training College, Malda. These colleges are meant for the training of male students. There are two Women's Colleges namely, (5) Institute of Education at Hastings and (6) Teachers' Training College, Chandernagar at Chandernagar. There also 3 co-educational colleges, namely (7) Post Graduate Basic Training College, Benipur, (8) State Institute of Education at Benipur and (9) Bureau of Educational and Psychological Research at Ballygunge Circular Road. Out of these 9 colleges there were 2 vacancies for the post of Principal in Government Teachers' Training College Burdwan and in the Teachers' Training College, Malda, there were two

vacancies for the post of Principal in the two Womens" Colleges and out of 3 co educational colleges there are 3 vacancies for the post of Principal. Thus in total there are 7 vacancies for the post of Principal. There is no dispute regarding this position,

9. In the West Bengal Service Rules, Part 1, 1948 Rule 5(4) defined West Bengal Provincial Service as these services under the administrative control of Govt. which Govt. may, from time to time declare by notification in the Calcutta Gazette in the West Bengal Provincial Services. Note (1) to the said Rules mentions amongst other Services West Bengal Senior Educational Services (Men's Branch), West Bengal Senior Educational Service (Women's Branch), Under the West Bengal Service Rules Part 1 1964 Rule 5(4) defined the West Bengal State Services as Class I, Class II, Class III and Class IV service. Rule 5(6) says cadre means the strength of a service or a part of a service sanctioned as a separate unit. It is thus evident from this rule that the previous classification of West Bengal provincial service as West Bengal Senior Educational Service (Mens Branch), West Bengal Senior Educational Service (Women Branch) was totally omitted from the service Rules. In the West Bengal Service Rules, 1971 Part 1 Rule 5(4) defines West Bengal State Services as Class I, Class II Class III and Class IV Service

10. Note (2) of Rule 5(4) (b) says that services included in Class I to Class IV service has been set forth in Appendix 9 to these rules, in appendix 9 mention has been made of West Bengal Senior Educational Service (Men's Branch) and West Bengal senior Educational Service (Womens Branch), West Bengal Educational Service (Mens" Branch) and West Bengal Educational Service (Womens" Branch. Thus it appears from the West Bengal Service Rules, 1971 Part 1 that the West Bengal Senior Educational Service (Mens" Branch) and the West Bengal Senior Educational Service (Womens" Branch) have been specified in appendix 9 pursuant to note (2) of Rule 5(4) (b) of the said Service Rules.

11. It has been tried to be contended on behalf of the respondents that in view of this grouping and/or classification of the Educational Service as Mens" Branch and Womens" Branch the impugned order made by the Government on 29th May, 1981 directing the Public Service Commission West Bengal to hold the interview separately for male officers and female officers and selecting them for the purpose of promotion to the post of Principal on the basis of their respective seniority in their respective group is not at all arbitrary and illegal This argument advanced on behalf of the respondents 1 to 3 is devoid of any substance as in the Rule there is no whisper about the grouping and/or compartmentalising the West Bengal Senior Educational Service into Mens" Branch and Womens" Branch. Note (2) to Rule 5(4)(b) cannot override or go contrary to the provisions of the Rules framed by the Government unless the Rules specifically provide so.

12. Secondly as regards the custom a direction was given by this Court on 3rd December, 1981 to the respondent no 1 to 3 to produce before this Court or to state all other documents on which basis they reserved some of the said

vacancies for the male candidates and others for the female candidates. Not a single scrap of paper has been produced before this Court. Nor any affidavit has been sworn on behalf of the respondent nos. 1 to 3 to clarify this position. In this circumstance, in my opinion, the reservation of 5 posts to be filled up by promotion by male candidates and two posts to be filled up by promotion from the female candidates is wholly arbitrary, illegal baseless and unreasonable specially in view of the specific averments made in the writ petition which has been admitted also that the petitioner was recruited in the post of Lecturer and subsequently confirmed in the post of Lecturer for the Men's Branch after taking joint interview of male and female candidates

13. This position has also been admitted by the respondents in paragraph 6 of the affidavit in-opposition affirmed on 26th March, 1981. It has also been an admitted position that the petitioner being the senior most was appointed as officer-in-charge of the Bureau of Educational and Psychological Research by the Government as early as in 1977 and she has been delegated all the financial powers of the Principal. It is also an admitted position that the petitioner has been working in the said post upto now. It is also evident from the civil list corrected up to 1st July, 1967 at page 332 that Sm. Kalyani Paramanik who was shown in the Womens' Branch was appointed Professor, Bureau of Educational and Psychological Research, David Hare Training College, Calcutta, (Mens' Branch) with effect from 11th September, 1957. Similarly it will appear from page 320 of the said civil list that Sm. Suruchi Bhattacharya was appointed Vice Principal and Professor of Post-Graduate Basic Training College, Banipur, though the said College is a co-educational college. This clearly goes to show that there was no grouping or classification amongst the employees on the basis of sex in the senior educational service as regards their posting and promotion was concerned.

14. Thus on a consideration of the West Bengal Rules Part I of 1948, 1964 and 1971 it is clear and apparent that the West Bengal Provincial Service as defined in Rule 5(4) of the said Rules was comprised of services including the West Bengal Senior Educational Service (Mens' Branch) as well as West Bengal Senior Educational Service (Womens' Branch). These Rules were made u/s 241 of the Government of India Act, 1935. This division of the Senior Educational Service on the basis of sex was, however, done away with in the West Bengal Service Rules, 1964 which merely defined under Rule 5(4) of the West Bengal State Services as comprising of Class I, Class II Class-III and Class IV services. No classification of the West Bengal Senior Educational Service has been made on the ground of sex. It is also pertinent to refer in this connection to paragraph 2 of the preface of the said Rules which is termed as sources of the Rules It is stated therein that these rules purport to produce with adaptation as where necessary the existing rules applying to officers under the rule making power of the Government of West Bengal that is the West Bengal Service Rules Part I (Corrected up to 1st November, 1948) which continued in force after the enactment of the Constitution of India. The West Bengal Service Rules, 1971, however, introduces

in note (2) of clause (b) sub-rule (4) of Rule 5 of the said Rules that services included In class I and class II services have-been set-forth in appendix 9 of these rules. In appendix 9 mention has been made of the class I services comprising amongst others West Bengal Senior Educational Services (Mens" Branch) West Bengal Senior Educational Service (Womens" Branch), West Bengal Educational Service (Mens" Branch) and West Bengal Educational Service (Womens" Branch). This note (2) of Rule 5(4) (b) being contrary to the provisions of Rule 5(4) is unenforceable in law inasmuch as the said note (2) is inconsistent with and contrary to the provisions of Rule 5(4).

15. It will be apposite to mention in this connection a decision of the Supreme Court in the case of Tara Singh and Others Vs. State of Rajasthan and Others, . It has been observed by A. N. Ray, CJ, that the notes which are appended to the rules are of aid not only in applying the rules but also in Interpreting the true impart of the rules. It has been further observed that the notes are part of the rules because they are for the guidance of the authorities. They are not inconsistent with the rules but are intended to fill up the gaps where the rules are silent. In the present case note (2) to Rule 5(4)(b) which purports to divide the West Bengal Senior Educational Service on the basis of sex is contrary to the provisions of the said rules and as such the same cannot be held to be legal and valid.

16. Secondly the sources of these rules as appear from paragraph 2 of the preface of these rules are the West Bengal Service Rules, Part I corrected up to 1st November, 1964 and new rules including amendments made after the 1st April, 1964 under proviso (2) to Article 309 of the Constitution of India. In paragraph 2 of the preface of the 1964 rules the source of the rules have been said as the West Bengal Service Rules Part I "Corrected up to 1st November, 1948" continued in force after the enactment of the Constitution of India by virtue of the Article 313 of the Constitution. It appears from Rule 5(4) of these Rules that the West Bengal State Services have been defined as comprising of Class I, Class II, Class III and Class IV services. The previous classification of the West Bengal Senior Educational Service (Mens" Branch) and West Bengal Senior Educational Service (Womens" Branch) was obliterated and or omitted from the 1964 Rules in order to make the rules conforms to the provisions of the Constitution of India. Article 313 of the Constitution specifically provides that all laws in force which include also statutory rules before the commencement of the Constitution and applicable to any public service or post either under the Union or under the State which continued to exist shall continue in force in so far as they are consistent with the provisions of the Constitution of India. It is Imperative that the Pre-constitutional rules applicable to any public service or post under the State will continue to apply to the extent they are consistent with the provisions of the Constitution.

17. Note (2) of Rule 5(4) (b), even if it is assumed for argument's sake is a valid rule, cannot be enforced and the same cannot be applied to service and posts

under the Government of West Bengal inasmuch as it purports to create an artificial division of the West Bengal Senior Educational Service, (Class I) on the ground of sex which is opposed to the provisions of Articles 14, 15 and 16 of the Constitution of India. The said note (2) therefore cannot be given effect to and the same should be declared Invalid as the same is inconsistent with or In derogation of the fundamental rights guaranteed by the Constitution in view of the provisions of Article 13 of the Constitution. In the present case the direction given by the Government to hold interview of the male candidates separately as well as the female candidates separately on different dates for the purpose of selecting for promotion to the 7 posts of Principals in the various Government Teachers' Training Colleges which are amalgamated with the-State Council of Educational Research and Training (S.C.E.R.T.) and the reservation of 5 posts of principals to be filled up by selection from amongst the male candidates and the remaining two vacancies to be filled up by selection for promotion from the female candidates solely on the basis of seniority in service is arbitrary, illegal and discriminatory being in utter violation of the provisions of Articles 14, 15 and 16 of the Constitution.

18. It has been tried to be contended on Behalf of the respondent nos. 2, 3 and 4 that the reservation of appointment of Principals in two Womens' Colleges, that is. Institute of Education, Hastings, and Teachers' Training College at Chandernagar has been made in order to confer more privilege on the lady officers and also greater benefit on them as promotion of the lady officers to the posts of Principals will be assessed on the basis of seniority amongst the lady officers is devoid of any merit. On the other hand, the reservation of greater number of vacancies to be filled up by promotion on the basis of seniority amongst male officers spells arbitrariness and discrimination on the ground of sex. It is also unreasonable on the face of it. It has been specifically stated by the petitioner that her position is 5th in order of seniority and she possesses the highest educational qualification amongst all the candidates and she has been officiating as Officer-in-Charge in the absence of the Principal in the Bureau of Educational and Psychological Research since 1977. It has also been stated that if there any joint interview is taken and promotion is given on the basis of seniority of service taking into consideration all the candidates - male and female together the petitioner will surely be appointed as Principal in one of the 7 vacancies. It has been further submitted that in view of the artificial classification of the senior Educational Service made on the ground of sex the petitioner will be deprived of her right of being promoted to the post of Principal on the basis of her seniority as her position is 3rd in order of seniority amongst the female candidates though male candidates much junior to her will be appointed to the post of principal. There is no denial of these statements made by the petitioner. Reference may be made in this connection to the observation made by Hegde, J. in the case of *Md. Usman and Others Vs. State of Andhra Pradesh and Others*, to the effect that "the doctrine of equality is attracted not only when equals are treated as unequals but also when unequals are treated as equals and that

article 14 is offended Doth by finding difference when there is none end by making no difference when there is one Is unexceptionable. But the rule of equality is intended to advance justice by avoiding discrimination.

19. Similar observation has been made In the case of Amrit Lal Berry and Another Vs. Collector of Central Excise, New Delhi and Others, . It has been held while dealing with Article 16(1) of the Constitution that the equality of opportunity for all citizens in matters relating to employment implies equal treatment to persons similarly situated or in the same category as in the petitioner. It postulates equality of conditions under which a number of persons belonging to the same category compete for the same opportunities end a just and impartial application of uniform and legally valid standards in deciding upon competing claims. It does not exclude justifiable discrimination.

20. In the instant case the impugned order of the Government made on 29th of May, 1980 as mentioned in annexure "C to the petition is in violation of the provisions of Articles 14 and 16(1) of the Constitution of India inasmuch as it purports to make the artificial classification on the ground of sex in the matter of setting apart of a greater number of posts for being filled up by promotion by the male candidates without any reasonable basis of such classification. The order is, therefore, in my opinion, arbitrary, unreasonable and discriminatory and as such interviews taken separately for the male candidates and the female candidates on different dates for filling up the posts of Principals by promotion on the basis of seniority is arbitrary and hence illegal.

21. It has been tried to be contended that the interim order of maintaining status quo as on the date of the Issuance of the rule expired as no steps were taken for getting the same extended and as such appointments have been given to the selected candidates mentioned in paragraph 2 of the supplementary affidavit-in-opposition sworn by respondent no. 2 on 2nd December, 1981. These appointments, It has been stated, were issued on 21st November 1981 and all of them have joined in their respective posts. This, of course, has been affirmed as true to the Information derived from the connected records. No records, however, have been produced on behalf of the respondents nos. 1 to 3 in support of this averment, it has been tried to be contended on this basis that as these appointees have not been impleaded in the rule no order can be made to their prejudice without giving them an opportunity of hearing, it appears from the order dated 1st of November, 1981 that an interim order of maintaining status quo as regards the petitioner is concerned as on that day was made till the disposal of the Rule. Therefore it cannot be said that this order was not made after hearing the learned Advocates for both the parties. It has also appears from the order dated 3rd December, 1981 that the petitioner as Officer-in-Charge of the Bureau of Educational and Psychological Research has been performing her duties and issuing cheques. This goes to show that the new appointee to the post of Principal of the said Bureau has not taken charge of his office end has not started working.

22. It has been submitted by Mr. Mitra, Learned Advocate for the petitioner that the appointment letters that has been issued during the pendency of the lis, i. e., the Rule shall abide by and subject to the decision rendered in the lis. Therefore, it has been submitted that it is not necessary to implead the persons appointed to the vacant posts of Principals during the pendency of this rule as respondents in this rule. There is substance in this contention. Moreover, in the writ application order and directions made by the State Government in the matter of selection of Principals on the basis of segregation and discrimination of candidates was challenged and the instant Rule was obtained. Even assuming for arguments, sake that the relief asked for in the writ application is not appropriate, it is now well settled that the writ court has Jurisdiction to mould prayers in the writ petition and to grant appropriate relief, to the petitioner which he is entitled under the law even though he has not asked for such relief. Reference may be made in this connection to the observations of this Court in the case of Ali Ahmed Vs. State of West Bengal and Others, at page 386 paragraph 8. Similar observation has been made in the case of Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, at page 733. It has been held that under Article 32 we must, in appropriate cases exercise our discretion and frame our writ or order to suit the exigencies of this case brought about by the alleged nature of the enactment we are considering." Therefore the argument that has been advanced on behalf of the respondents cannot be sustained.

For the reasons stated hereinbefore the Rule Is made absolute. Let a writ of Mandamus be issued commanding the respondents to forbear from giving effect to the selection made by the Public Service Commission on 5th November, 1981 for promotion to the posts of Principals of the Government Teachers" Training Colleges as mentioned in paragraph 2 of the Supplementary Affidavit in opposition sworn on 2nd December, 1981 as well as from giving any effect or further effect to the orders of appointment of promotion issued by the State Government on 21st November, 1981. Let a writ of Certiorari be issued commanding the respondents to quash, cancel and set aside the impugned recommendations by the Public Service Commission for promotion to the posts of Principal of the Government Teachers" Training Colleges as mentioned in paragraph 2 of the Supplementary Affidavit in-opposition sworn by respondent no. 2 on 2nd December, 1981 as well as the appointments or orders for promotion issued in respect of the said selected officers on 21st November, 1981. This will not, however, prevent the respondents, that is, the concerned authorities from taking steps in accordance with law for filling up the 7 vacancies in the post of Principals to the Government Teachers Training Colleges.

In the facts and circumstances of the case there will be no order as to costs.