

(2017) 07 CAL CK 0037
In the Calcutta High Court
Case No : 1179 of 2010

Shrabani Mondal (Pal)

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

West Bengal Primary Education Act, 1973, Section 60, Section 106(2) -
West Bengal Primary School Teachers Recruitment Rules, 2001, Rule 2(e), Rule 9(c),
Rule 2(d) -
West Be

Citation : (2017) 07 CAL CK 0037

Hon'ble Judges : Rakesh Tiwari, Subrata Talukdar, Mir Dara Sheko

Bench : FULL BENCH

Advocate : Tarun Kumar Das, ?Tapan Mukherjee, ?R.N. Dutta, ?Hare Krishna Halder

Judgement

1. The backdrop of reference has already been elucidated by my Ld. brothers, Talukdar and Dara Sheko, JJ. in their separate Judgments. I would therefore, pen down my own thoughts on the point as it does pass my mind that the Reference before us in this Special Bench turns on a pure interpretation of the statutory provisions and rules holding the field on the subject issue.
2. On the one hand, is Section 2 (11) of the West Bengal Regulation of Recruitment in State

Government Establishments of Public undertakings, Statutory Bodies, Government Companies and Authorities Act, 1999 (hereinafter referred to as the 1999 Act) and, on the other, is the Recruitment Rules 2001 (hereinafter referred to as 2001 Rules).

3. The appellant lays claim to the post of primary school teacher on the foundation that West Bengal Primary Council (hereinafter referred to as Council as defined in Rule 2(e) of the Rules 2001) is beyond the ambit of the provisions of 1999 Act, as such State Government or its instrumentality the "council" has no power, authority, or jurisdiction to exclude he being, an ex-census worker, from selection to the post under the "Exempted Category" as defined in Section 2(5) of the 1999 Act in relation to persons who may fall within the zone of consideration of such "Exempted Category". The definition reads:-

Section 2(5) :- "exempted category" means the category of persons seeking any job, declared by the State Government to be exempted category under Section 3 .

4. This contention of appellant is opposed by the State Counsel on the ground of ineligibility i.e. of not conforming to conditions laid down in notification dated 21st August 2002 issued by the Government under the 1999 Act clarifying the nomenclature of "Ex-census Employees" thus:-

"Clause 4 Ex-Census Employees:-

Ex-Census employees who worked in connection with 1981 Census Operation and who had put in at least six months" continuous service under the Director of

Census Operations, West Bengal.

Ex-Census Enumerators/Supervisors of 1981 Census Operations and 1991 Census Operations holding authentic "Experience Certificate" issued by the Directorate of Census Operations, West Bengal or any other competent authority duly authorized by the said Directorate.

Persons holding "Discharge Certificate" only shall not be considered for inclusion in the "Exempted Categories" since certificates granted by certain officials in some cases do not conform to the census frame-work communicated by the Directorate of Census Operations, West Bengal.

Clause 5.

Election Job workers/Enumerators:-

Election job workers and Enumerators as were engaged in the job during the revision/preparation of electoral rolls by the Home (C& E) Department between 1979 and 1st June, 2000 and who had put in a total of at least 240 days"(two hundred forty days) work during the said period.

This supersedes all earlier Circulars and Executive Orders issued from time to time, by the Government of West Bengal in the Labour Department relating to employment of persons belong to the Exempted Categories".

5. It stands to reason that either of the above

noted provisions were not intended to contradict each other. Starting with the subsequent

notification of the 2001 Rules, the same were

intended to deal with a specific category of

recruitments, viz. that of Primary School Teachers.

A careful reading of the 2001 Rules does not

demonstrate any violence either intended or,

unintended, to be caused to the accepted canons of

reservation as laid down in the statute, viz. the

1999 Act.

6. Simply put, even in law, as a stream cannot

rise above its source, the 2001 Rules merely seek

to fine tune the several aspects of reservation in

relation to different categories, extent of quotas,

definitions of eligible categories and the like. Upon

a conjoint consideration of the 1999 Act and the 2001 Rules it does not appear that the two could function in mutually exclusive jurisdictional fields.

7. Therefore, as correctly appreciated by Brothers Talukdar and Dara Sheko, JJ., the Reference to the Special Bench focusing on the "definition" of "exempted category" cannot be split up to apply differently, respectively under the 2001 Rules and the 1999 Act connected to recruitment under a common employer, viz. the State.

8. Applying the well-known canons of interpretation to the issue under Reference apparently covered by two legislations in the field of recruitment, a seeming inconsistency between the two Legislations, guiding principles as have been laid down by the Apex Court may be applied in the instant case.

9. First, it would be appropriate to consider whether the two provisions are repugnant or not. Question of repugnancy would arise only in the cases where both the pieces of legislation deal with the same matter but not where they deal with separate and distinct matters, though of a cognate and allied character. To the doctrine of occupied/overlapping field, resulting in repugnancy, the principle of incidental encroachment would be an exception.

10. Secondly, even if various provisions of the two legislations are fragmented, then it would still lead to the same result and their pith and substance

would still be traceable to the same source.

11. Furthermore, the constitutionality of the impugned Act is not to be determined by the degree of invasion into the domain assigned to the other Legislature but by the pith and substance as stated above. The true nature and character of the legislation is to be analyzed to find out whether the matter falls within the domain of the enacting Legislature. Any incidental or ancillary encroachment on a forbidden field does not affect the competence of the legislature to make the impugned law.

12. On this anvil, we shall now examine the provisions of a self-contained scheme under the Act, dealing with all the situations arising there from and the Rules to see that whether they are in conflict with the State legislation or not. The lis in the instant case is that can the "Board" and "Council" as defined in Rule 2(d) and 2(e) of 2001 Rules can co-exist and operate without conflict.

13. It is not an impossibility for the Court to reconcile the two statutes, in contrast to invalidation of the subordinate legislation which may cause serious legal consequences as the council being a successor to the office of the Board is beyond the ambit and scope of opportunity of 1999 Act.

14. Accepting the argument of the appellant would certainly frustrate the very object of the subordinate law, particularly when both the

legislations can peacefully operate together. To us, there appears to be no direct conflict between the provisions, viz. reading of provisions of the State legislation and 2001 Rules, as both these laws operate in their respective spheres.

15. It is settled position of law that provision of a subordinate legislation is to be read within and not beyond the scope, intent and object of the similar provision of the main Act, i.e. Rule always supplements the Act. Therefore, the Act of 1999 in the instant case, being a special Act regulating recruitment in State service, would prevail over the similar provision legislated in Rules particularly, in view of Section 12 of the 1999 Act. This would also be in consonance with the provisions of notifications dated 21st August 2002 with regard to the persons of exempted categories. Even the amendment to 2001 Rules in 2009 is silent in this regard and hence it can be safely said that legislators were conscious of this fact and have in their wisdom so provided in the Act and Rule accordingly, to interpret its context in which it has been legislated and what was the object of the legislation, is to be conscious to the mind of the legislator. For this purpose the Act and the Rules, at the first instance are required to be given a harmonious construction and thereafter in fragment so as to bring out the scheme in its crystal form without distortion of the provisions and their meaning.

16. Reading the provision "Board", "Council" in the 2001 Rules with the eyes of the legislators and stepping into their shoes to have an inkling of the object in their mind for such legislation, the court on perusal of the definition of "Board" and "Council" under the 2001 Rules finds that there is no inconsistency.

17. It is clear enough at the first instance that the two definitions operate in separate and distinct spheres though legislated under the provisions of the same statute, having a distinct object and role to play.

18. For all the reasons above, the judgment rendered by the Division Bench in the case of Director of Employment, Government of West Bengal vs. Nadia District School Council & Others is not good law. The reference is accordingly answered in affirmative.

Subrata Talukdar, J.:

19. I have had the privilege of reading the judgment of my Ld. Brother, Mir Dara Sheko, J. While respectfully concurring with the reasoning and, the conclusion, placed by my Ld. Brother answering the Reference in the affirmative, I take this opportunity to add a few lines of my own.

20. The Reference before the Hon"ble Special Bench relates to the "definition" (emphasis supplied) of "exempted category" as appearing in a State legislation to be applicable qua a State conceived subordinate legislation. The first is the West Bengal Regulation of

Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies and Government Companies and Local Authorities Act, 1999 (for short the 1999 Act) while, the notified rule of the School Education Department, Primary Branch, is the West Bengal Primary School Teachers Recruitment Rules, 2001, as amended in 2009 (for short the 2001 Rules).

21. Without elaborating on the settled legal position that a species of subordinate legislation can only supplement and, not supplant a statutory enactment by attempting to define exempted category separately when, such definition already exists in the Special Act which is the genus, viz. the 1999 Act, this Court must emphasise the point that the selection procedure for appointing primary teachers by providing, inter alia, for percentage of vacancies against special categories as well as the modalities of recruitment by the "Appointing Authority" under the 2001 Rules, cannot be confused with the "definition" of "exempted category" under the parent 1999 Act.

22. As correctly noticed by the Hon"ble Division Bench In Re: Shrabani Mondal (Pal) vs. State of West Bengal & Ors . vide its judgment and order dated 7th of January, 2011 in MAT 1179 of 2010 with CAN 7949 of 2010, the 1999 Act specially regulates recruitment in State Government establishments which are defined to mean public undertakings, statutory bodies, Government Companies and local authorities thereby, ushering within its fold even recruitment by a Primary School Council or Board, even if independently tasked to execute appointments under the 2001 Rules but, not beyond the

provisions of the parent statute.

23. This Court must further notice that the 1999 Act makes categorical mention, vide Section 12 thereof, for exemption by way of a notification any Appointing Authority from all or any of the provisions of the 1999 Act in respect of any category of posts as may be specified in such notification. It stands to reason therefore that barring the Notification of the Labour Department published on 21st August, 2002 (for short the 2002 Notification) declaring categories of persons as exempted categories for the purpose of the 1999 Act, there is no mention of any exemption under Section 12 of the 1999 Act to recruitment under/by the Primary School Council/Board.

24. To the further mind of this Court, neither the 2001 Rules, as amended in 2009, laying down the selection procedure, provides for a savings clause exempting the 1999 Act as clarified by the 2002 Notification from applying to the appointment of primary teachers. Quite otherwise, the 2001 Rules, as amended in 2009, provide for preserving the percentage of vacancies in favour of different categories of candidates including "other exempted category as may be specified", in other words, as specified under the 1999 Act.

25. Finally, this Court must address the findings of the Hon''ble Division Bench dated 28th July, 2009, In Re: Director of Employment, Government of West Bengal vs. Nadia District School Council & Ors. (MAT 1053 of 2007) reported in 2009 (4) CHN 442. To the best of the understanding of this Court, the finding of the Hon''ble

Division Bench in 2009 (4) CHN 442 (supra) that the Primary School Council has been set up under a special rule making exercise and, not being the successor-in-office to the Board is therefore outside the purview of Section 2(11) of the 1999 Act, does not, with great respect, address the controlling opening lines of S.2 which stipulate as follows: "unless the context (emphasis supplied) otherwise requires".

26. Again, to the best of the understanding of this Court, no different context is made out qua the Primary School Council under the 2001 Rules, as amended in 2009, apart from executing the selection/appointing procedure of teachers as envisaged by law. Therefore, the Primary School Council while seeking to perform its obligations under the 2001 Rules (supra) is required to play its role in the same context as the Board defined under Section 2(11) of the 1999 Act.

27. This Court is accordingly of the view that the Hon"ble Division Bench In Re: 2009 (4) CHN 442 while placing emphasis on the special rule making exercise behind constitution of the Primary School Councils, failed to appreciate the context in which the power conferred on the Councils could be exercised. Since both, under the Board or, its successor-in-office, viz. the Council, the context did not change and, it is nobody"s case that either the Council or the Board stood exempted by operation of Section 12 of the 1999 Act, the impact of the 1999 Act on the 2001 Rules cannot be read down.

28. With reference to the above noted discussion reliance may be usefully placed on the observations of the Hon"ble

Apex Court In Re: Reserve Bank of India vs. Peerless
General Finance and Investment Co. Ltd. & Ors .
reported in 1987 (1) SCC 424 at Paragraph 33 thereof,
which reads as follows:-

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression "Prize Chit" in Srinivasa and we find no reason to depart from the court's construction."

To quote, "in law context is everything".

29. For the above reasons I concur with the conclusion of
my Ld. Brother, Mir Dara Sheko, J., answering the
Reference in the affirmative.

Mir Dara Sheko, J. :

1. The reference arose amidst hearing of the
Mandamus Appeal before the Division Bench,
preferred by the appellant/writ petitioner who was
unsuccessful in getting appointment to the post of
primary school teacher. He claims to be an eligible
candidate under "Exempted Category."
2. Learned Counsel for the appellant/writ petitioner
submits that Section 2(11) of the West Bengal

Regulation of Recruitment in State Government Establishments of public undertakings, statutory bodies, Government Companies and Authorities Act, 1999(No. 14 of 1999), (referred to hereafter as Act of 1999), does not cover the West Bengal Primary Education Council hereinafter referred to as "Council"; that since "Council" being a mere successor-in-office of the "Board" the Act of 1999 has no application in regard to an employment under the "Council".

3. It is further submitted that the Government or the "Council" cannot take recourse to the Notification dated 21st August, 2002 issued in exercise of the power conferred under the Act 1999 to exclude the candidature of the appellant, who was eligible to get appointment under "Exempted category" being an "ex census" worker.

4. In support of his aforesaid contentions learned Counsel for the appellant/ writ petitioner relied upon the judgment delivered in appeal by an earlier Division Bench of this Court reported in (2009) 4 Calcutta High Court Notes at 422 of Director of Employment, Government of West Bengal Vs. Nadia District School Council & Ors. It is lastly submitted that law is well settled that a special law legislated by the parliament having received the assent of the president would prevail over a general law on the subject, therefore, the West Bengal Primary Teachers Act, 1973 having received Presidential assent then the General Act of 1999 would not

apply, hence the candidature of the appellant was liable to be considered in accordance with provisions of the Special Act and Recruitment Rules 2001(hereinafter referred to as RR, 2001).

5. The contention of the Learned Counsel for the appellant is opposed by the State. It is submitted that impugned certificate dated May 13, 2010 certifying performance of duties related to the work done by the appellant only in the first phase of census 2001, he therefore, is not eligible as he does not fulfill the conditions laid down in Clause 5 of Notification no. 301-Emp/1 M-10/2000 dated August 21, 2002 issued under the Act, 1999.

6. It is further stated that the said Act 1999 would be very much applicable to operate in the field, since except notification dated August 21, 2002 no other notification was ever issued by the Government to extend the zone of consideration for the Ex-census workers to any other census operation after 1991.

It is also reiterated that the "Council" did not also consider candidature of any candidate for appointment, who was engaged in the census operation after 1991.

7. I have also taken note of the Notification No. 240-EMP/IR-5/2000 dated 2nd August 2001 issued by the Government of West Bengal Labour Department prescribing 100-point roster earmarking therein posts reserved for all reserved categories including "Exempted categories" in exercise of the powers conferred by Section 14 read with Section 3(b) and

13 of the Act 1999. Clause (4) and (5) of the aforesaid Notification. The mode of collection of names of candidates belonging to "Exempted category" in clause (4) and (5) are set out hereunder:-

Clause (4):- All appointing authorities should obtain names from Exempted Category Cell under the Directorate of Employment, West Bengal, to fill up the vacancies meant for Exempted Category Candidates in the above roster except the cases of Employment on compassionate ground, Viz death-in- harness and premature retirement due to permanent incapacitation.

Clause (5):- The relevant Notification issued by the Finance Deptt. Relaxing upper age limits for SC/ST/BC persons with disabilities, ex-servicemen and Exempted Category Candidates may be kept in view while calling for names from the sponsoring agencies concerned and at the time of offering employment.

8. To make the selection procedure absolutely transparent, three Judges Bench of the Supreme Court in the case of *Excise Superintendent Malkapatnam Vs. K. B. N. Visweshwara Rao & Ors.* reported in (1996) 6 Supreme Court Cases 216 on which Learned Counsel for the State relied, held in paragraph 6 as follows:-

Paragraph 6:- We are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly accordingly to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also

display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

9. From Notification dated 21st August, 2002

aforesaid, the nomenclature of "Ex-census

Employees" have been clarified thus:-

"Clause 4

Ex-Census Employees:-

Ex-Census employees who worked in connection with 1981 Census Operation and who had put in at least six months" continuous service under the Director of Census Operations, West Bengal.

Ex-Census Enumerators/Supervisors of 1981 Census Operations and 1991 Census Operations holding authentic "Experience Certificate" issued by the Directorate of Census Operations, West Bengal or any other competent authority duly authorized by the said Directorate.

Persons holding "Discharge Certificate" only shall not be considered for inclusion in the "Exempted Categories" since certificates granted by certain officials in some cases do not conform to the census frame-work communicated by the Directorate of Census Operations, West Bengal.

Clause 5.

Election Job workers/Enumerators:-

Election job workers and Enumerators as were engaged in the job during the revision/preparation of electoral rolls by the Home (C& E) Department between 1979 and 1st June, 2000 and who had put in a total of at least 240 days"(two hundred forty days) work during the said period.

This supersedes all earlier Circulars and Executive Orders issued from time to time, by the Government of West Bengal in the Labour Department relating to employment of persons belong to the Exempted Categories". General procedure has been laid down following

Clause 7 and in cases of Ex-census employees, as

well as electing workers and enumerating the

relevant provisions are set out:-

Clause 7:-The Director of Employment, West Bengal, will maintain the list of eligible persons belonging to the exempted category of land losers as enrolled in

the Exempted Category Cell along with the lists of eligible persons included in other exempted categories.

Ex-Census Employees:- The Director of Employment, West Bengal, will maintain the list of eligible persons of this category on the basis of enrolment in the Exempted Category Cell of the Directorate of Employment.

Election Job Workers & Enumerators:- The Home (C&E) Department will forward the names of eligible Election Job Workers and Enumerators, who have put at least 240 days" (Two hundred forty days) work upto 1st June, 2000, to the Director of Employment, West Bengal for enrolment in the Exempted Category under the Directorate of Employment. The Director of Employment, West Bengal, will maintain a list of eligible persons of this category as enrolled in the Exempted Category Cell of the Directorate of Employment.

10. The Division Bench in dealing with the instant

MAT No. 1179 of 2010 with CAN 7949 of 2010 did

not subscribe the view of earlier Division Bench

held in the case of Director of Employment

Government of West Bengal Vs. Nadia District School

Council & Ors. (supra) assigning following reasons:-

(a) The Recruitment Rules are silent as regard definition of the "Exempted Category" which is provided in the Act, 1999. Therefore in the case on hand the Act, 1999 is applicable.

(b) Whereas the earlier Division Bench in the case of Nadia District School Council (supra) held that the Act 1999 would not be applicable to the West Bengal Primary Education Council since the council was successor-in-office of the "Board" and such council would not come within definitions of either "Corporation" or "Society" and thereby such council was not a creature of statute.

11. In view of the above and since the later Division

Bench could not accept the view of the former

Division Bench in regard to applicability of Act

1999 reference is made for seeking clarification on

the following lis:-

(c) "Whether the definition of "exempted category" as given in Section 2(5) of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory bodies and Government Companies and Local Authorities Act, 1999 applies to the process of recruitment

of primary teachers under the West Bengal Primary Teachers Recruitments Rules, 2001 as amended up to date".

12. There is no doubt but to observe beyond ambiguity that the Governor, in exercise the power conferred under sub-section (1) and Clause (k) of sub-section (2) of Section 106 read with Clause (k) of sub-section (I) of Section 60 of the West Bengal Primary Education Act, 1973 was pleased to make

the West Bengal Primary School Teachers Recruitment Rule 2001(hereafter referred to as R.R. 2001) providing mode of recruitment of primary teachers in primary schools under the "Council".

These rules were made in cancellation of previous rules framed under Notification no. 768-Edn(P) dated 22nd November, 1991.

13. The terms "Board" and "Council" have been defined under Clause 2(d) and 2 (e) of said R.R.

2001 read:-

(d) Clause 2(d):- "Board" means the West Bengal of Primary Education established under the Act;

(e)

(f) Clause 2(e):- Council means a primary School Council established under the Act;

It is noticed that the concerned advertisement for selection of the primary school teachers was published on 18th March, 2010 while the "Council" came into existence to operate the field. Therefore, it would not be correct to say that new provisions which came with its provisions would apply.

14. The "Board" and the "Council" have separate identity to exercise powers envisaged in the Act and

Rules thereunder, for which they have been created as subscribed by notification issued from time to time. It would, therefore be a wrong perception to read "Council" as successor-in-office of the "Board", or, alternatively the "Board" as predecessor-in-office of the "Council", for the reason that it has no support from the statute itself. Accordingly, the view of earlier Division Bench in the case of Nadia District Primary School Council & Ors. that the "Council" cannot be interchanged by "Board" as both are the creature having independent purpose under the same statute.

15. Needless to say that interpretation of any provision of a statute is to be held in consonance of the Act and Rules framed thereunder, provided there is no repugnancy between the provision of statute and its related rules, or, the Notifications published from time to time having received assent either of the President or of the Governor of the State. The Act 1999 having received the assent of the Governor would prevail over a state rule or notification on the same subject, and would apply to all posts in State Government establishments and other establishments as mentioned in Section 1(4) of the Act, 1999.

16. It appears from Rule 9(c) R R 2001 that though preparation of a separate panel to fill up the reserved vacancies from the candidate belonging to "Exempted Category" and others with the provision(s) were laid down but it is silent as to who

are the candidates under "Exempted Category".

Therefore, the court has to fall back to the provisions of the Act of 1999 and its subsequent notifications.

17. I accordingly find that District Primary School Council is the creature of the statute to act within its power envisaged by the Act and rules framed thereunder satisfying the conditions of sub-section (4) of Section (1) of the Act, 1999 so far as its applicability to the case is concerned.

Sub-Section (4) of Section 1 of the Act, 1999 is set out:-

It shall apply to all posts in State Government establishments and establishments of public undertakings, statutory bodies, Government Companies and local authorities, other than the posts which are required to be filled up either on the recommendations of-

(a) the Public Service Commission, West Bengal, or

(b) the West Bengal College Service Commission constituted under the West Bengal College Service Commission Act, 1978, or

(c) the West Bengal Regional School Service Commission constituted under the West Bengal School Service Commission Act, 1997, in respect of any of the regions referred to in sub-section (2) of section 2 of the said Act, or

(d) any Municipal Service Commission constituted under any law for the time being in force, or

(e) the Co-operative Service Commission constituted under the West Bengal Co-operative Societies Act, 1983,

or by promotion, or by absorption of person declared surplus by the State Government or by absorption of such categories of casual workers and other workers as the State Government may be notification specify form time to tome or by person included in the exempted category. 18. Before entering further into discussion, I

consider the definition of "Exempted Category" laid

down in Section 2(5) and the definition of

"Statutory Body" under Section 2(11), read with

Section 3(a) of the Act 1999 as to the persons who would come within the zone of such consideration of "Exempted Category".

Section 2(5) :- "exempted category" means the category of persons seeking any job, declared by the State Government to be exempted category under Section 3 .

Section 2(11) :- "statutory body" means any board, corporation, or society not being a local authority, set up under any law for the time being in force and the affairs of which are controlled by the State Government.

Section 3(a) :-Exempted category- The State Government may, from time to time declare any class or category of persons to be exempted category for the purpose of the Act.

19. From reading of Section 2 sub-section (11) of the Act, 1999 it can be safely held that any board, corporation or society set up under any law are inclusive within the definition of "Statutory Body" provided those are controlled by or under the authority of the State Government. Hence, the

District Primary School Council, controlled by the State Government can be considered, as a

"Corporation" within the definition of "Statutory Body", since all its transitional provisions regarding existence of Primary School Council are subject matter of Chapter XIII of the West Bengal Primary Education Act, 1973.

20. Whether the appellant/writ petitioner of the case would be eligible or not for appointment as "Ex-census worker", is the lis to be determined by the appropriate Bench hearing the appeal?

21. Taking note of the provisions of Act 1999 and the R.R. 2001 and all subsequent notifications under reference I find no repugnancy anywhere in

the provisions so laid down in the West Bengal Primary Education Act, 1973, or, in the Act 1999, or, in the R.R. 2001 and its subsequent Amendments made by Notification No.301-EMP/IM-10 2000 dated 21st August, 2002 as well as notification no. 268-SE(P)/10M-06/2009 dated 19.05.2009. Rather the Act 1999 provides that it shall apply to all posts as mandated under Section 1 sub-section (4) of the Act, 1999. Therefore the "Council" meant for primary schools cannot be said to have been set up "under the rule making process, as was wrongly held by earlier Division Bench in the case of Nadia District School Councils & Ors. (supra) and therefore the said view cannot be subscribed. The "Board" and "Council" are the creatures of the same statute to act independently in accordance with the provisions of Act and Rules.

22. In view of above the point of reference is answered in the affirmative i.e. the provisions of the Act 1999 and subsequent notifications issued in exercise of power under such Act are applicable in the instant Mandamus appeal, and the decision of earlier Division Bench held in the case of Director of Employment, Government of West Bengal Vs. Nadia District School Council and Ors. is not to be followed for answering the issue involved in the said Mandamus appeal.

23. As a consequence of answering to the reference the stay application being CAN 7949 of 2010 is also disposed of. With such expression of opinion upon

the point of law let the case be now placed before the referral Division Bench of this Court for final adjudication and ultimate decision in the Mandamus appeal.