

(2006) 01 CAL CK 0040
In the Calcutta High Court

Case No : Writ Petition No"s. 17675-78 (W) , 17680-83 (W) and 17776 (W) of 2001

Sri Dhananjoy Pradhan

APPELLANT

Vs

The Chairman, Egra Municipality and Others

RESPONDENT

Date of Decision : 19-01-2006

Acts Referred:

Bengal Municipal Act, 1932 — Section 66, 67, 68, 69, 70
Constitution of India, 1950 — Article 14, 16(1), 162
Management of Recognized Non Government Institutions (Aided and Unaided) Rules, 1969 — Rule 9(3)
West Bengal Municipal Act, 1993 — Section 4, 5, 53, 53(1), 53(2)

Citation : (2006) 2 CALLT 611

Hon'ble Judges : Pratap Kumar Ray, J

Bench : Single Bench

Advocate : Fazlul Hague and K.N. Nabi, K.K. Mitra and Debasish Das, for the Appellant; A.B. Chatterjee and Amaresh Bag, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—These writ applications were originally moved praying the following reliefs:

(a) a writ in the nature of Mandamus commanding the respondent No. 1 to issue an interview letter in favour of the petitioner to the post of Work Sarkar, Group-C, Egra Municipality, Post Office: Egra, District : Midnapore which will be held on 11th November, 2001 or any subsequent date in the office of the Municipality.

(b) a writ of the nature of certiorari directing the respondents to produce or cause to be produce all relevant documents in connection with the case of the petitioner before this Hon"ble Court so that the conscionable justice may be done to the petitioner.

(c) Rule NISI in terms of the prayer (a & b] above.

(d) to issue an order injunction restraining the respondents Nos. 1 & 4 not to hold any interview to the post of Work Sarkar, Group-C, Egra Municipality, Midnapore on 11th November, 2001 or any subsequent date without issuing interview letter in favour of the petitioner to the aforesaid post till disposal of the application.

(e) Ad-interim order of injunction in terms of prayers (d and e) above.

(f) make any other appropriate writ or writs order or orders to which the petitioner is entitled.

(g) to make the Rule absolute.

(h) pass such other or further order or orders as your Lordship may deem fit and proper.

(i) Cost or Costs.

2. By the interim order dated 9th November, 2001, Ashim Kumar Banerjee, J. directed the appearance of all the petitioners in the interview with a rider that "if the writ petitioner succeeds, the said appointment will abide by the result of the writ petition". The order dated 9th November, 2001 aforesaid speaks to this effect:

The writ petitioner is working as a Store Keeper on casual basis in Egra Municipality. The said post is now being filled up through regular recruitment process.

Hence I direct the said Municipality to allow the writ petitioner to participate at the interview for the said post provided the writ petitioner is eligible for the said post.

In case the writ petitioner succeeds, the said appointment will abide by the result of the writ petition.

Let affidavit-in-opposition be filed by 19.11.2001 and reply thereto, if any, be filed by 29.11,2001.

Let this matter appear in the monthly list of December, 2001 before the appropriate regular Bench.

Let plain copy of this order duly countersigned by the Assistant Registrar (CT.) be given to the learned Advocates appearing for the respective parties on usual undertaking.

3. During pendency of the writ application under changed situation affidavits have been exchanged by the parties wherefrom it appears that petitioners along with other candidates sponsored from Employment Exchange, were duly interviewed by the Selection Committee following the Recruitment Rules and thereby petitioners were empanelled for employment and as the writ applications are pending, no formal appointment letters have been issued.

4. It is the case of the writ petitioners that they were appointed in different posts respectively as detailed in respective writ petitions when the Municipality was setup due to the emergent need of the Municipality to provide civic facilities to citizens, It is true that such appointments were not made following any Recruitment Rule as at the material time there were no sanctioned posts and the appointments were made as per choice of the Municipal Authority. As the regularization of service after the posts were created and sanctioned by the competent authority was denied, the petitioners approached the Writ Court praying their appearance in the interview along with sponsored candidates for consideration of their case on merit. In pursuance thereof, petitioners appeared and now they are selected candidates on merit.

5. From the Affidavit-in-Reply filed by the writ petitioners affirmed on 15th September, 2003, it is now admitted fact in view of the documents annexed, which has not been denied by the respondents, that total 42 posts were sanctioned and the Director of Local Body, West Bengal by his letter dated 26th July, 2001 annexed at page 12 of the said affidavit directed the Chairman of the concerned Municipality to fill up 35 posts out of 42 posts sanctioned following the usual procedures but by subsequent communication as the Chairman of the Municipality had informed the said Director that out of 42 posts sanctioned, 10 posts were already filled up and only 32 posts would be considered for appointment, same was approved by the said authority. In pursuance thereof, ultimately, the Director of Local Bodies in terms of recruitment rule send his representative, namely, the Deputy Director of Local Bodies, Burdwan Division in the proposed Selection Committee for selection of the candidates on holding interview. Ultimately, a panel was finalized by the duly constituted Selection Committee, wherein the name of the writ petitioners were empanelled on merit in addition to the names of some sponsored candidates.

6. Now, the prayer of the writ petitioners under changed situation is to this effect that the petitioners could be appointed in the posts wherein they have been selected. This prayer has been opposed by the State respondents whereas the Municipality has contended that the following procedural steps as per rule selection of candidates was done. From the Affidavit-in-Opposition filed in W.P. 17675(W) of 2001 by Chairman, Egra Municipality as affirmed on 11th November, 2003, following facts are revealed:

2. It is stated that with the disposal of the present case following materials placed as follows:

(a) That Egra Municipality, District - Purba Midnapur was the Panchayat area before the year 1993 and by notification dated 9th June, 1993 the said Panchayat area converted as Egra Municipality and the Governor was please to appoint about 12 persons to be the commissioners of the Egra Municipality in the district of the then Midnapore constituted under this Department notification No. 342/C-4/MIM-30/89 dated 9th June, 1993 for a period of two years with effect from the date of the said notification. Thereafter election was held and the

respondent No. 1 was elected as a chairman of the said Municipality in the year 1999 and he is now functioning as a Chairman of the said Municipality.

(b) That the Joint Secretary to the Government of West Bengal. Department of Municipal Affairs, Writers' Buildings, Calcutta-700001 issued letters to the chairman of the said Municipality on 12.9.1994, 9.1.1995 and 10.2.1999 stating inter alia that the Governor has been pleased to accord approval for creation of 17 posts, 2 posts and 23 posts under Egra Municipality respectively. In the said letter it was mentioned that no group C and group-D posts should be filled up before full absorption of the staff received from the Panchayat under order issued u/s 6 of the Panchayat Act. On that basis 7 posts out of above said 42 posts were filled up from erstwhile Panchayat Employees.

Xerox copies of the aforesaid letters dated 12.9.1994, 9.1.1995 & 10.2.1999 are being annexed herewith and collectively marked as annexure "R1" to the petition.

(c) That the previous chairman of the said Municipality had not taken any steps for appointment to the aforesaid sanctioned post. It is needless to stay that some persons are needed urgently for smooth functioning of the said Municipality. Having no other alternative some persons including the petitioner herein was duly appointed as group-C staff of the said Municipality on contractual basis on and from 29.6.2000 and since that time they are working in the said Municipality uptillnow.

(d) That the Egra Municipality. District - Purba Medinipur has taken steps for appointment to the aforesaid sanctioned 32 posts and on that basis a resolution was adopted on 23.12.2000 and a letter was issued to the District Employment Exchange Officer, Egra, District - Purba Medinipur on 26.5.2001 for sponsoring the name of candidates for interview to the said post. Thereafter a selection committee was formed in a meeting dated 25.6.2001. The Director of Local Bodies, Government of West Bengal issued a letter to the Chairman, Egra Municipality on 5.12.2001 that the Deputy Director of Local Bodies. Burdwan Division will be the representative of the D.L.B. in the proposed selection committee for appointment of Employees in Egra Municipality. On that basis the Chairman, Egra Municipality issued a letter to all members of the above said sub-committee. A resolution was adopted on 21.1.2002 that written examination will be held on 16.2.2002 and oral examination will be held on 25.2.2002, 26.2.2002 & 27.2.2002.

Xerox copy of the resolution dated 23.12.2000, letter dated 26.5.2001. resolution dated 25.6.2001, letter dated 5.12.2001, 8.1.2002, resolution dated 21.1.2002. letter dated 31.1.2002 are being annexed herewith and collectively marked as annexure "R2" to the petition.

(e) That the aforesaid written and oral examination was held in accordance with law and Block Development Officer, Egra-I, Purba Medinipur issued a letter on 28.2.2002 to that effect.

Xerox copy of the resolution dated 16.2.2002 and letter dated 28.2.2002 are being annexed and marked as annexure "R3" to the petition.

(f) That about 231 persons appeared in the aforesaid written examination to the post of Group-C. Thereafter oral examination was held to the aforesaid Group-C and Group-D post. The aforesaid selection committee prepared panel 1:2 ratio on 4.3.2002 and submitted to the chairman, Egra Municipality for approval and necessary steps. Thereafter the said panel was duly approved by the Board of Councilor of the said Municipality. The Director of Local Bodies, West Bengal issued a letter to the chairman, Egra Municipality on 13.3.2002 by directing the chairman, Egra Municipality not to issue any appointment letter till the final orders of the Hon"ble High Court is delivered in this regard. Accordingly. no appointment letter was issued to any person up till now.

Xerox copy of the resolution dated 16.2.2002 and letter dated 13.3.2002 are being annexed herewith and collectively marked as annexure "R4" to the petition.

3. With reference to the statement made in paragraph 2 to 8 of the said application I state that save and except what would appeared from records everything is denied by me. 1 further state that the petitioner was duly appointed to the post of Group-C on contractual basis on 3.7.2000 and the said appoint was made by a selection process. The said appointment was made for smooth functioning of the said Municipality.

The District Employment Exchange Officer, Egra, Purba Medinipur had sponsored the name of about 640 persons for appointment to the above said 32 posts of the said Municipality and Hon"ble Justice Ashim Kumar Banerjee, High Court at Calcutta passed an order that the writ petitioner will be allowed to participate at the interview to the said post. Thereafter petitioner is called for to the said interview and panel was prepared which was duly approved by the Board of councillors on 4.3.2002 but no appointment letter was issued to any person as per order of the Director of Local Bodies, West Bengal marked as annexure "R4" to the petition.

7. Hence, the moot question involved herein whether the petitioners have accrued any right to be appointed irrespective of the fact their names were not sponsored from Employment Exchange but they appeared in the interview as per interim order of the Court dated 9th November, 2001 passed by Ashim Kumar Banerjee, J. aforesaid.

8. To consider the issue involved herein, the nature and scope of appointment in the concerned posts relating to which the petitioners appeared in the interview is required to be considered on the basis of the statutory provision as laid down in the West Bengal Municipal Act. 1993. Section 53 and Section 54 of the said Act deals with the creation of the posts and appointment matters, which reads to this effect:

53. Municipal establishments.-(1) Save as otherwise provided in this Act, a

Municipality may have the following officers;

- (a) an Executive officer;
- (b) a Health Officer;
- (c) an Engineer;
- (d) a Finance Officer;
- (e) a Medical Officer;
- (f) a Secretary;
- (g) an Office Superintendent;
- (h) one or more than one Sub-Assistant Engineer; (i) one or more than one Sanitary Inspector;
- (j) a Head Clerk;
- (k) a Head Assistant;
- (1) an Accountant;
- (m) (m)a Surveyor;
- (n) a Draftsman;
- (o) such other officers as may be designated by the State Government in this behalf;

Provided that the State Government may reduce the number of posts of the officers as aforesaid for any Municipality;

Provided further that the State Government may by order redesignate any of the posts of the officers as aforesaid in respect of any Municipality.

(2) [Subject to the provisions of Sub-section (1)] of this section, the Board of councillors may. at a meeting, determine which of the officers referred to in Sub-section (1) of this section are necessary for a Municipality, and, with the prior sanction of the State Government, create posts of such officers and fix the salaries and allowances to be paid and granted to such officers.

(3) The Board of councillors at a meeting may, subject to the norms regulating the size of the municipal establishment for each Municipality and the categories or designations of officers and other employees of each Municipality with their scales of pay as may be fixed by the State Government from time to time, determine what officers and other employees, other than the officers mentioned in Sub-section (1), are necessary for a Municipality, create posts of such officers and other employees, and fix the salaries and allowances to be paid and granted to such officers and other employees.

(4) Subject to the norms regulating the size of a municipal establishment as may

be fixed by the State Government under Sub-section (3), no post of an officer or other employees shall be created under Sub-section (3) by the Board of councillors of a Municipality [without the prior sanction of the State Government.]

(5) Notwithstanding anything contained in Sub-section (1). Sub-section (2), Sub-section (3) or Sub-section (4), the Board of councillors of a Municipality may, with the prior sanction of the State Government, create, if it considers necessary so to do for due discharge of municipal functions, a post of an officer or other employees which is not included in the norm as may be fixed by the State Government under Sub-section (3), and fix the salaries and allowances to be paid and granted to such officer or other employee.

(6) Until norms are fixed under Sub-section (3), no post of any officer or other employee shall be created by the Board of Councillors of any Municipality without the prior sanction of the State Government.

Corresponding Law: Sections 66 to 76 of Ben. Act XV of 1932.

54. Cadre of common municipal service, appointments, etc.-

[(1) The State Government may constitute cadres for the State in respect of Executive Officers. Health Officers. Engineers and Finance Officers Officers referred to in Sub-section (1) of Section 53.]

[(2) The State Government shall be the appointing authority of all the officers borne in the cadres constituted under Sub-section (1), and shall be the authority to transfer such officers from one municipal area to another.]

[Provided that until the cadre is constituted under Sub-section (1), the Board of councillors may, with the prior approval of the State Government, engage the officers to the posts of Health Officers and Engineers, sanctioned by the State Government, on contract basis or otherwise, and the qualifications and the recruitment procedure for such engagement shall be such as may be prescribed:

Provided further that the remuneration for such engagement, shall be paid from the Municipal Fund.]

[(3) The appointment of all other officers and employees, [not included in Sub-section (1),] shall be made by the Municipality [with the prior approval of the State Government].

[(3A) The recruitment to the posts of officers and other employees not required to be made through the Municipal Service Commission constituted under Sub-section (1) of Section 55, shall be made through the local employment exchange or through such other method as the State Government may determine from time to time.]

(4) Save as otherwise provided in this Act, the State, Government may by rules provided for the [qualification for) appointment, conditions of service and other allied matters relating to the officers and employees of Municipalities.

[(5) Notwithstanding anything contained in the foregoing provisions of this section or elsewhere in this Act, but subject to the provisions of Sub-section (2), the Board of councillors may, by resolution, decide to engage, on contract basis with the prior approval of the State Government, officers and other employees of a Municipality against such posts of such officers and other employees as may be created u/s 53:

Provided that the remuneration for, and the other terms and conditions of, such engagement shall be such as the State Government may approve.]

9. Section 53 Sub-section (3) and (4) the posts wherein the petitioners were appointed temporarily were created. But u/s 54. Sub-section (3A), which provides that recruitment to the posts of officer and other employees not required to be made through the Municipal Service Commission constituted under Sub-section (1) of Section 55, shall be made through the local Employment Exchange or through such other method as the State Government may determine from time to time was not identified in respect of the posts created under Sub-section (4) of Section 53. It has been submitted by the State respondents as well as by the Municipality and it is an admitted position as it appears from the respective affidavits that as yet the posts of employees, namely, the present posts, which were created were not identified as the posts u/s 54 Sub-section (3A) for filling up the posts through Employment Exchange. Sub-section (3A) was inserted in the statute, namely, the West Bengal Municipal Act, 1993 with effect from 10th October, 1994. Under Sub-section (3) of Section 54 it appears that all appointments except the posts as included in Sub-section (1) of Section 54 could be made by the Municipality with the prior approval of the State Government. The post relating to this writ application are not the posts stipulated in Sub-section (1) of Section 54. Hence, the Municipality got the right to appoint the incumbents in the concerned posts. A question has been raised by Mr. Sakti Nath Mukherjee, learned senior advocate appearing for the petitioners that Sub-section (3A) of Section 54, which provides that recruitment to the posts should be made through the local Employment Exchange or such other method, the State Government may determine, has no applicability in the instant case as the present posts of these writ applications have not at all been identified as the posts outside of the jurisdiction of the Municipal Service Commission. Hence, unless and until the posts are identified for selection by the Municipal Service Commission, the Sub-section (3A) accordingly has no applicability.

10. However, learned advocate for the State respondents has relied upon a circular letter No. 169/MA/O/C 4/1A-7/2000 dated 15th February, 2001 annexed as annexure "R21 in the affidavit of Sri Deb Kumar Dutta, Joint Secretary for the Municipal Affairs Department, Government of West Bengal affirmed on 3rd September, 2003, by which a guideline was issued directing the mode of direct recruitment by obtaining the names from local Employment Exchange and on due selection of the candidates by a Selection Committee on merits. The said Circular Letter reads to this effect:

Government of West Bengal Municipal Affairs Department Writers' Buildings, Kolkata.

169/MA/O/C4/1A-7/2000 dated, Kolkata 15th February, 2001 From: Joint Secretary to the Government of West Bengal. To: The Chairman/Chairperson.

Municipality/N.A.A.

Sir/Madam,

The State Government has issued various circulars from time to time regarding appointment and promotion of Municipal employees. It has, however, come to the notice of the State Government that the provisions of the West Bengal Municipal Act, 1993 and the circulars issued by this Department regarding appointment/promotion of municipal employees are not being followed by the Urban Local Bodies (ULB) uniformly. As a result irregularities have been committed in several cases, may be through inadvertence in some cases.

I am also directed to refer to this Department Order No. 752/MA/O/C 4/1A-7/2000 both dated 16.1.2000 & No. 753/MA/O/C 4/1A-7/2000 both dated 16.1.2000 and to say that in spite of clear direction on the procedure regarding filling up of vacant posts, many ULBs are not strictly complying with the same. I am accordingly directed to specify the following guidelines on recruitment of officers and employees of the Municipality/Notified Area Authority (N.A.A.) on the lines of the aforesaid orders.

1. No appointment to any post of officer or employees can be made by a Municipality/N.A.A. without the prior approval of the State Government even though the creation of such posts is within the limit of one percent of the total number of sanctioned posts of officers and employees in existence in the year immediately preceding.

2. Any appointment in a Municipality/N.A.A. shall be made only in the following manner:

(a) In the case of death of a serving officer or employees, dependent of the deceased employee of the Municipality/N.A.A. can be considered for appointment to an existing vacant post on compassionate ground, provided he qualifies for the same in accordance with the stipulations made by the State Government circulars of the Labour Department, or

(b) By absorption of the employees of any erstwhile Gram Panchayat. the area of which has been included within the limits of the municipal area, or

(c) In the case of direct recruitment to any vacant post in the cases other than (a) and (b) mentioned above, after obtaining names from local employment exchange in terms of the Act of the Labour Department and after due selection, or

(d) If there is no such case as mentioned in points (a) or (b), or if no candidate

for recruitment to the post of any officer or employee is available in the local employment exchange and the said exchange issues a non-availability certificate, the Municipality/N.A.A., with the prior approval of the State Government, may obtain names through paper advertisement in leading newspaper and select candidates with requisite qualification and experience.

3. In the case of recruitment of the officers and employees as per procedure mentioned at (c) and (d) above, selection of candidates will have to be made by a three member "Selection Committee" constituted by the Municipality/N.A.A. The chairman of the Municipality/N.A.A. shall head such committee, and one member of the Chairman-in-Council/Councilor, as may be nominated by the Chairman of the Municipality, and a representative of the Director of Local Bodies shall be the other two members of such Committee.

4. After selection of the candidate in the manner as mentioned in paragraph 2 and 3 above prior approval of the State Government will have to be taken for making any appointment directly or on promotion.

I am further directed to request you to comply with the above guidelines for recruitment of the officers and employees in your Municipality/N.A.A.

Yours faithfully. Sd/- Joint Secretary.

11. On a bare reading of the said circular letter it appears that the selection of the candidates is limited in respect of the sponsored candidates only from Employment Exchange but same has not satisfied the condition precedent of applicability of the statutory provision under Sub-section (3A) of Section 54 of the said Act, which provides that after identification of the posts, which to be selected by the Municipal Service Commission, rest posts could be filled up by calling the candidates from Employment Exchange and/or following the methods as to be determined by the State Government issuing orders to that effect, The circular letter as issued cannot be considered as order of the State Government issued under the seal of the Governor exercising power under Article 162 of the Constitution of India. Furthermore, the circular letter is not a recruitment rule in the field in question. Circular letter only provides the appointment procedures by calling the names from local Employment Exchange without any rider attracting the Sub-section (3A) of Section 54. Hence, unless and until there is an identification of the posts, which to be considered for selection amongst the candidates sponsored by Employment Exchange in terms of said Sub-section (3A) of Section 54 of the said Act, there is no question of applicability of the circular letter rigidly. In that view of the matter, the submission of learned advocate appearing for the State respondents that the interim order of the High Court directing appearance of the candidates in the interview cannot be legally sustainable has no basis.

12. It is an admitted position from the affidavits and other documents that the present posts of the Municipality as created u/s 53 of the said Act as yet has not been identified as the posts either outside of the ambit of the Municipal Service

Commission or within the ambit of the Municipal Service Commission in terms of the Sub-section (3A) of Section 54 of the said Act. Hence, under Sub-section (3A) only, there is a scope of issuance of a circular letter or order by the State Government formulating the methods of selection. As there is no identification of the post in terms of the said section, circular letter has no applicability in the instant case, until and unless posts are identified outside of the ambit of Municipal Service Commission to attract the order of the State Government providing method of selection.

13. Learned advocate of the State respondents submits further that besides the said guideline providing the mode of invitation of names from the local Employment Exchange, Sections 4, 5 and 6 of the West Bengal Act XIV of 1999 provides the recruitment process for empanelling candidates on merit only by consideration of candidature of sponsored candidates only. The relevant provision of the Sections 4, 5 and 6 of the said Act reads to this effect:

4. Vacancies to be filled up by persons sponsored by Employment Exchange.- After the commencement of this Act, all vacancies in the posts in any Government establishment or establishment of any public undertaking, statutory body. Government company or local authority shall be filled up by such persons as may be sponsored by an employment exchange.

5. Notification of vacancies to Employment Exchange.-Every appointing authority in any Government establishment or establishment of any public undertaking, statutory body, Government company or local authority shall notify to the employment exchange concerned, in the form of a requisition, every vacancy in any post in such establishment in accordance with the provision of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1953 (31 of 1959), 1 and rules made thereunder, and shall state the qualifications, age, experience or any other requirement for filling up of such vacancy.

6. Employment exchange to submit list of registrants to appointing authority.-The employment exchange shall, on receipt of the requisition u/s 5, submit to the appointing authority a list of registrants, other than the registrants who belong to the exempted category, in order of seniority determined on the basis of the length of the period of registration in that employment exchange and in accordance with such principal of rotation as the Director of Employment may prescribe from time to time, and also in conformity with the qualification, age, experience or other requirement, if any, its stated in the requisition.

14. On a bare reading of the said provisions of the Act, 1999. which have its applicability in the field of appointment to the posts under the Municipality, it appears that except the names from the Employment Exchange, no other names could be considered by the Selection Committee to fill up the vacancies.

15. The argument of learned advocate relying upon the said provision of the law stipulated under Sections 4, 5 and 6 of the Act, 1999 to hold that appearance of the petitioners without having the sponsorship from the concerned Employment

Exchange in the said interview was contrary for the said provision of the said Act. 1999 and accordingly null and void, has no basis, as posts were not identified under concerned Municipal Act as posts whose selection would not be done by Municipal Service Commission, a condition precedent to call names from exchange as per said statute.

16. In the instant case it appears that from Employment Exchange, names were sponsored and writ petitioner's name though were not sponsored from Employment Exchange but as per interim order of this Court passed by Ashim Kumar Banerjee, J. aforesaid, the petitioners appeared along with other candidates sponsored from Employment Exchange and following the recruitment process by the selection method, they got the privilege of empanelment on merit.

17. The question involved herein is of different issue, namely, the appearance of the writ petitioners in terms of the interim order of the Court, which, however, was with a rider "subject to result of the writ petition", could be finally approved by this Court, in view of subsequent events of their selection on merit.

18. It appears from the pleading of the writ applications that aforesaid interim order was passed in view of a positive case as made out by the writ petitioners that they are rendering service in the Municipality being appointed temporarily since long years and as there was no scope of regularization of their service under the statutory provision, the writ petitioners prayed for consideration of their merit in the selection process irrespective of the fact that their names were not sponsored from Employment Exchange. Hence, from the factual matrix of this case, it appears that the appearance of the writ petitioners in the written test and interview of said selection process was not as strangers but in the status of temporary appointee and as per Court's order aforesaid.

19. Hence, a moot question lies here whether a person who served any organization for a considerable period, which in the instant case for 5 years, whether would suffer the vacating of interim order by which they allowed to appear in the interview though they are not the sponsored candidates for selection of their candidature on merit along with other candidates. The point is not at all res Integra. The issue has been decided by the Apex Court when the prayer of regularization of service due to rendering of such long service was refused by directing their appearance in open competition for selection of their candidates merit along with other candidates on grant of due weightage for past service. Reliance may be placed to the Judgment passed in the case Dr. Surinder Singh Jamwal and another Vs. State of Jammu and Kashmir and others, referring the Judgments J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., , relevant paragraphs being paragraph 2 and 3 reads to this effect:

2. The controversy raised in this case is squarely covered by the Judgment of this Court reported in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., . It is not in dispute that the appellants were

recruited on ad hoc basis and have been continuing as such. It is their contention that since they had put in more than 13 years of service they are entitled to regularization of service and approached the High Court for direction to regularize their services. The High Court has followed the ratio in the above Judgment and dismissed the petition. In the light of this Court the settled legal position now is that the recruitment to the service should be Governed by the appropriate statutory rules. Under the rules the regular recruitment to the posts shall be made by the Public Service Commission, Consequently, the ad hoc appointments would be only temporary appointments dehors the rules, pending regular recruitment without conferring any right to regularization of service. This Court in Narinder Mohan's case, 1994 AIR SCW 1701 (supra) had given the following directions (Para 13):

Accordingly, we set aside the directions issued by the Division Bench of the High Court and confirm those of the single Judge and direct the State Government of the J & K to notify the vacancies to the PSC which would process and complete the selection, as early as possible, within a period of six months from the date of the receipt of this order. The State Government should on receipt of the recommendation, make appointments in the order mentioned in the selection list within a period of two months thereafter. Since the respondents have been continuing an ad hoc doctors, they shall continue till the regularly selected candidates are appointed. They are also entitled to apply for selection. In case any of the respondents are barred by age, the State Government is directed to consider the cases for necessary relaxation under Rule 9(3) of the age qualification. If any of the respondents are not selected, the ad hoc appointment shall stand terminated with the appointment of the selected candidate. The direction sought for by Dr. Vinay Rampal cannot be given. His appeal is accordingly dismissed and the State appeal is also dismissed. The appeals of the PSC are accordingly allowed but in the circumstances parties are directed to bear their own costs.

3. Following the above directions, there shall be a direction to the State Government to notify the vacancies to the Public Service Commission within a period of two months from today. On notification so made, it would be open to the appellants to apply for regular recruitment. It would be for the PSC to consider the respective claims of the candidates who have applied for and to make necessary selection according to rules. On selection so made and recommendation made to the State Government, the State Government will make appointments as per rules within a period of two months from the date of the receipt of the list of the selected candidates from the PSC. The PSC is directed to complete the process of the selection within a period of three months from the date of the receipt of the requisition. The State Government after receipt of the lists shall make the necessary appointments in accordance with law. Till then the appellants would continue only on ad hoc basis till the regularly selected candidates are appointed.

20. The same view earlier was passed by the Apex Court in the case Sandeep Kumar and Ors. v. State of Uttar Pradesh and Ors. reported in 1993 suppl.(1) SCC 525, a Judgment of Three Judges Bench whereby and whereunder Public Service Commission Rule was considered and direction was given for appearance in the interview along with other candidates condoning the age bar. Calcutta High Court also followed the Judgment of Apex Court in the case Smt. Debirani Bhattacharjee and Anr. v. District Inspector of Schools (S.E.), Burdwan and Ors. reported in 199.6(2) CHN 415, a Judgment of Division Bench whereby directions was given to appear in the interview along with other sponsored candidates on condoning the age bar. Single Bench of this High Court held accordingly in the case Sri Shila Pyne and Anr. v. State of West Bengal and Ors. reported in 1998(2) CLJ 84.

21. The aforesaid Judgment was delivered by the Apex Court considering the social Justice concept as well as the concept of economic justice. The function of the legal system and the legal procedure, no doubt, is to regulate the social behavior and norms. To identify the specific rules and regulations even in the matter of appointment for which this Court is now concerned, care should be taken so that no discretionary action is mated out to anybody in breach of Article 14 of the Constitution of India. But that does not mean that law is static and pedantic. Law is for the human beings and the purpose of the rule of law provides a scope of humane consideration of material facts in its dynamic process of evolving to a social goal. In the instant case it appears that only because the writ petitioners were not sponsored from Employment Exchange though their names are appearing in the Employment Exchange Register, despite being selected following the proper selection process, they are being deprived of from being appointed though they, are still rendering service in the Municipality being appointed casually and/or temporarily by the Municipal Authority in the long past. Social justice concept, accordingly, will come to rescue the petitioners, which practically was considered by the Apex Court in the case Dr. Surinder Singh Jamwal (supra).

22. Hence, the Court is not construing the statutory provision of the law as urged by the learned advocate for the State respondents by reading the words "mechanically", but Court has the intention to inject the societal and humane values in such letters of the statute under the special facts of the case.

23. Enlistment of the names and sponsorship thereof by the Employment Exchange is controlled and guided by Employment Exchange Brochure and Manual, which provides that unemployed persons would be illegible to register their names in the Employment Exchange to avail chance and/or opportunity of sponsorship of their names in vacancies concerned. Under statutory regulation, namely. Employment Exchange (Compulsory Notification of Vacancies) Act. 1959, the employer is bound to notify the vacancies to the Employment Exchange. So the purpose of enlistment in the name of the Employment Exchange Register by an unemployed person and sponsorship of the names of those candidates in the

resultant vacancies as to be declared by employer are in the domain of the procedural law as no substantive right of appointment is being provided thereon. The registration of the names of the Exchange and sponsorship of the names from Exchange, since are within the field of procedural law, it cannot sub-serve/subvert the substantive right of an unemployed youth for being considered on merit in the selection process with reference to the vacancy declared.

24. Having regard to such jurisprudential concept of the Employment Exchange Registration procedures and the notification of vacancies by the employers to the Employment Exchange, the Apex Court in the case *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, , a Judgment of Three Judges Bench dealt with the matter and held that appearance of the petitioner irrespective of non-sponsorship of their names did not vitiate the selection process as petitioners' candidature were properly considered by the Selection Committee to identify their merit. The Apex Court in the case *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, held that Article 14 read with Article 16(1) enshrines fundamental right to every citizen to claim consideration for appointment to a post under the Stat. Relevant paragraph 5 reads to this effect:

Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State, Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and expected vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection.

25. In dealing with that, case the Apex Court relied a Judgment passed in the case *Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta and others*, wherein wide publication of the post inviting application was considered as justified. Even the Apex Court on issue of failure to advertise the post held that the candidates who got no opportunity to apply due to such, failure have the locus standi to question the validity of recruitment process. Reliance may be placed to the Judgment passed in the case *Sardara Singh and others, etc. Vs. State of Punjab and others*, . Relying upon the *Excise Superintendent Malkapatnam* (supra) the Apex Court reiterated the same view in the case *Raj Kumar and Others Vs. Shakti Raj*

and Others, , a Judgment of Three Judges bench.

26. Very recently the Full Bench of Calcutta High Court has passed a Judgment on interpreting the recruitment regulation of appointment of non-teaching staff in the secondary and higher secondary schools controlled and guided by Rules of Management of Recognized Non Government Institutions (Aided and Unaided) Rules, 1969 by holding, inter alia, that non-sponsorship of the names of the candidates from Employment Exchange would not vitiate the selection of such non sponsored candidates on merit in the case *Rabindra Nath Mahato v. State of West Bengal and Ors.* reported in 2005(2) CLJ 161.

27. Having regard to such slate of affairs, this Court applying the doctrine of social justice concept is of the view that the appearance of the petitioners irrespective of non-sponsorship of their names from the Employment Exchange would not vitiate their selection on merit. In that view of the matter, writ applications are allowed. The interim order passed by Ashim Kumar Banerjee, J. in all the writ applications stand confirmed by the final Judgment of this Court, From the records since it appears that the writ petitioners have already been selected by the duly constituted Selection Committee as per law, respondents are directed to declare the result of the selection process formally and to give appointment of the petitioners in the posts in question within two weeks from this date and to release all salaries allowances and service benefits with effect from their respective date of appointments. Till such appointment letters are issued and the petitioners join in the posts in question they will continue in their respective temporary posts with service benefits as now enjoying. Writ applications are thus allowed.

Later:

Xerox plain copy of the ordering portion of the Judgment delivered today countersigned by Assistant Registrar (Court) be given to the learned advocates for the parties.

Xerox certified copy of the order, if applied for, be supplied expeditiously.