

(1989) 06 CAL CK 0001
In the Calcutta High Court
Case No : F.A.M. No. 596 of 1987

State of West Bengal and Others

APPELLANT

Vs

Hari Prasad Singh and Others

RESPONDENT

Date of Decision : 09-06-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 27(1), Order 9 Rule 9, 11, 141

Constitution of India, 1950 — Article 225, 226, 372, 372(5), 373

Citation : 93 CWN 1158

Hon'ble Judges : Sudhanshu Sekhar Ganguly, J; Manas Nath Roy, J

Bench : Division Bench

Advocate : S. Gupta and Shyamali Banerjee, for the Appellant; A.B. Majumdar and Bharati Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Sekhar Ganguly, J.—This is an appeal from the rule made absolute by Majumdar, J. in C. O. No. 127(W) of 1984 on 10/6/84. The facts leading to the present appeal may be summarised as follows : - In urban Government recognised primary Schools, the teachers are appointed by the Managing Committee subject to approval by the appropriate authority in the Education Department, i.e. the Director of Primary Education, Government of West Bengal, to whom their names are recommended by the District Inspector of Schools on behalf of and" as the ex-officio Secretary of the Urban Advisory Committee. The version of the. respondents-petitioners is that they were appointed as teachers of a number of Primary Schools situated within the Malda town area by the Managing Committees of those Schools from 1974 and onwards. Their names were duly recommended to the Director of Primary Education for approval of their appointments by the District Inspector of Schools (Primary) Malda., the ex-officio Secretary of the local Urban Advisory Committee. The said Authority having failed to accord his approval, the respondents Nos. 1 to 6 and 8 to 10 moved a writ petition before this Court in C. R. 384(W) of 1983, which was

ultimately disposed of by Monoj Kumar Mukherjee, J. on 13/7/83 with a direction on the Director of Primary Education to consider the recommendation for approval within two months. Two similar writ applications on similar grounds were also moved in C. O. No. 3694(W) of 1983 and C.). 9695(W) of 1983 by respondents nos. 11 to 15 and 16 to 21 respectively, in which a similar direction was passed by Suhas Chandra Sen, J. on 16/7/83. Thereafter, the District. Inspector of Schools (P.E.), Malda issued Memos nos. 1206(17) and 1207(17) both dated 28/11/83, whereby he accorded approval to the appointments of the respondents as teachers after obtaining opinion of the local Government Pleader. Bank Accounts were also opened in favour of the respondents, to enable them to draw their salary. The District inspector of Schools also directed the Sub-Inspector Appellant respondent no. 4) to draw up their pay bills, but subsequently he directed the Sub-Inspector by a letter not to draw up their pay bills. Apprehending, therefore, that the approval of their appointments as per the aforementioned Memos nos. 1206(17) and 1207(17) dated 28/11/(sic) was withdrawn or cancelled, the respondents moved the present writ petit; in CO. 127 (W) of 1984, against the State of West Bengal, the Education Department, the Director of Primary Education and the District Inspector and Sub-Inspector of Schools, Maida (appellants-respondents nos. 1 to 4) for a direction upon them to pay their salary to the present respondents and not to revoke or cancel the aforementioned Memo nos. 1206(17) and 1207(17) both dated 28/11/83 and interim reliefs.

2. The case of the appellants-respondent, as it appears from their affidavit-in-opposition is that the respondent-petitioners were never legally appointed teachers of the Schools concerned. The Memos No. 1206(17) and 1207(17) dated 28/11/83 were extracted from D. Debnath, the then District Inspector of Schools (Primary) by putting him under gherao. Dr. Debnath himself submitted a confidential report stating this to the Director of School Education with copies to the District Magistrate, Malda and Director of Public instruction by his Memo no. c/6 dated 29/11/83. The District Magistrate. Malda also intimated the Director of School Education about this incident by his office note dated 5/12/83 (P. 116). The department thereafter started a Departmental Enquiry against Dr. Debnath, for illegally granting approval to the appointments of the respondents and placed him under suspension. The Memo No. 1206(17) and 1207(17) dated 28/11/83 could not therefore ensure to the benefit of the respondents and the opinion of the Government Pleader, Malda, or the opening of the Bank Accounts in their favour could not improve matters in any way. Besides, these memos were subsequently set aside by the Director of School Education. The respondents, so it is urged, are not entitled to the relief prayed for.

3. By an affidavit-in-reply dated 20/9/85, the respondents denied the story of gherao and urged that this story together with the so-called subsequent reports by Dr. Debnath, the District Magistrate, Malda, etc. were manufactured for defeating the claim of the respondents.

4. It appears that the writ petition No. C. O. 127(W) of 3984 having been moved before A. M. Pal, J. (as his Lordship then was) his Lordship passed an order on 12/1/84 directing the appellants to pay a sum of Rs.750/- to each of the respondents within 29/2/84. Thereafter, on 12/1/84 his Lordship passed another order directing the respondents to pay salary of February, 1984 to the respondents by 20/3/84. In view of the apprehension expressed that some steps might be taken for cancellation of the appointments of the respondents, his Lordship passed another order directing the parties to maintain status quo as on that day until further orders. Thereafter, on 18/5/84 his Lordship passed another order directing the respondents to comply with his earlier order and make payments, if they had not filed appeals against these orders.

5. It is urged that the State Government" made attempts to file appeals against the orders of A. M. Pal, J. dated 13/1/84 and 9/3/84 (F. M. A. T. 122 and F.M.A.T. 3879 both of 1984). These attempts proved abortive and the appellants did not take any further step. It appears that U. C. Banerjee, J. also passed an order on 30/7/85, directing the appellants to pay all arrears of salary to respondents. This order, however, was quashed in F.M.A.T. 3019 of 1985. It was urged that the approval of appointments of the respondents stood confirmed by payment of salary to the respondents from time to time.

6. As stated above, the petition in C. O. 127(W) of 1984 was heard on merits and allowed by Majumdar, J. By his final order, his Lordship directed the appellants to pay the respondents, their salary and allowances with effect from their respective dates of joining as per Memos nos. 1206(17) and 1207(17) both dated 28/11/83 mentioned above and to go on paying their salary month after month. The findings on which this final order of his Lordship is based, may be summarised as follows :-

a) The relevant Government Orders do not provide that for the approval of the appointment of a teacher of a Government aided Urban Primary School, recommendation of the Urban Advisory Council is a must.

b) In the present case, recommendation was actually made by the Urban Advisory Committee.

c) The story of gherao cannot be believed; the approval given by the District Inspector of Schools as per Memos 1206(17) and 1207(17), both dated 28/11/83, were given duly in accordance with law and there was no ground for cancellation of the said two orders. The said two orders were effective and operative and necessary steps pursuant thereto should follow. The orders cancelling the said two Memos was ineffective and invalid.

d) Since there is a specific notification to the effect that primary teachers, who have been in continuous service for long should be denied to have been confirmed automatically, the respondents" service could be approved on the basis of their continuous service for a long time ever assuming that the necessary recommendations of the Urban Advisory Committee were not there,

7. The learned advocate for the appellants has assailed all the findings and final conclusions as stated above and the learned Advocate for the respondents has supported them very strongly. We now turn to see how far the findings and conclusions of the learned trial judge may be considered as justifiable.

8. To begin at the beginning, we have to see first if there are materials on record to show that the respondents were duly appointed teachers of the schools concerned by the Managing Committees thereof as claimed by them; vide, para 2 of the writ petition. The case of the respondents depends entirely on a finding favourable to them on this point, since the question of recommendation and approval may arise only after the factum of appointment of the respondents has been satisfactorily established. Strange, to say, however, the respondents did not produce any material whatsoever to establish that they had really been appointed as teachers by the Managing Committees of the Schools concerned. They could have produced the Minute or Resolution Books of the Managing Committees of those schools to show that. They could have also produced other papers such as registers of the schools concerned showing that they had actually served those schools and received their salaries from these schools; for it is inconceivable that they taught in these schools since the seventies without getting anything by way of remuneration for their efforts. To our specific question in this regard, the learned Advocate for the respondents informed us that appointment letters and such other papers were lying with the records of the three earlier writ-cases viz. C. R. 384(W) of 1983, C. O. 369(W) of 1983 and C. O. 9695(W) of 1983. he also assured us that he would call for the records of the three writ cases to satisfy us on this point. He did not, however, make any such effort. The result is, there is nothing before us at present to show that the respondents had actually been appointed by the Managing Committees of the schools concerned.

9. The specific cases of the respondents in this regard is contained in para 2 of the writ petition, which runs in the following way :-

"2. That your petitioners were appointed teachers by the Managing Committees of Primary Schools mentioned below. Names of petitioners, date of joining and names of schools are set out below in the tabular form".

Then follows a table giving details of joining of each of the respondents.

10. The learned advocate for the respondents argued that the respondents' assertion that they were appointed by Managing Committees of the Schools concerned was not specifically denied by the appellants in their affidavit-in-opposition and that the respondents were entitled to have a walkover on the point of their appointments on the ground of non-traverse Para 4 of that affidavit-in-opposition runs in the following way :

Para 4 of the affidavit-in-opposition :

With reference to paragraphs 1, 2 and 3 of the said petition I state that these

respondents specifically denies that the petitioners had been legally appointed teachers of the school concerned. I deny and dispute each and every fact set out in the tabular form under paragraph 2 of the said petition. The other facts appearing from the said paragraphs are matters of records and I do not admit anything not appearing from the Records of the case.

11. The learned Advocate for the respondents argued that by denying that the respondents "had been legally appointed" the appellants meant to say that the respondents had been appointed teachers of the schools concerned - though not legally. A teacher is appointed legally when he is appointed by the Managing Committee of the School. When it is denied that somebody was not legally appointed as a teacher of a school, what is meant is that amongst others he has not been appointed by the Managing Committee of the School. The truthfulness of the statements in the tabular form was also denied in para ft. It is to be held therefore, that the appellants denied by implications, if not specifically, that the respondents had been appointed teachers of the schools concerned by the Managing Committees thereof.

12. The learned advocate for the respondents urged next that since the names of the respondents were forwarded by the District Inspector of Schools (P.E.) to the Director of Primary Education, for approval of their appointments, it should be presumed that they had been duly appointed teachers of the Schools concerned before that. From the orders passed by the Director of School Education on 29/9/83, it appears that the District Inspector of Schools forwarded the names of Hari Prasad Singh (respondent No. 1) and 9 others to the said Director under his Memo no. 736 dated 9/12/ 82. Under Memo no. 16 and 17 to the dated 10/1/83 the District Inspector of Schools similarly forwarded five names (Respondent Bhabesh Chandra Basak and four others) and six names (respondent Uijal Kumar Roy and five others) respectively to the selfsame authority.

13. From this, however, it cannot be said for certain that the respondents had really been appointed teachers by the Managing Committees of the Schools concerned. They could have produced direct evidence in the shape of resolution books and other school papers to show that. Since they did not take any steps for producing unimpeachable documentary evidence from the schools concerned, to establish conclusively their case in this regard, we do not consider it advisable to draw such presumption in their favour on the basis of evidence which shows nothing besides that the names of three respondents and 16 others - perhaps the remaining 18 respondents - were forwarded to the Director of Schools Education for confirmation of their postings. The learned advocate for the respondents criticised the appellants for not producing the three memos mentioned above. But neither did the respondents call upon the appellants to produce them.

14. At this juncture, it becomes necessary to refer to a number of documents which have been produced by the appellants at the appellate stage. These comprise the Minute Books of Maheshmati Girls Primary School and the Urban

Advisory Committee, Malda, Bill Registers maintained by the District School Board etc. The appellants want us to take into consideration these documents in exercise of the inherent power of the Court. The learned Advocate for the appellants submits that notwithstanding Rule 53 of the Writ Rules framed by this Court, Order 1, Rule 27 will not have any application to the present case, in view of the bar in section 141 of the CPC and that the Court could very well invoke its inherent powers in this case for taking into consideration these documents in exercise of the inherent power of the Court. The learned Advocate for the appellants submits that notwithstanding Rule 53 of the Writ Rules framed by this Court, Order 41, Rule 27 will not have any application to the present case, in view of the bar in section 11 of the CPC and that the Court could very well invoke its inherent powers in this case for taking into consideration these documentary evidence. The learned Advocate for the respondents argued on the other hand that the provisions of Rule 53 of the Writ Rules should prevail, so long as the Rule is not deleted. To solve the tangle it becomes necessary to reproduce below the provisions of both the Rule 53 and section 141 of the Civil Procedure Code. Rule 53 of the Writ Rules which draws its sanctity from Article 225 of the Constitution runs in the following way :-

" 53" Save and except as provided by these rules and subject thereto, the procedure provided in the CPC (Act V of 1908) in regard to suits shall be followed as far as it can be made applicable, in all proceedings for issue of a writ".

Section 141 CPC which derives its authority from Entry No. 13 of the concurrent list of Schedule VII read with Article 372(5) of the Constitution runs as follows :-

"141" Miscellaneous Proceedings :-

The procedure provided in this Code in regard to suits shall be followed as far as it can be made applicable, in all proceedings in any Court of civil (Explanation) : In this section, the expression "proceedings" includes proceedings under Order IX, but it does not include any proceeding under Article 226 of the Constitution.

15. Both the Rule 53 and section 141 derive their authority from the Constitution. They cannot however, be given the same weight. We think that a Rule even though statutory, must give way to the provision of an Act, passed by or having the authority of an Act passed by the Legislature. Article 225 of the Constitution saved and endorsed the power of the High Courts existing since before the coming of the Constitution, to make rules of Courts subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by the Constitution. True, the Civil Procedure Code, 1908 was not enacted by any Legislature which had received its authority from the Constitution. But, then, as it has been laid down in Explanation 1 to Article 372, the expression, "law in force" includes "a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed. "True, the Explanation I was added for explaining

the expression "law in force" as appearing in Article 372. But then it is this Article 373 which has given authority to all constitutional laws of this country and the explanation must therefore cover the CPC also and it should be taken as if this Code was made by an authority which had received its powers to make it from the Constitution. Agreeing with the learned Advocate for the appellants, we are inclined to hold, therefore, that notwithstanding the provisions of Rule 53 of the Writ Rules, in view of the provisions of section 141 of the Civil Procedure Code, the provisions of the said Code will not have any application to the writ-cases under Article 226 of the Constitution.

16. The question that arises next is as to whether this Court can accept the new materials offered at this stage by invoking its inherent powers. The Courts have inherent power in the absence of any express or implied prohibition to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of Court; *Jaipur Minerals v. Commissioner of income tax* AIR 1977 SC 1348. The power is very wide and even where the CPC applies is not controlled by the provisions of the Code and even where provisions have been made specifically in the Code its application is restricted not because it is contrary by the provisions of the Code but because it should be presumed that the procedure specifically provided for orders in certain circumstances is dictated by the interests of justice; *Bajrang Rai v. Ismail Mian*, AIR 1978 Patna 339 (F. B.). Considered from this point of view, the provisions of Order 41, Rule 27 of the CPC cannot be ignored since it may be presumed that the said provisions of the Code are based upon consideration of justice and fair play between the parties. They may certainly be accepted as providing guidelines for exercising inherent powers in such-situation as the present, where the appellate Court is being approached for accepting new materials for consideration. This is not seriously disputed, since even in this case the only ground taken in the application for production of additional evidence is that the documents in question were not available inspite of efforts to get relevant documents from Malda, while the matter was pending before the trial court. This of course, is clause (aa) to Order 41 Rule 27(1) of the Code. At the time of hearing, it was also urged that since the additional evidence would help the Court to arrive at a satisfactory and firm conclusion on a most vital point, the Court should require them to be produced. This of course is Clause (b) of Order 41, Rule 27(1) of the Code. The learned advocate for the respondents while agreeing that the Court certainly can require any new material to be produced, if it feels that such new material will enable it to pronounce judgment, submits that the Court can very well pronounce its judgment on the materials already on record. He also argued that since the new materials offered, must have been there in the Schools concerned or the office of the District Inspector of Schools or some such office, the argument that they were not available while the matter was pending before the trial Court cannot be accepted.

17. There is a lot of strength in the objection taken by the learned Advocate for the respondents. The judgment of the Court can certainly be pronounced on the

materials on record. But, the new materials which tend to throw light on such a vital point as the appointment of the, respondents in the Schools concerned, will certainly help the Court to pronounce its judgment in a more satisfactory and assured manner. That is one reason why the new materials should be accepted. As for the other ground, it certainly cannot be disputed that the new materials offered now must have been lying in the offices of the Schools or the District Inspector of Schools of Malda. It may as well be, however, that the authorities in the Education Department in Calcutta, who were fighting this Rule, were not aware of the existence of these materials or their whereabouts. This ground for accepting the new materials offered also, therefore, should be taken to have been established. The additional evidence offered should therefore be accepted, more so, as their genuines and relevance were not disputed from the side of the respondents.

18. The first item (Annexure-A) of the new materials is a letter from the District Inspector of Schools, Malda dated 28/9/78, addressed to the Director of Primary Education, seeking approval of the appointments of. Primary School teachers of Urban Primary Schools in English Bazar Municipality (Malda) appointed before 31/12/76 in normal and additional (sic)cancies. The letter was accompanied by a list of teachers and it was mentioned in it that the proposals for approval were unanimously accepted by the Urban Advisory Committee in its meetings dated 2/8/78 and 26/9/78. The Resolution Book of the Urban Advisory Committee English Bazar, Malda, for the year 1978 which was also produced, - shows that on 2/9/78 and 22/9/78 resolutions were passed for forwarding the names of the enlisted teachers, ail appointed before 31/12/76 to the Director of Primary Education for approval. What is significant is that the names of Kulsum Begum and Subrata Sarkar (respondent nos. 9 and 10), who were alleged to have been appointed on 1/3/74 and 5/4/76 respectively as teachers of Immambra Free Primary School are absent from this list, raising grave doubts about the genuineness of their claim.

19. The second and third items of the new materials comprise resolutions of the Managing Committee of Mahesrnati Girls Primary school dated 25/3/76 and 27/8/78. By the first resolution, the said Committee appointed two teachers of the name of Prashanta Kumar Chakraborty and Smt. Chitra Roy. By the second, the District Inspector of Schools (P.E.) Malda, was requested to have the appointments to these two teachers approved. The fourth and fifth items are copies of reports of inspection of this very school held on 6/2/79 and 4/4/79. Both these reports contain the names of all the teachers of the school at that time including Prashanta Kumar Chakraborty and Smt. Chitra Roy. The names of these two teachers appear also in the resolution of the Managing Committee of the said School dated 2/9/78 and 22/9/78 as unapproved teachers. What is very significant is that neither the resolutions of the Managing Committee of the School nor the Inspection Reports mention the names of Malina Roy (Majumdar) or Ashis Sarkar (respondent nos. 7 and 8), who claim to have been appointed by the Managing Committee of that school on 26/5/77, as being amongst the

teachers of the School. Had they been really appointed as teachers of that school by the Managing Committee thereof, their names certainly would have appeared in the resolutions of the said Committee and the Inspection Reports. In this connection it is submitted from the side of the appellants that Shri Asim Kumar Maitra, who presided over the meeting of the Managing Committee held on 25/3/76, was none other than the husband of Smt. Latika Talapatra, (respondent no. 6) and that Shri Lalit Mohan Ghosh, Sub-Inspector of Schools, who inspected the School on 6/2/79, was the father of Shri Rabi Shankar Ghosh (respondent no. 3). These submissions have not been controverted.

20. The next item comprises two minute books of the Urban Advisory Committee, Malda, for the years 1973 and 1978-81 respectively. These are been sought to be taken into consideration for showing that the name of not even a single respondent was recommended to the Director of Primary Education for approval.

21. The last item comprises two Bill Registers maintained by the District School Board, Malda, for the years 1985-86 and 1986-87 respectively. It is submitted that these Registers comprise the details of payment of salary etc. to all the approved teachers of Primary Schools at Malda recognised by the Government. It is specifically submitted that neither of these registers contains the names of Kutubpur no. 3 Primary School, in which the respondents nos. 11 to 15 claim to have been working and Nalini Bala Primary school, in which the respondent nos. 16 to 21 claim to have been appointed as teachers and it is urged that these omissions conclusively establish that these two schools were not recognised by the Government. It is added that the Government has no responsibility with regard to unrecognised schools and their teachers and that, a such, the Government is under no obligation to pay anything to respondent nos. 11 to 21. True, the names of all the respondents were also entered in the Bill Register for the year 1986-87, But that was done as per the orders of this Court as the endorsements show.

22. We find therefore, that the respondents have not produced anything to show that they had really been appointed a teachers of the Schools concerned by the Managing Committees thereof. On the other hand from the materials produced by the appellants it appears that two of the schools, of which the respondent nos. 11 to 21 claim to be teachers, are not recognised by the Government at all and that of the remaining ten respondents four (respondent nos. 7 to 10) could never have been appointed as teachers of the two schools concerned.

23. In view of all the materials produced from the side of the appellants, it becomes very difficult to hold, therefore, that the respondents had really been appointed teachers of the schools concerned by the Managing Committees thereof as claimed by them.

24. Next, we have to see if the names of the respondents had been recommended to the appropriate authority in the Education Department, for the

approval of their appointments. There is no dispute that the Director of Primary Education, Government of West Bengal is the appropriate authority and that to him the names of the teachers were sent for approval of their appointments by the District Inspector of Schools (Primary). The only dispute is as to whether the District Inspector of Schools had to refer the cases of such teachers to the Urban Advisory Committee for their views before forwarding their names to the Director of Primary Education. It was urged from the side of the appellants that this was compulsory. On the other hand it was urged from the side of the respondents that the order of the Government in this regard is merely directory. To solve the dispute we have to refer to certain letters containing the principles in this regard.

25. It appears that the Urban Advisory Committees were set up by the Government "in order to aid and advise the District Inspector of Schools (P.E.), in the matter of setting up of Primary Schools and for selection of sites in urban areas 1. This will appear from letter No. 1234-Edn. (P)/ 5C-3/76/78 dated 23/6/78, addressed by Shri M. M. Singha Roy, Deputy Secretary to the Government of West Bengal to the Director of Primary Education, West Bengal, New Secretariat Buildings, Calcutta-1. It appears however, that there was a direction of the Government regarding the functions of the said Committees even before they came into existence. This will appear from letter No. 896-Edn. (P)/3P-23/77 dated.28/4/78, addressed to the Director of Primary Education, West Bengal, New Secretariat Buildings, Calcutta-1. The letter has some importance and as such it is being re-produced below :

Sub : Recognition of Primary Schools and approval or appointment of teachers therein.

"The undersigned is directed to refer to his letter No. 1924-Sc/P dt. the 27th March, 1978 on the above subject and to state the following:-

Points :

a) Whether the organiser-teacher serving in the schools which have already been recognised (Prior to imposition of ban) can be approved now. (a) & (b) Director of Primary Education is requested to make reference to the District School Boards for their opinion on the question of grant of recognition to schools and of approval of teachers in each individual case and then dispose of the cases.

b) There are some schools already recognised by the Director of Public Instruction in file and approval of teachers accorded in file, but orders have not been communicated to the Districts because of imposition of ban. Whether these orders can be formally communicated now.

c) Whether appointments made in schools under the Free & Compulsory Primary Education Scheme and also by Managing Committees of Urban Managing Committees of Urban aided primary schools upto 31/12/76 can now be approved. c) Reference may be made to the respective Urban Advisory Committee when set up before disposal of such cases.

Sd/- M. M. Sinha Roy

Deputy Secretary.

26. The letter which follows next appears in No. 1451-Edn. (P)/3-P-23/77 dated 17/8/78, addressed to the Director of Primary Education, West Bengal, 1, K. S. Roy Road, Calcutta by the Deputy Secretary mentioned above and we feel inclined to re-produce it below :-

Sub : Recognition of Primary Schools and appointments of teachers therein.

In continuation of this Department Order No. 896-Edn. (P) dated 28/4/1978 on the above subject, the undersigned is directed to say that since "the Urban Advisory Committees have been set up for Calcutta and other Municipal areas, the principles contained in items (a) and (b) of this department memo referred to above will also be applicable in respect of primary schools and teachers in Urban areas under similar circumstances (Mutatis mutandis).

It is requested that opinion of Advisory Committees should be obtained before disposal of the cases.

Sd/- M. M. Singha Roy

Deputy Secretary.

The last letter in this series bears No. 390-Edn. (P)/5-C-2/77 dated 22/3/79, addressed to Director of Primary Education. The relevant portion of this letter runs as follows :-

Sub : Appointments of teachers in the recognised aided

primary/Jr. Basic schools in Municipal areas from approved panels.

".....The teachers appointed by the Managing Committees of aided primary/Jr. Basic Schools from 1/1/77 to 30/6/77 may therefore be approved by the District Inspector of Schools (P.E.) subject to the condition imposed in item (c) of G. O. No. 896-Edn. (P) dated 28/4/78 and fulfilment of other usual conditions."

" This instruction will not, however, be applicable to the new quota of teachers sanctioned from the year 77-78 and the normal vacancies occurring from 1/7/77 onwards.

Sd/- Deputy Secretary"

27. From the above, it becomes quite clear that though letter No. 896-Edn. (P)/3-P/23/77 dated 28/4/78 by its clause (c) provided for reference of the appointments of teachers made by Managing Committees of urban aided primary schools upto 31/12/76 to the Urban Advisory Committee for approval of the appointments specifically, by letter No. 1451-Edn. (P)/3-P/23/77 dated 17/8/78, the principle was made applicable to all former cases of appointments also. Even though the District Inspector of Schools (P.E.) was permitted to approve the

appointments of teachers so appointed by the Managing Committees of such schools from 1/1/77 to 30/6/77, reference to the Urban Advisory Committee was made compulsory, vide letter No. 390-Edn. (P) Sc. - 2/77 dated 22/3/79. In that view of the matter, we are of the opinion that even though in reply to clause (c) in letter No. 896-Edn. (P)/3-P-23/77 dated 28/4/78 it was stated that reference "may be made to the respective Urban Advisory Committee", such reference was indeed made compulsory and not optional.

28. As stated above, the letters by which the District Inspector of Schools (P.E.) sought approval of the appointments of the present respondents from the Director of Education (Primary) have not been produced before us. We find reference of these letters in 3 orders passed by the said Director of Education. These orders have been re-produced in pages 56, 61, 113 and 186 and 188-189 of the Paper Book. From these 3 orders," it appears that the District Inspector of Schools made no specific recommendation for according approval to the appointments of these alleged teachers. It appears further that the case of these teachers were not referred to the Urban Advisory Committee for their recommendation. In view of these deficiencies, the Director refused to accord his approval to the appointments of these teachers. It is nobody's case that the cases of the respondents were actually referred to the Urban Advisory Committee, before their names were sent to the Director of Primary Education. In that view of the matter, we are inclined to hold that the names of the present respondents were not forwarded to the said Director after doing all that was necessary under the relevant rules and regulations.

29. The next point which arises for decision is as to whether the appointments of the respondents as teachers of the schools concerned were approved by the appropriate authority. From the 3 orders mentioned above, it becomes quite clear that their appointments were not approved by the appropriate authority. The matter could have ended there. But, as stated above, the respondents placed a lot of importance on two orders passed by the District Inspector of Schools (P.E.) Malda, in this record and it becomes necessary to consider these two orders also.

30. It appears that on 28/11/83, the District Inspector of Schools passed two orders in "the shape of Memos No. 1206(17) and 1207(17) which have been re-produced in pages 147 and (sic)5 of the Paper Book. The body of the order contained in memo No. 1206(17) runs in the following way:-

" In the light of the orders of the Hon''ble High Court dated 13/7/83 the undersigned is pleased to issue approval of the following teachers from the date of their joining the institutions as noted against their name.-.."

31. Then follows the names of the respondent nos. 1 to 10 and the name of the schools, they were allegedly serving as teachers though not mentioning the dates of their alleged joining. The order of the Hon''ble High Court obviously refers to the order passed in C. R. No. 384(W) of 1983 on 13/7/83 by Monoj

Kumar Mukherjee, J. The language of the order contained in Memo No. 1207(17) dated 28/11/88 is also practically the same and it seeks to approve the appointments of the respondents nos. 11 to 21. This order refers to the order passed by this Court on 16/9/83 presumably by Suhas Chandra Sen, J. in C. O. No. 3694(W) of 1983 and C. O. No. 9.695(W) of 1983. This order also did not mention the dates of joining of these teachers.

32. We find it extremely difficult to understand why the respondents put so much of importance to these two orders passed by the District Inspector of Schools. By the two orders passed by Manoj Kumar Mukherjee and Suhas Chandra Sen, JJ. their Lordships directed the Director of Primary Education - not the District Inspector of Schools, Malda - to consider the recommendation for approval of the appointments of the respondents. It appears that previously the District Inspector of Schools had the authority to approve the appointment of Primary School Teachers; but his authority to do that was taken away by a Government Order contained in letter of Shri C. N. Pen Authority, Joint Secretary to the Government of West Bengal dated 3/10/70 and addressed to the Director of Public Instruction, West Bengal. It is also the respondents' case that the appropriate authority competent to approve their appointments was the Director of Primary Education. It is also their own case that the District Inspector of Schools, (Primary) was the authority, only for the purpose of recommending their names to the Director of Primary Education for approval of their appointments. Presumably, to their own knowledge and belief, the District Inspector of Schools (P.E.) had no authority whatsoever to approve their appointments. In the circumstances, it must be held that the orders passed by the District Inspector of Schools approving their appointments was not worth the paper on which they were written. It is difficult to understand what benefit could they confer on the respondents. Not that this position was not known to the District Inspector of Schools (Primary) either. It appears that before issuing the said 2 orders he addressed a letter to the Government Pleader, Malda, seeking his advice as to what he would do vide his memo no. 1300 dated 28/11/83 re-produced in page 44 of the Paper Book. He specifically mentioned in this letter that this Court directed the Director of Primary Education to consider the question of recommendation for approval of the respondents' appointments. It appears that the learned Government Pleader fully agreed with him and he advised the District Inspector of Schools to make arrangements for the implementation of the order passed by this Court. In spite of that the District Inspector of Schools passed the two orders aforementioned whereby he sought to usurp the power and authority of the Director of Primary Education. It strikes us that left to himself, the District Inspector of Schools would not have passed these two orders and that he had to pass these orders being compelled by circumstances over which he had no control. It is in this context that the story of "Gherao" strikes us as perfectly believable and acceptable. We do not think that the report of the District Inspector of Schools and that of the District Magistrate, Malda were manufactured by the State authorities as alleged from the side of the

respondents. The learned advocate for the respondents urged that the story of Gherao could not be true since the District Inspector of Schools could have sent information to the District Magistrate or the Police since he had admittedly sent somebody to the Government Pleader, Malda for his views. He urged further that the District Inspector of Schools had not lodged any information with the police either on 28/11/83 or on the day following and that this raises grave doubts as to the genuineness of his story. We do not find any great merit in this argument. It may be that the District Inspector of Schools, who was under Gherao was permitted to seek the advice of the Government Pleader, Malda through somebody. It cannot be believed that the people who had Gheraoed him would allow to him inform the Police or the District Magistrate. As to why he did not inform the police even on the day following, the District Inspector of Schools explained to the District Magistrate, Malda that he was afraid for himself and the members of his family an explanation which does not strike one as unbelievable. Be that as it may, the very fact that the District Inspector of Schools passed the aforementioned orders without having - even to his own knowledge - any authority to do so, very clearly shows that he was compelled to pass these orders being pressurised by circumstances beyond his control. Gherao or no, however, the memos in question containing his orders could not confer any right or interest on the respondents for the very simple reasons that the District Inspector of Schools had no right or authority to pass these orders.

33. Lastly, we take up the conclusion of the learned trial Judge to the effect that the respondents could be deemed to have been confirmed automatically in view of their long continuous service. The relevant Government Order in this regard contained in letter No. 443 - Edn. (P) dated 30/3/78 addressed by the aforementioned Deputy Secretary to the Director of Primary Education has been produced from the side of the appellants and we re-produce below the first two paragraphs of this letter herein-below:-

Sub : Confirmation of Primary Schools Teachers under District Schools Boards/
District Inspector of Schools (P.E.)

" The undersigned is directed to state that it has come to the notice of Government that in spite of issue of Government Order No. 1734-Edn. (P) dated 11th August, 1973 a large number of Primary teachers has not been confirmed even after rendering service for a considerable long period. The Government has examined and considered the matter afresh.

After a careful consideration the Governor is pleased to order that the Primary school teachers who have rendered at least 15 years of continuous service on or before 31st December, 1977 should be deemed to have been confirmed automatically provided there is nothing on record to the contrary regarding continuous satisfactory service".

34. Para 2 of the above letter very clearly shows that the benefit of automatic

confirmation was made available only to those primary teachers, who had rendered at least 15 years of continuous service on or before 31/12/77. Para 2 of the writ petition shows that none of the respondents claimed to have joined their respective schools before 1974; so obviously, they could not get the benefit of the order of the Government in this regard.

35. On a consideration of all the materials On record and the facts and circumstances of the case, we are inclined therefore to conclude in the following way :-

a) There is no material on record to show that the respondents had ever been appointed as teachers of the schools concerned by the Managing Committees thereof.

b) The alleged appointments of the respondents were never approved by the Director of Primary Education of the Government of West Bengal.

c) The orders passed by the District Inspector of Schools, Primary Education as contained in Memo Nos. 1206(17) and 1207(17) dated 28/11/83, could not confer any benefit to the respondents in the form of confirmation of their alleged appointments.

d) The respondents have not rendered at least 15 years of continuous service on or before 31/12/77 and as such they can not claim to have become confirmed automatically on the strength of the relevant Government Order in this regard.

36. In view of these findings of ours. We find it difficult to agree with the conclusions arrived at by the learned trial Judge and we are constrained to set aside his judgment and order.

37. In this connection it may be mentioned that even though the respondents asked for an order restraining the appellants from cancelling and/or revoking the aforementioned Memos 1206(17) and 1207(17) both dated 28/11/83, they did not prefer any prayer for cancellation of the orders passed by the Director of Primary Education on 9/12/82 and "0/1/83, whereby he refused to accord his approval to the alleged appointments of the respondents. These 3 orders would have remained untouched even though the respondents had on in this appeal and it is difficult to understand how in that case, any order could have been passed validity calling upon the appellants to make any payment to the respondents. A lot of arguments was also made since the Director of Primary Education had actually cancelled the orders contained in Memos Nos.1206(17) and 1207(17) both dt. 28/11/83. It was urged that in view of the injunction passed by Pal, J. on 9/3/84, in C. R. No. 127(W) of 1984, the said Director could not have cancelled these orders.

38. It appears that the orders cancelling the memos 1206(17) and 1207(17) dated 28/11/83 were passed on 9/7/84, whereas the order of injunction in question was passed by Pal, J. on 9/3/84. The relevant portion of this order passed by Pal, J. runs as follows :-

" Mr. Majumdar apprehends that there may be some steps taken for cancellation of the appointments of these teachers.

Let the status quo as on today be maintained until further orders."

39. The orders cancelling the aforementioned two memos did not cancel the appointments of the respondents, for, the said two memos were not issued for appointing them. They were issued for confirming their appointments which was a different matter altogether. We feel all the same, however, that the officer concerned should not have passed the orders cancelling the aforementioned two memos in view of the order passed by Pal, J. on 9/3/84.

40. It may also be mentioned here that by both the orders passed by Director of Primary Education on 9/7/84 he cancelled the memo no. 1207(17) dated 28/11/83 only. In the Paper Book there is no copy of his order cancelling the memo no. 1206(17) of that day. That however, is of very little importance since as we have already seen, the orders as evidenced by the 2 memos being passed by an officer, who had no authority to pass them, were not worth the papers on which they were written. It is not at all material, therefore, that one of these orders docs not appear to have been formally cancelled. In view of what has been stated above the present appeal must be allowed. Hence, the appeal is hereby allowed. The judgment and order passed by the learned trial court are hereby set aside, and the interim orders are all hereby vacated.

The parties do bear their costs.

M.N. Roy, J.

I agree.