

(2008) 02 CAL CK 0054
In the Calcutta High Court
Case No : F.M.A. No. 307 of 2005

State of West Bengal and Others

APPELLANT

Vs

Mostafizor Rahaman and Others

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Constitution of India, 1950 — Article 162
West Bengal School Service Commission Act, 1997 — Section 17(1), 17(2), 7, 8(1)
West Bengal School Service Commission Rules, 1997 — Rule 7(1)

Citation : (2008) 4 CHN 89

Hon'ble Judges : Pratap Kumar Ray, J; Manik Mohan Sarkar, J

Bench : Division Bench

Advocate : Sk. Oli Md. and Washef Ali Mondal, for the Appellant; Milan Chandra Bhattacharya and Sulagna Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Pratap Kumar Ray, J.—Heard the learned Advocate appearing for the parties.

2. Challenging the judgment and order dated 2nd April, 2003 passed in W.P. No. 7399 (W) of 2000 by the learned Trial Judge whereby and whereunder the learned Trial Judge directed the District Inspector of Schools and the school authority concerned to regularise the appointment of the writ petitioner on the strength of selection as made by the School Service Commission with reference to leave vacancy being a short term vacancy wherein the writ petitioner was a candidate and selected, by quashing and setting aside the impugned order dated 8th December, 1999 whereby the writ petitioner was directed not to serve the school any further beyond 11th November, 1999 as he was an appointee on a lien vacancy which expired on 11th November, 1999, this appeal has been preferred by the State-respondents as appellants. It is an admitted position that the writ petitioner initially was appointed on lien vacancy of Shri Jayanta Kr. Roy, permanent Assistant Teacher for the period 1st October, 1999 to 11th November, 1999. It was the case of the writ petitioner in the writ application that before

expiry of such tenure of short term vacancy, the incumbent Shri Jayanta Kr. Roy, the permanent appointee therein who was on lien, resigned and, as such, the writ petitioner continued to work. It was the case made out by the writ petitioner that as his selection for appointment in the said lien vacancy was made by the School Service Commission following the procedure laid down to fill up such vacancy whereby the lien vacancy was duly notified to different Notice Boards in terms of the statute, his appointment for all practical purposes should be considered as appointment in a permanent vacancy and, as such, as and when the short term vacancy became a permanent vacancy due to resignation of Shri Jayanta Kr. Roy, he accrued a right to hold the post permanently. The learned Trial Judge was convinced with such argument and held that as the appointment in the lien vacancy was made following the procedure to fill up short term vacancy by the School Service Commission, in all purposes it to be considered as selection by regular method and accordingly the writ petitioner should be regularised.

3. Learned Advocate for the appellants submits that the two procedures, namely, filling up the short term vacancy by the School Service Commission and filling up a permanent vacancy by said Commission are completely different. It is contended that for filling up the permanent vacancy Regularisation No. 1 dated 16th June, 1998 which is called as West Bengal School Service Commission (Procedure for Selection of Persons for Appointment to the Posts of Teachers including Headmasters/Headmistresses/Superintendents of Senior Madrasahs in recognised Non- Government Aided Schools and Procedure for Conduct of Business of the Commission) Regulations, 1998 provides that there should be declaration of vacancies by adding the vacancies of different schools under different Districts by Regional School Service Commission and it requires to be advertised in the Daily Newspapers of State wide wide publication inviting applications from the eligible candidates for their appearance in selection test which consists of written examination and thereafter oral interview by the School Service Commission. It is further contended that the School Service Commission in exercise of power conferred by Sub-section (1) of Section 8 read with Sub-section (1) and in particular Clause (d) of Sub-section (2) of Section 17 of the School Service Commission Act, 1997 and Sub-rule (1) of Rule 7 of the West Bengal School Service Commission Rules, 1997 framed a procedure for selection of persons for Appointment to the Posts of Teachers of the Schools recognised by the West Bengal Council of Higher Secondary Education or the West Bengal Board of Madrasah Education which provides the basic essential qualification for Assistant Teacher and also provides the selection procedure by allotting different marks under different heads under Clause (4) under different heads, namely, written test 60 marks, academic qualification including professional qualification 30 marks and personality test (interview including oral test for teaching aptitude) 10 marks, in total 100 marks. For short term vacancy it is the submission of the learned Advocate for the appellant that the recruitment procedure is completely different which is guided by Memo No. 600-SE(S) dated 18th August, 1998

issued by the School Education Department, Secondary Branch, Government of West Bengal issued in the name of the Hon'ble Governor in exercise of the power conferred by Procedure 8 of the said Procedure for selection of teachers which provides that for short term vacancy and/or leave vacancy the Managing Committee will invite the applications through Public Notice Board of the concerned school, concerned office of the District Inspector of Schools (Secondary Education), Block Development Officer, Sub-Divisional Officer, District Magistrate, Chairman of the Municipality, Commissioner of the Corporation, Savapati of Panchayat Samity, Sabhadhipati of Zilla Parishad, Regional School Service Commission and the Central School Service Commission with the particulars as mentioned thereto, namely, eligibility qualification, age etc. and thereafter on receipt of the application the Managing Committee will process the same and thereby will send a short list of five candidates. It is submitted that in processing the application to make it a panel of five candidates the Managing Committee will consider the marks of academic qualification including professional qualification as set out in the table therein of the said circular allotting 20 marks for academic and professional qualifications and will interview the candidates for which five marks allotted. By selection in this way the name to be forwarded to the School Service Commission who thereafter will recommend the name for filling up the short term vacancy. It is accordingly submitted referring the aforesaid two procedures that selection of the procedure to fill up the short term vacancy is not identical to procedure for selection of a teacher for appointment in a permanent vacancy which the learned Trial Judge failed to appreciate properly.

4. Opposing the appeal it is the submission of the learned Advocate for the respondent that even for short term vacancy as the vacancy is required to be declared through the different Notice Boards of the concerned District at different places mentioned in the procedure, the selection even on short term vacancy under the present situation when the incumbent has resigned from the post and thereby post has been declared a permanently vacant post, the writ petitioner accrued a right for regularisation and considering the matter in the angle of equity, the judgment under appeal passed by the learned Trial Judge was justified. The learned Advocate for the respondent had relied upon a judgment on the point on equitable justice passed in the case *Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others*, . It has been further contended that since on the basis of the interim order granted by this High Court while the writ application was moved as the writ petitioner/respondent is working continuously since the year 1999, his service to be protected by applying the principle of equity and on sympathetic approach.

5. Having regard to the rival contentions of the parties, we are of the view that the point before us is very short for our decision.

6. It is a settled law under the Service Jurisprudence that the incumbent holding the post under short term vacancy has no right to the post to hold it

permanently and the tenure of the working on the lien vacancy ends as soon as tenure is completed.

7. On comparison of the two procedures to fill up the vacancies, one of short term vacancy and another is of long term permanent regular vacancy we will get an answer of the issue whether the learned Trial Judge was justified on his findings that there was no different standard of taking examination by Service Commission and, as such, a good case made out for regularisation of service.

8. From the two procedures to fill up the respective vacancies, namely, a temporary short term vacancy and a permanent regular vacancy, as discussed earlier, it appears that for permanent regular vacancy the selection process is regulated centrally by the Regional School Service Commission by identifying the total vacant posts of Assistant Teachers in different schools under the different Districts under the said Regional Service Commission and thereafter all those vacancies are advertised in the daily newspaper inviting applications following the Regulation No. 1 dated 16th June, 1998 in terms of Clause (4). Thereafter, selection of candidates is followed by holding a written examination and panel is prepared on total average of the marks obtained out of written test for which 60 marks is allotted, academic qualification and professional qualification for which 30 marks is allotted and interview marks out of 10 marks as allotted. Hence, it appears that there is total 100 marks allotted for selection of a candidate on the basis of marks as to be obtained to fill up a permanent regular vacancy and such vacancy is required to be advertised in the daily newspaper by declaration of the posts relating to the vacancies of a particular region which consists of several Districts and thereby consists of different schools under several Districts. The relevant portions of the procedure to fill up the post of permanent regular vacancy of Assistant Teachers are set out hereinbelow:

Regulation No. 1 dated Calcutta 16th June, 1998 relating to regularisation of Procedure for Selection of Persons for Appointment to the Posts of Teachers.

1. Short title and commencement.- (1) These regulations may be called the West Bengal School Service Commission (Procedure for Selection of Persons for Appointment to the Posts of Teachers including Headmasters/Headmistresses/ Superintendents of Senior Madrasahs in recognised Non-Government Aided Schools and Procedure for Conduct of Business of the Commission) Regulations, 1998.

3. Information regarding vacancies.- Each Regional Commission having jurisdiction shall, on the 1st January of each year or as soon as may be thereafter, receive or obtain from the Schools, or from the District Inspectors of Schools (Secondary Education) the number of the vacancies in approved posts which are then available or are expected to be available for appointment upto the second day of next January and thereafter. In case, such requisition is not available, the vacancy position may be obtained from the Director of School Education, West Bengal, or from the Central Commission.

4. Advertisement in newspapers.- (1) The Central Commission shall, on receipt of the information about such vacancies either from the Regional Commission or from the Director of School Education for the purpose of selecting persons for appointment to the posts of teachers, advertise vacancies in such posts in leading newspapers of the State, in English and Bengali and in any other languages, if necessary, specifying the qualifications, age as on 1st January of the year of advertisement, scale of pay (if possible), and other necessary information relating to such posts.

(2) The qualification, age, and any other requirements, for selection to the posts of teachers, shall be such as may be prescribed by the State Government.

7. Selection of candidates.- (1)(a) The Secretary of the concerned Regional Commission shall arrange for proper custody, after scrutiny by the Central Commission or by the concerned Regional Commission, as the case may be, of all applications for selection of persons in terms of Section 7 of the Act. Each Regional Commission shall prepare a list of eligible candidates. The Regional Commission shall conduct, under the supervision of the Central Commission, written examinations of all eligible candidates. Such written examinations may consist of one or more papers as may be decided by the Central Commission. The contents of each paper, total marks, qualifying marks, duration of examination and other ancillary matters may be decided by the Central Commission.

(b) The procedure for, and the manner of conducting the examination by the respective Regional Commission shall be decided by the Central Commission which shall issue separate detailed instructions in this regard.

(c) On the basis of the results of such written examination and academic scoring each Regional Commission shall call for the interview of the candidates, not exceeding two and a half times the number of vacancies, depending on the number of successful candidates in the examination.

(2) When the written examination are conducted in select persons from appointment to the posts of teachers, the Central Commission shall determine the following particulars-

(a) the scheme and syllabus of the examination and preparation of question papers and distribution thereof in the Regional Commission.

(b) appointment of paper-setters. Moderators and Observers;

(c) finalisation, region-wise, of the lists of Examiners on the basis of the recommendations of Regional Commissions or otherwise;

(d) Fixation of the rates of remuneration for paper-setters, Moderators, Experts and all other persons concerned with the actual conduct of examinations;

(e) the condition of admission to the examinations;

(f) assistance in the preparation of final lists for interview as and when found necessary;

(g) assistance in the preparation of final lists for interview as and when found necessary;

(h) the composition of the Viva-voce/Personality Test Board to be continued by each Regional Commission having jurisdiction for the purpose of interview to be undertaken by such Regional Commission. Each such Board shall consist of, among others, at least one Member from the concerned Region.

(3) Each Region Commission having jurisdiction shall, when conducting examinations, perform functions-

(a) selection of examination centres.

(b) appointment of Officer-in-Charge for examination centres, Custodian of confidential papers, Supervisors, Invigilators and Examiners,

(c) making of arrangements for the actual conduct of examinations and evaluations of answer-scripts as may be directed by the Central Commission,

(d) constitution of Viva-Voce/Personality Test Boards as per directions of the Central Commission for interviewing candidates, declared qualified for Personality Test/Viva-Voce, and

(e) forwarding to the appointing authority, on the basis of the final merit list, of one single name and other details of the candidate recommended for each vacancy reported.

8. Preparations of panel for candidates.- (1) On the basis of the written examination, academic scoring and personality test, all added together, each Regional Commission shall, for each subject, prepare final merit list, that is to say, a panel of candidates, found fit for appointment, strictly in order of merit. Each such panel shall include names one and half times the number of the vacancies referred to in Regulation 3. There may be different/separate/subject wise/language wise/sex wise/category wise sets of panels as may be necessary, based on academic qualifications, for the Higher Secondary, Secondary and Madrasah as may be decided by the Central Commission.

(2) Each panel prepared shall remain valid for on year from the date of approval of the panel by the Regional Commission for he posts which have already been reported and which will be reported up to one year next from the date of publication of the list of interviews. If the Central Commission thinks it expedient to extend the validity of the panel beyond its normal period for any reasonable cause, the validity of any such panel shall be extended for a further period of one year, that is to say, the time of validity of the panel shall, in no circumstances, be more than two years.

9. Allotment of candidates.- On receipt of a request from the appropriate

authority, as may be prescribed in the recruitment rules, for appointment in a particular vacancy, the Regional Commission shall recommend only one more from the concerned panel for appointment against that vacancy. A copy of the letter recommending the name shall be endorsed to the candidate through registered post with acknowledgement due.

Notification No. 14-SE(S) dated 8th January 1, 998

1.(1) These procedures shall be called the procedure for selection of persons for appointment to the posts of Teachers of Schools recognised by the West Bengal Board of Secondary Education or the West Bengal Council of Higher Secondary Education or the West Bengal Board of Madrasah Education as the case may be.

...D. Assistant Teacher of High School/High Madrasah.

(i) Method of Recruitment:

By selection (direct) in consultation with the West Bengal Regional School Service Commission of the concerned region.

(ii) Eligibility:

Citizen of India.

(iii) Qualifications:

(a) Essential:

Bachelor degree from any recognised University.

(b) Desirable:

Bachelor of Teaching/Bachelor of Education/Post Graduate Basic Training from any recognised University.

(iv) Age: Minimum 20 years of age as on the 1st day of January of the year of advertisement. Upper age limit of 17 years, relaxable by 5 years for Scheduled Caste/Scheduled Tribe candidates and 3 years for backward Class candidates.

There shall be no restriction of age in respect of approved teaching and non-teaching staff of school for appearing at an examination for selection for appointment to the above posts.

G. Assistant Teacher of Higher Secondary School.

(i) Method of Recruitment:

By selection (direct) in consultation with the West Bengal Regional School Service Commission of the concerned region.

(ii) Eligibility:

Citizen of India.

(iii) Qualifications:

(a) Essential

Bachelor degree with Honours (Regular/Special (Condensed) or Bachelor degree with Proficiency Certificate from any recognised University.

(b) Desirable:

Bachelor of Teaching/Bachelor of Education/Post Graduate Basic Training from any recognised University of any training recognised by the Government of West Bengal as equivalent of Bachelor of Teaching/Bachelor of Education/Post Graduate Basic Training.

(iv) Age: Minimum 20 years of age as on 1st day of January the year of advertisement. Upper age limit of 37 years, relaxable by 5 years for Scheduled Caste/Scheduled Tribe Candidates and 3 years for backward Class candidates.

There shall be no restriction of age in respect of approved teaching and non-teaching staff of school for appearing at an examination for selection for appointment to the above posts.

9. To fill up a short term vacancy it appears that under the procedure for selection of persons for appointment to the post of teachers in terms of Notification No. 14-SC(S) dated 8th January, 1998 as mentioned above, Clause 5 is the concerned procedural law which reads such:

5. In the case of short term vacancies such as deputation vacancies/maternity leave/medical leave/vacancy due to grant of lien, the Managing Committee/Ad-hoc committee/Administrator or the concerned District Inspector of Schools (Secondary Education) to the concerned Regional School Service Commission. The regional School Service Commission shall then prepare a panel of three candidates, single candidate in the case or reserved vacancy if the required number of candidates are not available in order of merit, on the basis of academic and professional Qualifications and interview, and shall forward the name of the first candidate of the panel to the school with intimation to the candidate and the concerned District Inspector of Schools (Secondary Education). The School shall then issue order of appointment to the candidate by Registered post with Acknowledgement Due within 15 days of receipt of the Commission's recommendation.

10. Under Clause (8) of the said procedure the State Government was empowered to take a decision curing any defect or doubt. Clause (8) reads such:

(8) In the case of any doubt or difficulty in implementing any provisions of these procedures, the matter shall be referred to the State Government by the Commission and the decision of the State Government therein shall be final and binding.

11. As under Clause (5) as quoted above it appears that the District Inspector of

Schools concerned was empowered to prepare a panel of three candidates in respect of short term vacancy under General category. The said procedure (5) got a clarification by the State Government in exercise of power under Clause (8) as already referred to and thereby an order was issued in the name of the Hon"ble Governor being the order issued under Memo No. 600-SC (S) dated Calcutta, 18th August, 1998 whereby a procedural step has been directed to be followed by the Managing Committee to declare the short term vacancy and thereby to empanel the names of candidates by allotting marks on the basis of academic and professional qualification as well as interview as elaborately mentioned therein, which reads such:

Memo No. 600-SE(S) Dt. Calcutta 18.8.98. IS-6/97.

ORDER

Whereas it has come to the notice of the Government in the School Education Department that a difficulty has arisen in implementing the provision of procedure (5) issued under notification No. 14-SE(S)/IS-6/97, dated 8th January, 1998 for selection of candidates in the case of filling up of short-term vacancies in the High school/Higher Secondary School/High Madrasah:

And Whereas it has become expedient to remove the difficulty as aforesaid:

Now, Therefore, in exercise of the power conferred by procedure (8) of the procedure for selection of persons for appointment to the posts of teachers of Schools recognized by the West Bengal Board of Secondary Education or the West Bengal Council of Higher Secondary Education or the West Bengal Board of Madrasah Education, as the case may be, the Governor is pleased hereby to decide as follows:

(i) The Managing Committee/Ad-hoc Committee or Administrator of the School shall invite applications through PUBLIC NOTICE BOARD of the concerned school, concerned office of District Inspector of Schools (Secondary Education), Block Development Officer, Sub-Divisional Officer, District Magistrate, Chairman of the Municipality, and Commissioner of the Corporation, Sabhapati of Panchayat Samity, Sabhadhipati of Zila Parishad, Regional School Service Commission and Central School Service Commission with the following particulars:

- (a) Name and address of the school;
- (b) Name of short-term vacant post;
- (c) The nature of such vacancy with period;
- (d) Category of post (General/Reserved);
- (e) Age;
- (f) Eligibility;
- (g) The required academic and professional qualification for the post; (h) Other

particulars relevant for filling up such vacancy;

(i) Last date of submitting the application;

(ii) The Managing Committee/Ad-hoc Committee or Administrator of the School shall adopt the eligibility, academic and professional qualification and age, specified for the different posts in accordance with the procedure issued under Notification No. 14-SE(S)/IS-6/97, dated the 8th January, 1998 for inviting applications through Public Notice Board as mentioned above. The academic and professional qualification shall be the same as provided in the procedure for recruitment to the post.

(iii) On receipt of the application within the date fixed, the Managing Committee/Ad-hoc Committee or Administrator of the school shall prepare a short list upto 5th position on the basis of academic and professional qualifications and distribution of the marks prescribed in the Table below. The short list shall be the list of eligible candidates for sending to the concerned Regional School Service Commission through the concerned District Inspector of schools (Secondary Education) as required in procedure (5) in the case of short-term vacancies.

(iv) For making short list, the distribution of marks of academic qualifications including professional qualifications and interview for the short-term vacant posts shall be different from that of regular posts and it shall be 20 (twenty) marks for academic qualification including professional qualification and 5 (five) marks for interview.

12. Hence, it appears that having regard to the provision as laid down in order dated 18th August, 1998 as quoted above read with Clause (5) procedure for selection of teachers of the schools in terms of Notification dated 8th January, 1998 it appears that to fill up the short term vacancy there is no necessity to advertise for the post in daily newspaper and mere publication of vacancy in the Public Notice Boards within the District thereto is sufficient declaration, that there was no written test to select the candidates as it requires to fill up a permanent regular vacancy by allotting total 60 marks, for academic qualification including professional qualification whereas for permanent regular vacancy it is 30 marks, in case of short term vacancy it is 20 marks, similarly the interview marks is 10 for regular permanent post whereas it is 5 so far as the post under short term vacancy. On a comparative analysis of the aforesaid two procedures it appears that the procedure to select a candidate for appointment in the post of Assistant Teacher in a school under short term vacancy though is finalised by the School Service Commission but it is not identical with the procedure for selection of a candidate in the post of Assistant Teacher in a permanent regular vacancy.

13. Having regard to such, we failed to appreciate the finding of the learned Trial Judge whereby the learned Trial Judge held that there was no basic difference to fill up the post under short term vacancy and permanent vacancy. From the different procedural laws as discussed it appears that in short term vacancy the selection is confined only with reference to limited applications as to be filed by

the candidates on perusing the vacancy declaration on the different Notice Boards whereas selection of a candidate for a permanent regular post as there is a wide publication in the daily newspaper, naturally selection is held on considering the merits of many candidates who will apply. Furthermore, there is a very distinguishing feature about the written test examination whereby the knowledge of a candidate is tested on a particular subject of the teaching post by allotting 60 marks for filling up the post in a regular permanent vacancy whereby the merit of a candidate is judged properly which procedure is absent in respect of a candidate under short term vacancy.

14. Considering this, we are of the view that procedure to fill up the permanent regular vacancy is a procedure whereby the meritorious candidates are selected following the written test and the oral interview by the School Service Commission which is not in respect of filling up a vacancy of short term. The submission of the learned Advocate for the respondent/writ petitioner that the writ petitioner was allowed to work by this High Court by passing an interim order when the writ application was moved and as he has rendered long service at the present moment, hence his service is to be protected by regularising it applying the principle of equity, is not carrying any weight to identify the present issue. It is a settled legal position that regularisation is not a mode of appointment and it is also settled that until and unless the recruitment law is followed no candidate is eligible to continue in the post by way of regularisation and also it is a settled law that when there is a recruitment procedure even by executive decision, the Government cannot regularise the same by issuing an order under Article 162 of the Constitution of India. Reliance may be placed to the judgment passed in the case B.N. Nagarajan and Others Vs. State of Karnataka and Others, and a Constitution Bench Judgment passed in the case Secretary, State of Karnataka and Others Vs. Umadevi and Others, . It appears that the writ petitioner's service was approved on a lien vacancy till 11th November, 1999 as it appears from the approval decision of the District Inspector of Schools concerned annexed at page 40 of the Paper Book.

15. Hence, with effect from 12th November, 1999 petitioner was a stranger in the school and he had no legal right to perform the duties as an Assistant Teacher which practically was communicated by the impugned decision in the writ application by the District Inspector of Schools concerned by his communication dated 8th December, 1999 whereby the prayer for extension of period of service beyond the lien vacancy period was refused which became the subject of challenge in the writ application. After the tenure of the short term vacancy was over, the appointee has no legal right to retain the post. In the instant case, as the earlier permanent incumbent, Shri Jayanta Kr. Roy resigned from the post, the vacancy which was a short term vacancy due to lien as taken by Shri Jayanta Kr. Roy thereafter due to resignation of Shri Jayanta Kr. Roy was automatically converted to a permanent regular vacancy. Hence, with effect from 12th November, 1999, as Shri Jayanta Kr. Roy resigned before that date from the post, the post became vacant permanently which is required to be filled up

following the procedure to fill up the permanent regular vacancy as already quoted above. Save and except that procedure, there is no other procedural and/or alternative procedure to retain the service of the writ petitioner/respondent. As such, interim order as passed by this High Court initially when the writ application was moved allowing the continuance in service and thereafter the judgment as passed which is impugned herein directing regularisation of service, all became bad in law as those are contrary to the procedure for direct recruitment of Assistant Teacher in a permanent normal vacancy following the procedures as discussed.

16. The point of sympathetic and equity principle as raised by the learned Advocate for the writ petitioner/respondent also is not legally sustainable having regard to the settled legal position that in the conflict of law and equity, the law will prevail. Reliance may be placed to the judgment passed in the case *Bharat Petroleum Corpn. Ltd. Vs. Maddula Ratnavalli and Others*, wherein the Apex Court at para 19 held "it is well settled that when there is a conflict between law and equity, it is the law which has to prevail in accordance with Latin Maxim: "Dura Lex Sed Lex" which means "the law is hard but it is a law." Equity can only supplement the law but it cannot supplant or override it". In the case *Madamanchi Ramappa v. Muthaluru Bojjappa* reported in AIR 1963 SC 1632 the Court held "what is administered in Courts is justice according to law and consideration of fair play and equity, however important they may be, must yield to clear and express provision of the law".

17. It is also a settled legal position that "consideration of equity cannot prevail and do not permit a High Court to pass an order contrary to law". Reliance may be placed to the judgment passed in the case *Council for Indian School Certificate Examination v. Isha Mittal* reported in 2007(7) SCC 521. It is also a settled legal position that in a case where statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom. Reliance may be placed to the judgment passed in the case *Nasiruddin v. Sitaram Agarwal* reported in 2003(3) SCC 577.

18. Having regard to the aforesaid legal position on the application of principle of equity, we are of the view that there is no scope to apply principle of equity in view of clear unambiguous statutory provision as already discussed about the procedure for selection of Assistant Teacher in respect of permanent regular vacancy which admittedly was not followed in the instant case. The judgment as relied upon by the learned Advocate for the writ petitioner/respondent namely *Buddhi Nath Chaudhary and Ors.* (supra) has no relevancy in the fact situation of this case. In that case selection was not illegal but was improper. There recruitment in the post of Motor Vehicle Inspector was followed following an existing rule, which however was amended amendment during the process of selection requiring the eligibility criteria of possessing a driving licence by the candidates aspiring for the post of Motor Vehicle Inspector and experience

thereof but was not considered and selection completed following the earlier rule. On challenge by other candidates, the Apex Court passed a decision by holding that during the litigation since the candidates already had acquired experience and as they were holding the post for a long period, their appointments should not be disturbed, with the specific finding that lack of experience initially which was the subject matter now is dead, in view of the experience as already acquired during the long period. In the instant case, the fact situation is completely different.

19. Here admittedly the writ petitioner/respondent was appointed in a short term vacancy following a different procedural law for selection of candidates for appointment in such short term vacancy and as soon as the tenure was completed he became a stranger to the school and he got no right thereof to continue. He is required to appear afresh along with other candidates as and when the procedure to fill up a permanent regular vacancy would start. In the instant case, accordingly the writ petitioner/respondent had no legal right even to remain in the school after 11th November, 1999 that is after expiry of the vacancy tenure, which was not addressed by the learned Trial Judge and accordingly the judgment as relied upon by the learned Advocate for the writ petitioner/respondent Buddhi Nath Chaudhary and Ors. (supra) has no relevancy for adjudication in this case. It is a settled legal position that a judgment is a binding precedent if and only if the question of law and the fact involved therein are identical. It is also a settled law that even a change of single word on factual matrix will change the status of a decision from binding precedent.

20. Reliance may be placed to the judgment passed in the case State of Punjab Vs. Baldev Singh, wherein Court held "a decision of the Court takes its colour from the question involved in the case in which it was rendered and a decision is an authority for what it decides and not that everything said therein constitute a precedent", to the judgment passed in the case Regional Manager v. Pawan Kumar Dubey, a judgment of 3-Judges Bench reported in 1976 SCC 1766 where the Apex Court held "one additional or different fact can make a world of difference between consequence in two cases, even when the same principle was applied in each case to similar facts".

21. Learned Advocate appearing for the respondent/writ petitioner has led us to consider the ground of sympathy, we are sorry to apply the same as the same would be breach of statutory provision. It is a settled legal position that sympathy has no place when consequence will be breach of law.

22. It is a settled law that "sentiment is a dangerous will O the wisp" to take as a guide in the search for legal principle as viewed in the case Latham v. Johnson & Nephew reported in 1911-13 A.L.J. 117. The Apex Court has also considered this principle in the case Uma Rani v. Registrar, Cooperative Society reported in 2004(4) SCC 112 to refuse its application and same view passed in the case Ramakrishna Kamat and Others Vs. State of Karnataka and Others, which has been followed recently in the case Ashok Kumar Sonkar Vs. Union of India (UOI)

and Others, .

23. Considering the aforesaid findings and observations and the legal position as discussed, accordingly we have no other alternative but to quash the impugned judgment under appeal.

24. Hence, the impugned judgment under appeal stands quashed and set aside.

25. The appeal is allowed.

26. The writ application stands dismissed.

Manik Mohan Sarkar, J.

I agree.