
(2010) 10 CAL CK 0070
In the Calcutta High Court
Case No : Writ Petition No. 15384 (W) of 2010

Subhankar Mandal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 162, 166(1), 166(2)

Citation : (2010) 10 CAL CK 0070

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Judgement

Dipankar Datta, J.—These petitions can be categorized as "A", "B" and "C" on the basis of the impugned inaction of the concerned District Inspectors of Schools (S.E.), as well as the impugned orders passed by them.

2. In so far as category "A" is concerned, W.P. No. 15384 (W) of 2010, W.P. No. 7402 (W) of 2010, W.P. No. 19267 (W) of 2010 filed by the first empanelled candidates and W.P. No. 18802 (W) of 2010 filed by the school authorities fall within it. Here, the common grievance of the petitioners is that the panels that were prepared in connection with recruitment of non-teaching staff have not been considered by the concerned District Inspectors and are awaiting a decision at their end. It is apprehended by the respective petitioners that the panels may not receive the approval of the District Inspectors because of Memo dated July 22, 2008 issued by the Assistant Secretary to the Government of West Bengal, School Education Department and Memo dated May 13, 2010 issued by the Officer on Special Duty & Deputy Secretary to the Government of West Bengal, School Education Department.

3. In W.P. No.18666 (W) of 2010 (filed by a first empanelled candidate), and in W.P. Nos. 19148 (W) of 2010, 19137 (W) of 2010 and 5685 (W) of 2010 (filed by various school authorities) comprising category "B", the petitioners have questioned the orders passed by the concerned District Inspectors rejecting the panels prepared in connection with recruitment of non-teaching staff on the

ground that prior permission to conduct recruitment process was issued after July 22, 2008, i.e. in violation of the Memo referred to above.

4. The third category i.e. category "C" comprises W.P. No. 18974 (W) of 2010, W.P. No. 18976 (W) of 2010, W.P. No. 18977 (W) of 2010, W.P. No. 18979 (W) of 2010, W.P. No. 18980 (W) of 2010, W.P. No. 18982 (W) of 2010, W.P. No. 3995 (W) of 2010, W.P. No. 18582 (W) of 2010, W.P. No. 18731 (W) of 2010. Here, the panels prepared by the school authorities for recruiting non-teaching staff have been rejected on the ground that the recruitment process violated the Moral Code of Conduct of Election Rules, 2009.

5. Although some of the petitions have been heard separately, all these petitions shall stand disposed of by this common judgment and order since the issues are similar.

6. Issue similar to the one raised in these petitions was considered by me earlier. By judgment and order dated July 16, 2010, I had disposed of four writ petitions, bearing W.P. Nos. 13665(W) - 13667(W) of 2010 and 13669(W) of 2010. I intended to pass similar orders on those writ petitions forming part of this batch, which came up for hearing at a point of time earlier than the others. Copy of the said judgment and order was made over to Mr. Tapabrata Chakraborty, learned Additional Government Pleader. On perusal thereof, he requested for audience to argue certain points which, according to him, had not been argued earlier. His prayer was granted and the writ petitions where he had been engaged for the State were fixed for hearing. He advanced the lead argument, which has since been adopted by the different learned advocates appearing for the State in the other petitions.

7. Mr. Chakraborty contended that the order dated July 16, 2010 requires a re-look since at the time the said four writ petitions were disposed of, effective assistance had not been rendered to Court on behalf of the State.

8. Before I record the submissions advanced by Mr. Chakraborty, it would be convenient to note the factual similarities of the petitions disposed of on July 16, 2010 and the present batch.

9. The earlier batch of petitions was at the instance of aspirants for recruitment to posts of non-teaching staff in different recognised non-Government aided schools. Processes had been initiated by the respective school authorities in terms of the West Bengal Schools (Recruitment of Non-teaching Staff) Rules, 2005 (hereafter the 2005 Rules). On being called, the petitioners had participated in the selection tests conducted by the competent authority. All of them had figured as the first empanelled candidates. They were aggrieved because the District Inspector of Schools (SE), Purba Medinipur had not decided the issue of approval based on the aforesaid Memo dated July 22, 2008 and Memo dated May 13, 2010.

10. Here, the managing committees of different recognised non-government

aided schools (either petitioners or private respondents) sought to fill up vacancies in non-teaching posts therein. The concerned District Inspectors were approached, in terms of the 2005 Rules, for according prior permission to initiate process for filling up such vacancies. The said District Inspectors had accorded prior permission by orders issued after July 22, 2008 but before January 14, 2009 i.e. the date of enforcement of the amendments to the West Bengal School Service Commission Act, 1997 (hereafter the 1997 Act). In terms of such permission, the school authorities had requisitioned names of eligible candidates from the local employment exchanges. Some of them had also inserted advertisements in newspapers inviting applications from eligible candidates. The competent selecting body had conducted selection tests whereupon panels had been prepared. Such panels had been forwarded to the concerned District Inspectors for according approval. In respect of some, no decision has been conveyed by the said District Inspectors to the school authorities one way or the other. These constitute the category "A" case. In respect of some, panels forwarded by the school authorities have not been approved relying on the contents of Memo dated July 22, 2008 and Memo dated May 13, 2010, referred to above. Category "B" case are these. The rest comprise category "C" case where the panels have been disapproved on the ground noticed above.

Memo dated July 22, 2008, referred to above, reads as follows:

"In response to the above reference this is to state that a revised policy decision for recruitment of Group-C and Group-D Staff of the Non-Govt. aided Educational Institutions is under progress.

Hence the District Inspector of Schools (S.E.) of all the districts may be directed to refrain from issuing fresh P.P. to schools for the recruitment of non-teaching staff until the finalization of the policy. In such cases where prior permission have already been issued, recruitment process may continue in accordance with existing procedure and in terms of orders passed by Hon"ble Court of law if any. No fresh prior permission should be issued except under directions of Hon"ble Court."

By Memo dated May 13, 2010, it was conveyed as follows:

"I am directed to refer to the matter as noted above and to state that State Government in School Education Department in terms of this Department" No.1333-SE (Law)/ 08 dated 15. 07.2008, requested you to instruct the District Inspectors of Schools (SE) of all district to refrain from issuing Prior Permission for the recruitment of Non-Teaching Staff in the West Bengal Recognised Non-Government Aided Educational Institutions until the finalization of new policy. Thereafter, in terms of No. SS-ES/S/1S-18 dated 14.01.2009, the West Bengal Schools (Control of Expenditure) Act, 2005 (Amendment) and in terms of No.56-ES/S/1S-18 dated 14.01.2009, the West Bengal School Service Commission Act, 1997 (Amendment) came into force to make provision for the recruitment of Non-Teaching Staff in the West Bengal Recognised Non-Government Aided

Educational Institutions on recommendation of the West Bengal School Service Commission.

In terms of this Department's No.697-ES/S/1S-18/08 dated 09.07.2009, the Notification under the title "The West Bengal School Service Commission (Selection of persons for Appointment to the Post of Non-Teaching Staff Rules, 2009 was published in the Official Gazette in supersession all previous rules, orders, notifications and directions on the subject. The rule has been enforced since the date of publication (09. 07.2009) of the said Notification in the Official Gazette.

The earlier rules namely, the West Bengal Schools (Recruitment of Non-Teaching Staff, 2005 was also superseded with issuance of the Department's No. 697-ES/S/1S-18/ 08 dated 09.08.2009.

Thereafter, in terms of No.28-SE (S) dated 8th January, 2010, the Management of Recognized Non-Government Institutions (Aided and Unaided) Rules, 1969 was amended to make provision for recruitment of Non-Teaching Staff in respect of all Recognized Non-Government Aided Educational Institutions in the State solely on recommendation of the West Bengal School Service Commission.

With the issuance of No. G97-ES/S/1S-18/08 dated 09.07.2009 the Notification under the title "The West Bengal School Service Commission (Selection of persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 and with the amendment of Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969, the School Authority no longer enjoys the statutory power to conduct interview for the recruitment of Non-Teaching Staff in the West Bengal Recognised non-Government Aided Educational Institutions.

Having considered to the above stated State Policy already in force, I am directed to request you to instruct immediately once again the District Inspectors of Schools (SE) of all districts of this State not to accord any approval of panel prepared by the School Authority in terms of The West Bengal Schools (Recruitment of Non-Teaching Staff, 2005 (Published under No. 1594-SE(S) dated 26.12.2005) for the recruitment of Non-Teaching Staff in the West Bengal Recognized Non-Government Aided Educational Institutions as such power of according approval of panel by the District Inspector of Schools (SE) has already been withdrawn. This will include all cases for which Prior Permission for the recruitment of Non-Teaching staff was accorded on or after 22.07.2008".

Appropriate action shall be taken against the District Inspector of Schools (SE) and the School Authority, if found acting against the statutory provisions as stated above. This may be treated as extremely urgent."

11. In the judgment dated July 16, 2010, referred to above, I had held that Memo dated July 22, 2008 issued by the Assistant Secretary cannot be used as a shield by the concerned District Inspector for not considering the issue of approval of panels pending before him for three reasons. The first reason is not

relevant for a decision on these petitions. However, the second and third reasons may be of some relevance and, therefore, are set out hereinbelow:

"Secondly, the Memo dated 22.07.2008 does not appear to have been issued by the State in exercise of its power conferred upon it by Article 162 of the Constitution. Also, it has not been authenticated in terms of Article 166(3) of the Constitution. It does not provide the consequence for non-compliance therewith. On the authority of the decision of the Division Bench of this Court reported in AIR 2000 Cal 73 (State of West Bengal & Ors. v. Abdul Kuddus & Ors.), it cannot be held to be a valid executive instruction having binding effect; and

Thirdly, even though the Assistant Secretary had observed in his Memo dated 22.7.2008 that fresh prior permission ought not to be issued (except under the directions of the Court) in view of finalisation of revised policy for recruitment of Group C and Group D Staff of the non-government aided educational institutions which was under process, it is evident that the policy itself referred to in the said Memo ultimately culminated in the promulgation of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-teaching Staff) Rules, 2009 (hereafter the 2009 Rules). Rule 24(2) of the 2009 Rules ordains that nothing in the 2009 Rules shall affect any act done or cause to be done in accordance with the provisions of the 2005 rules or notifications or orders issued under the West Bengal School Service Commission Act, 1997. Assuming *arguendo* that the Memo dated 22.7.2008 of the Assistant Secretary is a valid executive instruction, the same cannot override the provisions of Rule 24(2) of the 2009 Rules which expressly validates whatever action has been taken under the provisions of the 2005 Rules."

12. Mr. Chakraborty strenuously tried to impress that Memo dated July 22, 2008 was indeed a valid executive instruction. He referred to the Rules of Business of the Government of West Bengal, framed in terms of power conferred by Article 166(3) of the Constitution, as also Home Department notification dated February 5, 1959, to contend that in terms of Article 166(2) of the Constitution, "orders and other instruments made and executed in the name of the Governor shall be authenticated by the signature of a Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary to the Government of West Bengal, or of an Officer of the Government of West Bengal specially empowered in this behalf by the Governor".

13. According to him, the Assistant Secretary in terms of the said notification dated February 5, 1959 is duly empowered to authenticate orders and other instruments made and executed in the name of the Governor and, therefore, Memo dated July 22, 2008 is unexceptionable.

14. Next, it was contended by him that Rule 24(2) of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-teaching Staff) Rules, 2009 (hereafter the 2009 Rules) does not in any manner save any action taken in terms of the 2005 Rules. He argued that only those

rules that had been made under the Act and notification or orders issued thereunder would stand saved having regard to the definition of the word "Act" in Rule 2(1)(a) of the 2009 Rules.

15. He, therefore, urged that the reasoning assigned by the Court in its judgment dated July 16, 2010 ought not to weigh any further in holding that the petitioners are entitled to relief on these petitions.

16. Mr. Chakraborty relied on the decisions in State of Bihar and others Vs. Md. Kalimuddin and others, for the proposition that the Government is competent to suspend a recruitment process pending review of policy. Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, was relied on in support of the scope of judicial review. He also referred to the decision in West Bengal Board of Secondary Education v. Dakhiruddin Khan & Ors., AIR 2002 Cal 200, where the decision in Abdul Kuddus (supra) was considered. An unreported decision of a learned Judge of this Court dated June 25, 2004 while disposing of W.P. No.18121 (W) of 2003 (Shyamapada Bera v. State of West Bengal & Ors.) was also relied on in support of the submission that since the forum of selection had only been changed without any change in eligibility criterion, selection process that was initiated in terms of the 2005 Rules cannot be continued and no candidate has any vested right to claim consideration of the panel in which he has secured the 1st position.

17. As noted above, insofar as the petitions falling under category "C" are concerned, the concerned District Inspector while observing that the panels prepared by the school authorities could not be approved assigned a different ground. He was of the view that the entire process of recruitment stands vitiated due to violation of the Moral Code of Conduct of Election Rules, 2009.

18. Mrs. Suchitra Saha, learned advocate appearing for the State in all the petitions being part of category "C", fairly did not make any attempt to sustain the order passed by the District Inspector. However, she sought to rely on Memo dated July 22, 2008 and May 13, 2010. On being apprised of the submissions advanced by Mr. Chakraborty earlier, she adopted the same.

19. Upon hearing Mr. Chakraborty at length and on fresh consideration of the entire issue, I am of the opinion that a view different from the one taken in the judgment dated July 16, 2010 is not required to be taken. The reasons therefor follow.

20. Bare perusal of Memo dated July 22, 2008, extracted supra, does not reveal that any decision of the Government was being sought to be conveyed. In terms of Article 166(1) of the Constitution, "(a)ll executive actions of the Government of a State shall be expressed to be taken in the name of the Governor". If indeed any decision had been taken by the Government in the School Education Department with the Minister-in-Charge at the helm, which the Assistant Secretary sought to convey by Memo dated July 22, 2008, mention of "decision taken by the Government" or that "the Governor has been pleased to decide" or that "I am directed to" or like expressions ought to have been there, as are

ordinarily to be found in other Government orders/Memo conveying the decision of the Government. The same is conspicuous by its absence in Memo dated July 22, 2008. In my view, the executive action of suspending a statutory provision ought to have been expressed in the name of the Governor. However, I am conscious that mere omission to mention the same would not invalidate the proposed governmental action, if indeed the decision of the Government is available on records/files.

21. By Memo dated July 22, 2008, operation of the statutory rules, viz. the 2005 Rules casting a duty on the District Inspectors to consider an application made by a school seeking prior permission to recruit was sought to be suspended. Mr. Chakraborty had been called upon to place the records to show that the decision was that of the Education Department/the Minister-in-charge. He failed to produce the records on the specious plea that he had not anticipated that the concerned file would be required to be looked into. Hearing of the petitions (category "A") was adjourned on more than one occasion on the prayer of Mr. Chakraborty. Faced with this situation, once again he prayed for adjournment. I did not consider it appropriate to grant further adjournment for the purpose of production of the relevant file. On a comparative study of Memo dated July 22, 2008 and Memo dated May 13, 2010, it appears that while the Officer-on-Special Duty had been directed to request the Director to advise the concerned District Inspectors not to approve the panels leading to issuance of Memo dated May 13, 2010, Memo dated July 22, 2008 reflects the ipse dixit of the Assistant Secretary to suspend operation of a statutory provision without any reference to any prior decision of the Government or direction of his superior. By the notification dated February 5, 1959, power was conferred, inter alia, on an Assistant Secretary to authenticate orders and instruments made and executed in the name of the Governor. No such governmental decision has been placed before Court. Memo dated July 22, 2008, thus, cannot be given the exalted status of a valid and binding executive instruction. The first contention of Mr. Chakraborty, therefore, stands overruled.

22. Even if Memo dated July 22, 2008 is regarded to be a valid executive instruction, the same cannot be relied on to defeat the petitioners' claims since it is manifestly contrary to Rule 24(2) of the 2009 Rules. Rule 24 reads as follows:

"24. Savings - (1) Nothing in this Rule shall affect reservation, relaxation of age limit and other concession required to be provided for Schedule castes, schedule tribes and other backward classes and other special categories of persons in accordance with the orders issued by the State Government from time to time.

(2) Nothing in this Rule shall affect any act done or caused to be done in accordance with the provisions of the earlier Rules made or notifications or orders issued under the Act".

23. It is the argument of Mr. Chakraborty that it is only the rules made under the

1997 Act that are saved by Rule 24(2) and no action taken under any other Rule. There is a basic fallacy in the argument. The 1997 Act was amended w.e.f. January 14, 2009 thereby empowering the Regional School Service Commission having jurisdiction to conduct process of selection for recruiting non-teaching staff in vacant posts in recognised non-Government aided schools. Rules laying down procedure for regulating recruitment to non-teaching posts under the 1997 Act for the first time was framed by bringing the 2009 Rules into existence w.e.f. July 9, 2009. Rules under the 1997 Act did not exist prior to July 9, 2009 for regulating procedure of selection for recruitment to non-teaching posts. Having regard to such undisputed position on facts, the word "earlier" in Rule 24(2) assumes great significance. If Mr. Chakraborty's contention is to be accepted, the word "earlier" has to be totally ignored. It is settled rule of interpretation that a statute cannot be read in a manner so as to render a word used therein as surplusage. It has to be borne in mind that the 2009 Rules superseded all previous rule, orders, notifications and directions on the subject of procedure for recruitment of non-teaching staff. For harmonious construction, Rule 24(2) has to be read in a manner so that the expression "the earlier Rules made" refers to the 2005 Rules, which is the previous rule since superseded, and not any rule made under the 1997 Act, for the simple reason that no such rule was in existence.

24. One may have similar result if Rule 24(2) is read differently. The word "Act" wherever it occurs in the 2009 Rules need not mean the 1997 Act. Rule 2, as is usual in statutory provisions, is prefaced by the expression "(i)n these Rules, unless the context otherwise requires". The context in which the word "Act" has been used in Rule 24(2) cannot mechanically derive its meaning from Rule 2(1) (a). I repeat that no Rules having been made under the 1997 Act prior to July 9, 2009 regulating recruitment of non-teaching staff and in the context where the word "Act" has been used in Rule 24(2), it ought to mean the West Bengal Schools (Control of Expenditure) Act, 2005 under which the 2005 Rules had been framed. By an executive instruction such as Memo dated July 22, 2008, the provisions of Rule 24(2) of the 2009 Rules cannot be set at naught which, as held earlier in the judgment dated July 16, 2010, expressly validates actions taken for recruitment under the provisions of the 2005 Rules i.e. final selection of suitable candidates in accordance with the 2005 Rules, and not a mere step in the process of recruitment before final selection. Unless this interpretation of Rule 24(2) is resorted to, any appointment of non-teaching staff made prior to July 9, 2009 based on prior permission issued after July 22, 2008 must be held invalid in view of the amendments effected in the 1997 Act, and as contended by Mr. Chakraborty. That would result in utter chaos and manifest injustice arising out of absurd interpretation of law. The second contention of Mr. Chakraborty also does not impress me and, accordingly, stands rejected.

25. I have considered the decisions cited by Mr. Chakraborty.

26. The proposition of law laid down in Md. Kalimuddin (supra) can hardly be

disputed. It is settled law that a body within the meaning of "State" as defined in Article 12 of the Constitution is competent not to finalise a selection process that it had initiated and in such case a candidate who has been selected for appointment cannot claim a Mandamus to offer appointment on the basis of the panel/merit list. However, the action of the State should be justified on the anvil of Article 14 of the Constitution [see: *The State of Haryana Vs. Subash Chander Marwaha and Others*, *Jai Singh Dalal and Others Vs. State of Haryana and Another*, and *State of M.P. and Others Vs. Raghuveer Singh Yadav and Others*,]. The decision in *Md. Kalimuddin* (supra) is distinguishable because of existence of Rule 24(2) of the 2009 Rules (supra) here. Viewed in the light of the same and on the touchstone of Article 14, the impugned Memo dated July 22, 2008 cannot be sustained in law.

27. The decision in *Ekta Shakti Foundation* (supra) does more harm than good to the cause of the official respondents. It has been held therein that "the scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution." As noticed above, the executive instruction dated July 22, 2008 is repugnant to Rule 24(2) and, therefore, the process of recruitment that had commenced under the 2005 Rules ought to be allowed to reach its logical conclusion.

28. In *Dakhiruddin Khan* (supra), the Division Bench of this Court did consider the previous Division Bench decision in *Abdul Kuddus* (supra) but no law has been laid down therein that the decision in *Abdul Kuddus* (supra) does not lay down good law. Therefore, the said decision is also of no assistance.

29. The law laid down in the unreported decision in *Shyamapada Bera* (supra) does not also aid the official respondents in view of Rule 24(2) of the Rules.

30. However, so far as the right of an empanelled candidate is concerned, one may usefully refer to the decision in *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, wherein it has been observed as follows:

"10. The State Government's interpretation of para 11 of its order dated July 9, 1975 was incorrect and wrong. It failed to appreciate that in the instant case reservations had already been made and notified under the advertisement published on May 18, 1975. Therefore the conditions precedent contemplated in para 11 were fully satisfied. In this view the selection made by the Commission by following the reservations and the mode of selection as prescribed under the provisions of the Government Order dated September 6, 1969 were deemed to have been made validly in accordance with the provisions of para 11 of the government order. It is relevant to point out that the Government Orders dated September 6, 1969 (sic) and July 9, 1975 both had been issued by the government in exercise of its statutory power under Rule 10 of 1975 Rules, making provisions for reservations and prescribing mode of selection. A government order issued in exercise of statutory powers acquires statutory force,

therefore, the provisions contained in the aforesaid government orders including the provisions of para 11 of the Government Order dated July 9, 1975 also acquired statutory character. Through para 11 superseded earlier government orders but in expressly saved the pending selections where reservations were already made and advertisement had been issued. Para 11 being statutory in nature was binding on the government and the government had no authority to direct the Commission by means of administrative order to revise the select list in accordance with the amended mode of selection as prescribed under the Government's Order dated July 9, 1975. In our opinion the State Government was bound to give full effect to the provisions of para 11 of the Government Order dated July 9, 1975 and therefore directions contained in its order dated April 23, 1976 were illegal."

"11. *****Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as then existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature."

(underlining by me for emphasis)

31. Also, a careful reading of the amendments effected in the 1997 Act neither reveals that the newly introduced provisions regulating procedure for recruitment of non-teaching staff are to operate retrospectively, nor is there any intendment to enforce the same from a past date. To the contrary, there is sub rule (2) of Rule 24 which saves selections made in terms of the 2005 Rules. In such situation, one cannot proceed oblivious of the law laid down by the Supreme Court in its decision in P. Mahendran and others Vs. State of Karnataka and others, wherein it was ruled as follows:

"5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force,

the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

(underlining for emphasis by me)

32. The concerned District Inspectors by perceiving that Memo dated July 22, 2008 stood as a barrier for granting approval of panels prepared by the respective schools committed error of law.

33. For the reasons aforesaid, all the writ petitions must succeed and are, accordingly, allowed. The Memo dated July 22, 2008 stands quashed. The subsequent Memo dated May 13, 2010 following it cannot independently stand and stands quashed also. Insofar as the impugned orders of the concerned District Inspectors declining to accord approval to the panels forwarded to them by the respective school authorities are concerned, the same also stand set aside. The said District Inspectors shall consider the issue of approval of the panels strictly in accordance with the provisions of the 2005 Rules. If the District Inspectors are satisfied that the respective schools have complied with and/or adhered to the requirements of the 2005 Rules, they shall approve the panels without any delay. However, if they are of the considered opinion that any or all the panels that have been forwarded do not deserve approval, their reasoned decisions shall be communicated to the Managing Committees of the schools as well as the first empanelled candidates, being some of the petitioners herein. This exercise shall be completed as early as possible but not later than three weeks from date of receipt of copy of this judgment and order.

34. Photocopy of this judgment and order, duly countersigned by the Assistant Court Officer, shall be retained with the records of all the petitions barring W.P.15384 (W) of 2010.

There shall be no order as to costs.

Urgent photostat certified copy of this judgment and order, if applied for, shall be given to the applicant as early as possible.