

(1998) 05 CAL CK 0013
In the Calcutta High Court

Case No : Civil Appellate Jurisdiction W.P. No. 29197 (W) of 1997 with 202 Ors.

Ziaul Islam with 202 Ors.

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-05-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142, 16, 271
Recruitment and Leave of Teachers of Primary Schools of West Bengal Rules, 1991 — Rule 14, 26, 8, 9
West Bengal Primary Education Act, 1973 — Section 106(1), 106(2)(v), 19, 60(K)

Citation : (1999) 1 CALLT 509

Hon'ble Judges : Satyabrata Sinha, J; Dibyendu Bhusan Dutta, J

Bench : Division Bench

Advocate : Mr. A.P. Sircar, Mr. Subir Sanyal and Mr. A. Roy for Hooghly and Birbhum Dist Primary School, Mr. Arun Mitra and Mr. Tara Prosad Halder for 24 Parganas S Dist. Primary School, Mr. P. Basu for 24 Parganas N Dist. Primary School and Mr. Golam Mohammad, for the Appellant; Mr. Manick Ch. Das, Ms. Pratima Mukherjee, Mr. Subrata Banerjee, Ms. Tapati Dasgupta, Mr. Saktipada Jana and Mr. B.B. Koley, for the Respondent

Judgement

S. B. Sinha, J.—Several writ applications were referred to the Division Bench on the question as to whether the decision in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, , -would apply to a case where the recruitments of teaching and non teaching staff are governed by the statutory rules.

2. The matter was referred also to Division Bench in view of the fact that several Benches had been passing Inconsistent orders relying on or on the basis of decision in Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, .

3. Several appeals have also been filed by different Ad-hoc Committee of the District Primary Schools Councils questioning orders passed by learned single Judges of this court whereby and whereunder different orders as noticed

hereinbefore have been passed.

4. In order to consider the matter in its proper perspective it is not necessary to state the fact of the matter in great details as the point involved in these matters is a pure question of law. Suffice it to say that the writ petitioners hold the requisite qualification for being appointed as Asstt Teachers. They are either trained or untrained. Some of them got their names registered in the local Employment Exchanges. Their names, however, were not sponsored by the Employment Exchange. The writ petitioners, Intended to appear at the interview which was being held by the different School Councils. Several learned Judges had passed different orders. Some orders directed : (1) The District Primary School Council should allow the writ petitioners to appear at the interview: (2) All persons who intend to appear at the interview may be permitted to so appear; or (3) The local Employment Exchanges to sponsor the names of the writ petitioners and (4) A learned single Judge of this court, however, has held that in all such cases, keeping in view the ratio in *Excise Superintendent (supra)*, an advertisement must be issued before any appointment is made.

5. Articles 14 and 16 of the Constitution of India in no uncertain terms provide for equality before law and equal protection of law in the matter of appointment or conditions of service. However, the matter relating to recruitment of primary teachers is governed by a legislative Act. The legislative history as also the rules prevailing in the field and the impact of various litigations filed before this court had been noticed by a Division Bench, of which one of us (S.B. Sinha, J), was a member in *West Bengal Board of Primary Education v. State of West Bengal & Ors.* reported in 1997 (1) CLJ 165. It now, however, stands admitted that the matter of recruitment after the said decision would be governed by the West Bengal Primary Education Act, 1973 which came into force with effect from 20th September, 1974 and Rules regulating the, Recruitment and Leave of Teachers in Primary Schools in West Bengal published in the Calcutta Gazette on 25.11.1991.

6. Section 60 of the 1973 Act provides for the duties of the Primary School Council. Section 60(K) reads thus :--

"subject to the prescribed conditions, to appoint teachers and other staff in Primary Schools, to transfer any such Teachers or other staff from one Primary School to another Primary School within the Jurisdiction of the same Primary School Council and to pay to teachers and other staff salaries and allowances, if any, at such rates as may be fixed by the State Government;"

Section 106 of the said Act provides for powers of State Government to make rules for carrying out the purposes of this Act.

7. Sub clause (v) of sub-section (2) of section 106 empowers the State in particular and without prejudice to the generality of the foregoing power to make rules in any other matter which may or is required to be prescribed.

8. As noticed hereinbefore, section 60(K) provides for appointment of teachers

and other staff subject to the prescribed conditions. The word "prescribed" has been defined in section 2 (xx) as meaning prescribed by rules made by the State Government under the Act. Teacher has been defined in section 2(xxa) to mean Act.

"a person who holds a teaching post in a Primary School or in a Junior Basic Training Institution on a regular and whole time basis and is paid either wholly or in part from the funds under the control of the State Government in the Education Department;"

9. The State Government in exercise of its power conferred upon it under sub-section (1) of section 106 of the Act made rules relating to Recruitment and Leave of Teachers in Primary Schools in West Bengal. Rules 8 and 9 which are relevant for the purpose of these matters are as follows:--

"8. Calling for the names from the Employment Exchange.-

(a) The number of vacancies as determined under Rule 4. except in case the vacancies mentioned in sub-rule (a) and sub-rule (b) of rule 14 and the vacancies to be filled by inter-council transfer under the provisions of sub-section (k) of section 19 of the Act, shall be intimated by the Council to the concerned Employment Exchange. For the purpose of preparation of panel for eligible candidates, the Employment Exchange shall be requested to send names of candidates, both trained and untrained, who have requisite qualifications and in order of seniority of registration, and the list of candidates so prepared shall comprise of at least 50% of trained candidates unless the number of registered trained candidates at the concerned Employment Exchange is sufficient to comprise of the 50% of the names in the list :

Provided that in case of non-availability of sufficient number of candidates belonging to the Scheduled Castes and the Scheduled Tribes in the Employment Exchange of the concerned revenue district, a reference shall be made by the Council to the Special Employment Exchange for the Scheduled Castes/ Scheduled Tribes at the State Level for sending further names.

(b) The letter to the employment exchange mentioned in sub-rule (a) shall contain, among other matters :--

(i) the required minimum qualifications of candidates;

(ii) the reservation quota for Schedule Castes and Scheduled Tribes candidates and physically handicapped candidates; and

(iii) the number of vacancies to be filled up.

(c) The total number of vacancies existing on the 31st December of a calendar year shall be treated as the number of vacancies for that year.

9. Selection procedure.--(a) On or after the names of candidates for the posts of teachers are obtained from the employment exchange, all candidates shall be

communicated in writing to produce testimonials/ certificates for computation of their marks in the score sheets prepared for the purpose of such selection.

(b) Credit shall be given and computed in the following manner :

(i) there shall be 100 marks in total as full marks :

(ii) the full marks shall be allotted to four different aspects of the candidate's eligibility in the following manner:--

1. Academic qualification -- 65 marks

2. Training -- 20 "

3. Written Test/Oral interview -- 10 "

4. Co-curricular Activity -- 5 "

Total -- 100 Marks

(iii) the percentage of marks to the total full marks obtained by the candidate in School Final /Madhyamik/Higher Secondary (XI Class) shall be computed as percentage of 65 and recorded in the score sheet, and if a candidate has passed two of the above public examinations, the better result only shall be computed;

(iv) the percentage of marks to the total full marks obtained in Junior Basic Training Certificate Examination or equivalent shall be computed as percentage of 20 (twenty) and recorded in the score sheet;

(v) marks obtained in the interviews shall be recorded in the score sheet;

(vi) in awarding marks for co-curricular activities one mark shall be credited for each of the certificates mentioned below:--

(A) A certificate that he/she represented the district in State level games, sports, Issued by district level sports authority.

(B) a certificate that he/she has shown excellence in cultural activities representing the district in State level competitions issued by district level authority,

(C) minimum "A" certificate of National Cadet Corps.

(D) a certificate of successful participation in literatlng the illiterates by a district level officer, and

(E) a diploma/certificate in Music/Arts and Craft on completion of a course of at least one year's duration from any University/recognised Government Institutions :

Provided that the maximum of such marks to be credited shall not exceed five.

(vii) is (eighteen) marks shall be credited for academic qualification to an eligible candidate belonging to Scheduled Tribe category who have required qualification

as mentioned in sub-rule (e) of rule 6, Awarding of marks for training, interview and co-curricular activities shall be done in accordance with clauses (iv), (v) and (vi) respectively.

(c) (i) The total marks obtained by each candidate for academic qualification, training and co-curricular activities shall be computed in the manner prescribed in clauses (iii), (iv) and (vi), and a list of names of all candidates of each category, namely, Scheduled Caste, Scheduled Tribe, physically handicapped and others shall be prepared in descending order of total marks obtained by them.

(ii) The Staff Selection Committee. In its meeting shall finalise the total number of candidates from the top of the lists mentioned in clause (c), to be called for Interview. The number of candidates to be called for interview shall be five times the number of vacancy unless the total number of candidates is Insufficient for the same.

(iii) The candidates selected for Interview shall be Intimated the date, time and place for their Interview.

(d) After the Interview all the scores shall be recorded and the marks obtained by a candidate shall be added up and the names of candidates shall be arranged according to marks obtained in a descending order.

(e) After the process as laid down in sub-rule (b) is complete, the Selection Committee shall arrange the names serially down from the top of the list. A panel of such number of candidates as there are vacancies plus 10% of such vacancies shall be prepared. The reservation for Scheduled Castes, Scheduled Tribes and physically handicapped persons shall have to be strictly maintained in the panel. The panel shall show separately names of scheduled Tribe, Scheduled Caste, Physically handicapped, and other eligible candidates.

(f) Thereafter the panel thus prepared shall be placed in the meeting of the Council for passing and the total number of eligible candidate Included in the panel shall be the same as the number of vacancies plus 10% of such existing vacancies."

10. Rule 8 of the 1991 Rules aforementioned provides for the manner in which the Primary School Council would feel up the number of vacancies. The said procedures provide that a panel for eligible candidates be prepared and for the said purpose the Employment Exchange would be requested to send the names of the candidates (trained or untrained) who have requisite qualification and in order of seniority of registration.

11. Rule 9 provided for the selection process in great details. The said Act and the Rules provide for a complete code in the matter of recruitment of teachers. It is now a well settled principle of law that if some matters are included by reason of a statute, other matters by necessary implication are excluded. No other procedure for-selection having been prescribed, the District Primary School Council who are creature of the statute, have no other option but to follow the

provisions of the said rules in the matter of recruitment of teacher. They cannot deviate therefrom. We are conscious of the fact that although seemingly they appear to be mandatory in nature but in certain circumstances they may be held to be directory.

12. In Craies on Statute Law, 7th Ed. at page 268 states the circumstances in which Impossibility would be treated as excuse for non-compliance with absolute provisions.

13. In Crawford's Statutory Construction and Interpretation of Statutes, Article 271 at page 539, the law is stated in the following terms :--

"Even where a statute is clearly mandatory or prohibitory, yet. In many Instances, the courts will regard-certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their Justification in consideration of Justice. It is a well known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely related nature, would seem to be of a sufficient calibre to excuse or Justify a technical violation of the law."

No such case of impossibility arise in the instant case.

14. It is now a well settled principle of law that even if a statute is directory in nature, the same has to be substantially complied with. The Primary School Councils being statutory authorities, they have no other option but to act within the four corners of the statute.

15. It is now well settled by the decision of the Supreme Court of India that recruitments have to be made in terms of the statutory rules.

16. It is also pertinent to note that the courts have also upheld recruitments in cases where vacancies were notified only in a notice board and the same had not even been intimated to the employment exchange. Reference in this connection may be made to Jogindra Jha v. College Service Commission reported in 1983(3) SLR 4 and Sardara Singh and others, etc. Vs. State of Punjab and others, . Even in some cases, the matter of distribution of largess or Invitation to treat by calling for limited tenders has been held to be justified.

17. It is now also a well settled principles of law that any appointment in violation of the recruitment rules will be void.

18. Furthermore, it is further well settled that no recruitment can be made in violation of or in derogation of the provision of the recruitment rules. Such recruitment rules themselves, unless, an clearly ultra vires must be held to have been framed in consonance with the principle laid down under Articles 14 and 16 of the Constitution of India. Reference in this connection may be made to reported in JT 1996(2) SC 435 and Smt. Ravinder Sharma and Another Vs. State of Punjab and Others,

19. In *Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others*, posts were sought to be filled up from questioning the candidates sponsored through the medium of Employment Exchange. Although such names were sponsored, in terms of interim direction issued by the Tribunal, orders were Issued to select the candidates whose names were not so sponsored. Keeping in view the factual matrix the apex court held :--

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play. Justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Getter view appears to be that it should be mandatory for the requisitioning authority/ establishment to Intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly accordingly to seniority and reservation, as per requisition.

In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter, of employment would be available to all eligible candidates."

20. In that case there was nothing to show that in terms of the recruitment rules, vacancies would be filled up only from amongst the candidates whose names had been sponsored by the Employment Exchange.

21. It appears that the said decision has been referred to by a Division Bench of this court in *Arun Kr. Mondal v. Brojo Gopal Biswas and Others* reported in 1997 (2) CLJ 519 wherein a Division Bench of this court has been considering a case of regularisation. However, in that decision the points which had been taken Into consideration by us, had neither been argued nor considered.

22. In *Raj Kumar and Others Vs. Shakti Raj and Others*, the fact of the matter was that the posts of canal patwari in the Irrigation Department of State of Haryana were Class-III posts for which prior to formation of the State of Haryana the recruitment used to be governed by a rule known as Punjab Public Works Department (Irrigation Branch) Patwaris State Service Class III Rules, 1955. In terms of such rules those who passed an examination, were to be appointed almost automatically unless the name of a passed candidate who reaches the age of 25 years without having been employed temporarily as a patwari was to

be struck off the list. However, in terms of a circular letter Issued by the Chief Engineer for recruitment to the post of Canal patwari was to be made through the Subordinate Service Selection Board. After formation of State of Haryana another Rule was made under proviso to Article 309 of the Constitution of India, in terms whereof all such appointments were to be made by Subordinate Service Selection Board. The apex court found that both the 1955 Rules and 1970 notification, both statutory Rule, reveal that the former in order to fit into the frame work of 1970 notification need suitable amendments; in particular, in the matter of the source and method of recruitment, seniority and all related Issues. The apex court found that the selection and appointments to the post was not in accordance with law. . The Subordinate Service Selection Board also prescribed various guidelines for selection of the candidates. The apex court observed that even if 1955 Rules occupy the field upon coming into force of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, Rule 12 thereof had become inoperative. It was held that the State was bound to follow the method prescribed in 1955 Rules inasmuch no executive instruction could be Issued to supplant the statutory Rules. The apex court found that in view of 1970 notification, direct recruitment could be made through Subordinate Service Selection Board. The Government had followed sometimes 1955 Rules and sometimes 1970 notification according to their convenience, but in the case before the apex court they have dispensed with both and Instead constituted a Committee for selection of the candidates which was beyond the purview of 1970 notification and that too after written examinations were conducted under 1955 Rules. The apex court held that the entire exercise was illegal.

23. In this situation, Excise Superintendent's case (supra) was referred to and followed and observations were made to the following effect :--

"In view of this legal position, the necessary requirement should be that they should necessarily not only notify but also call the names from employment exchange; in addition they should give wide publicity in the media Inviting applications from qualified persons for selection. Instead. they have adopted the procedure under 1955 Rules. They did not call the names from the employment exchange and conducted the examinations for them. After the selection of the candidates, names of selected candidates were called from the employment exchange. Obviously, the successful candidates in the written examinations were asked to approach the employment exchange of the concerned circle and, accordingly, names came to be sponsored. The procedure is clearly Illegal denying equal opportunity to many a candidate waiting in the register of the concerned employment exchange. Therefore, the Government hereafter should strictly follow the procedure by not only calling their names from the employment exchange, but also by publishing in the local and national newspapers and giving wide publicity in the media as well as getting the written examination and the interview conducted by the SSSB; marks should be awarded strictly according to the procedure."

24. The Excise Superintendent (supra) however, has been distinguished in a recent decision of the Supreme Court in *Arun Tewart and Ors. v. Zila Manasavl Shikshak Sangh and Ors.* reported in AIR 1998 SC 331. In that case the scheme of recruitment itself was under challenge as ultra vires. The apex court keeping in view the various decisions of the Supreme Court of India held that the decision in Excise Superintendent was rendered in the fact of that case. It was held:--

"The next contention relates to inviting applications from Employment Exchanges instead of by advertisement. This procedure has been resorted to looking to the requirements of a time-bound scheme. The original applicants contended that if the posts had been advertised, many others like them could have applied. The original applicants who so complain, however, do not possess the requisite qualifications for the post. As far as we can see from the record, nobody who had the requisite qualifications, has complained that he was prevented from applying because advertisement was not Issued. What is more important, in the special circumstances requiring a speedier process of selection and appointment, applications were Invited through Employment Exchanges for 1993 only. In this context, the special procedure adopted is not unfair. The State has relied upon the case of *Union of India (UOI) and Others Vs. N. Hargopal and Others*, where Government instruction enjoining that the field of choice should, in the first Instance, be restricted to candidates sponsored by the Employment-Ex changes, was upheld as not offending Articles 14 and 16 of the Constitution. In the case of *Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others*, , this court approved of recruitment through Employment Exchanges as a method of preventing malpractices. But in the subsequent and more recent case of *Excise Superintendent, Malkapatnam, Krishna District, A.P. v. K.B.N. Vtsweshwara Rao* (1996) 6 SCC 215 : (AIR1996 SCW 3979), this court has distinguished *Union of India (UOI) and Others Vs. N. Hargopal and Others*, on the basis of special facts of that case. It has observed that the better course for the State would be to invite applications from Employment Exchanges as well as to advertise and also give wide publicity through T.V., Radio etc. The court had to consider whether persons who had applied directly and not through Employment Exchange would be considered. This court upheld their claim for consideration.

There are different methods of Inviting applications. The method adopted^ in the exigencies of the situation in the present case cannot be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this court were in vogue." (underlying is mine)

25. The Scheme of recruitment thus had not been held to be ultra vires.

26. In these cases the fact of the present matter stand on a better footing as vires of the Act or the Rules have not been questioned. We may also note that *Union of India (UOI) and Others Vs. N. Hargopal and Others*, has been followed by the Supreme Court in *Delhi Development Horticulture Employees" Union Vs. Delhi Administration, Delhi and others*, .

27. The petitioners in terms of the aforementioned Rules, do not have any right to be considered for appointment. They are not even empanelled candidates. Their names had not been sponsored by the Employment Exchange, if the Employment Exchange has committed any illegality in not following the guidelines as regard sponsoring the names of the eligible candidates, a writ of mandamus can be Issued against it. But a writ of mandamus cannot Issue unless a person establishes in himself a legal right and consequently a legal duty in the respondents.

28. In *State of U. P. and others Vs. Harish Chandra and others*, the law is stated in the following terms.

"Under the Constitution a mandamus can be Issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be Issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law. This being the position and in view of the Statutory Rules contained in Rule 26 of the Recruitment Rules we really fail to understand how the High Court could Issue the impugned direction to recruit the respondents who were Included in the select list prepared on 4.4.87 and the list no longer survived after one year and the rights, if any, of persons included in the list did not subsist"

29. In the cases of *Excise Superintendent (supra)* upon which reliance has been placed by the learned single Judges the apex court could have issued certain direction under Article 142 of the Constitution of India. But this court does not have any such power.

30. It is now a trite law that a decision is an authority for what it decides and not what can logically be deduced therefrom.

31. In *The Regional Manager and Another Vs. Pawan Kumar Dubey*, the law is stated in the following terms:--

"It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

32. In *Municipal Corporation of Delhi Vs. Gurnam Kaur*, the apex court observed:--

"Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das* case and to the learned Judge who agreed with him. we cannot concede that this court is bound to follow It. It was delivered

without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be Justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in Ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence 12th edn. explains the concept of sub silentio at p. 153 in these words:--

"A decision passes sub silentio. In the technical sense that has come to be attached to the phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio".

33. It is also well known that a decision is not an authority for what it has not decided or not a point, which has not been argued, Reference in this connection may be made to *Goodyear Ltd. v. State of Haryana* reported in AIR 1980 SC 781, and *Mittal Engineering Works (P) Ltd. Vs. Collector of Central Excise, Meerut*, .

34. It is further well settled that the recommendation of the Supreme Court is not binding.

35. In *Indian Oil Corporation Ltd. Vs. Municipal Corporation and Another*, , it is stated :--

"It is thus clear that the decision of this court in *Ratna Prabha* (AIR 1977 SC 308) (supra) on the construction of section 138(b) of the M.P. Act has all along been understood and Justified on the basis of the presence of the notwithstanding clause in section 138(b) of the M.P. Act and the later decisions have distinguished it on that ground. That is the basis on which the decision in *The Corporation of Calcutta Vs. Sm. Padma Debi and Others*, was distinguished in *Ratna Prabha* (supra (AIR 1977 SC 308) itself. It is also obvious that a Bench of 3-Judges only in the later decisions could not overrule the decision of this court in *Municipal Corporation, Indore and Others Vs. Smt. Ratnaprabha and Others*, and therefore, none of the later decisions could be so read to have that effect the Division Bench of the High Court in 1989 MPLJ 20 was clearly in error in taking the view that the decision of this Court in *Ratna Prabha* (AIR 1977 SC 308) (supra) was

not binding on It. In doing so, the Division Bench of the High Court did something which even a later co-equal Bench of this court did not and could not do. The view taken by the Division Bench of the High Court in 1989 MPLJ 20 proceeds on a total misunderstanding of the law of precedents and Article 141 of the Constitution of India, to which it referred. But for the fact that the view of the Division Bench of the High Court proceeds on a misapprehensions of the law of precedents and Article 141 of the Constitution, it would be exposed to the criticism of an aberration in judicial discipline. The decision of the Division Bench of the High Court was, therefore, rightly overruled by the full Bench in the impugned judgment."

36. In Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, It was held :--

"Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No Judgment can be read as if it is a statute. A word or a clause or a sentence in the Judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and, therefore, Judges are to employ an intelligent technique in the use of precedents."

37. While considering the cases of appointment of the Secondary Teachers, a special bench of this court in Writ Petition No. 1933 of 1977 (Sri Debasts Dutta v. State of West Bengal) and W.P. No. 1934 of 1997 (Sri Chandan Kumar Biswas v. State of West Bengal & Ors.) had also arrived at the same finding.

38. On behalf of the writ petitioner, however, it was submitted that in terms of the rules framed under Bengali Rural Education Act, 1930 there was a provision for calling for the names both from the Employment Exchange and also issue an advertisement simultaneously but such a provision has been deleted. If this be position, the stand of the writ petitioner is on a weaker ground in as much as the court in such a situation, must apply Heydon's Rules. It will also not be correct to contend that the State Government can be directed by Issue of Madamus to supplant some Instructions. Rules framed under a statute is legislative in character. The court has no Jurisdiction to Interfere therewith or to Issue any direction to amend, alter, supplement or supplant the same as the same would amount to encroach upon the legislative powers of the executive. Any such direction would be contrary to the constitutional mandate as legislation is with in the exclusive domain of the Legislature. It is further well known that when a rule is validly made, the same becomes part of an Act.

39. Before parting with this case, however, we may notice that although Rule 9 provides for both written examination and Interview, some of the courts have been disposing of various writ applications by directing the School Authorities to allow the writ petitioners or others to appear at the interview. Thus, mandatory provisions relating to the eligibility of the candidates to appear at the interview

by appearing in the written examination had been dispensed with, which could not have been done by a Judicial order in as much a statutory rule cannot be relaxed unless there exists any provision therefore.

40. For the reasons aforementioned we have no other option but to hold that the writ petitioners had no legal right to appear at the Interview unless their names had been sponsored by the Employment Exchange. If they have any other grievances, they may file separate writ application but by filing a writ application, the court not have been permitted them to appear at the Interview on the basis of the decision of the Supreme Court of India in Excise Superintendent (supra). Any action taken or any appointment given pursuant thereto or in furtherance thereof shall be a nullity. All the writ petitions are, therefore, dismissed and all appeals preferred by the State of West Bengal or the District Primary School Councils excluding M.A.T. 676 of 1998 are allowed. However. In the facts and circumstances of this case there will be no order as to costs.

D.B. Dutta, J.--I agree.

41. Petitions dismissed