

**IN THE HIGH COURT AT CALCUTTA  
Civil Revisional Jurisdiction  
Appellate Side**

**Present: -                   Hon'ble Justice I.P. Mukerji  
                                     Hon'ble Justice Biswaroop Chowdhury**

***FMA 3534 of 2014***

***With***

***CAN/3/2014 (Old CAN 2711 of 2014)***

***Chittaranjan Baidya***

***VERSUS***

***Dipankar Mandal & Ors.***

|                          |                                                                                                                        |
|--------------------------|------------------------------------------------------------------------------------------------------------------------|
| for the appellant:       | Mr. Ekramul Bari, Adv.<br>Mr. Santanu Chatterjee, Adv.<br>Mr. Divya Chatterjee, Adv.<br>Mr. Rajendra Kumar Nandi, Adv. |
| for the respondent no.1  | Mr. Sundarananda Pal, Adv.<br>Mr. Manoj Kumar Roy, Adv.                                                                |
| for the respondent no. 5 | Mr. Lakshmi Kanta Pal, Adv.<br>Mr. Bandhubrata Bhula, Adv.                                                             |

**Judgment on: March 22, 2023**

**Biswaroop Chowdhury, J:**

This appeal is directed against the Order dated 10-01-2014 passed in WP No. 14353 (W) of 2010 with WP 11494 (W) of 2007. The appellant before us was not a party in the writ petition the Order of which is assailed but was a candidate in a recruitment interview in which the respondent no.1 / writ petitioner appeared pursuant to the Order passed in Writ Petition 11494 (W) of 2007.

The case of the Writ Petitioner/respondent no-1 may be summed up thus:

1. The Writ Petitioner being unemployed registered his name in the District Employment Exchange Basirhat on 28.1.2002 and since the date of registration no interview call was given to the petitioner.
2. The Writ Petitioner came to know from a reliable source that a post of Clerk Group 'C' was lying vacant at Chowdhury Chwak Santimay Siksha Niketan (High School) P.O. Kamarganti P.S. Haroa District-North 24 Parganas and names of 35 candidates have been sponsored by the District Employment Exchange Authority filling up the said post of Clerk in the said school excluding the name of the petitioner. Petitioner's name was not sponsored by the concerned Employment Exchange or office of the District Inspector of schools (SE) concerned.
3. The Writ Petitioner made an application for the post of Clerk in the said school but the authority of the said school did not accept his application on 24-05-2007 and the authority of the said school has also stated that there was no provision for taking any application from outsiders. The post of clerk was a skilled post and the Employment Exchange concerned did not sponsor the name of the petitioner.
4. No advertisement was made by the Respondent authorities for filling up the said vacant post and no notice was displayed in their notice board.
5. The petitioner being aggrieved by and dissatisfied with the inaction of the respondent authorities moved a writ petition being No. WP No. 11494(W) of 2007. His Lordship the Hon'ble Justice Biswanath Samaddar was pleased to pass the following Order:

I therefore direct the concerned respondent authorities to permit the Writ Petitioner to appear at the interview for filling up the post of Clerk/Group 'C' staff in Chowdhury Chawk Santimay Siksha Niketan (High School) P.O. Kamarganti, P.S. Haroa, District North 24 Parganas and when such an interview is going to be held by the said authorities and if he/she is otherwise eligible. However this will create no equity in favour of the Writ Petitioner and the same shall abide by the result of the instant writ application.'

6. Pursuant to the Order dated 15-06-2007 passed in WP No. 11494 (W) of 2007 the Writ Petitioner/Respondent no-1 was allowed to appear at the interview for the post of Clerk at Chowdhury Chak Santimay Siksha Niketan (H.S.). The Writ Petitioner appeared at the interview and answered all questions put to him and stood first in the panel for the post of clerk prepared on the basis of interview held on 8-07-2007

7. The Writ Petitioner/respondent No-1 upon coming to know that the panel for the post of Clerk of the school concerned prepared on the basis of interview held on 8-07-2007 was sent to the District Inspector of schools (Secondary Education) for approval but the same not being approved made a representation to the Additional District Inspector of Schools (SE) Basirhat the respondent no.7 herein on 30/06/2010.

8. As the representation made before the Additional District Inspector of Schools by the Writ Petitioner/Respondent no-1 was not considered and decided by the concerned respondent a Writ

application was moved before this Court by the petitioner/Respondent no-1 being WP. No. 14353 (W) of 2010.

9. By Order dated 10-01-2014 His Lordship the Hon'ble Justice Tapabrata Chakraborty was pleased to dispose W.P.14353 (W) of 2010 with W.P. 11494(W) of 2007 by observing and directing as follows:

'Today both the matters have come up for hearing before this Court. Upon hearing the submissions made by Mr. Maitra, Learned Senior Advocate appearing for the petitioner, Mr. Ganguly appearing for the State authorities and Mr. Pal appearing for the said school authorities and upon considering the materials on record I find that no useful purpose will be served by keeping the Writ applications pending.

Accordingly both the writ applications are disposed of by directing the Additional District Inspector of Schools (SE) of Basirhat Sub-division to take a decision as regards approval of the said panel for the Group – 'C' post (Clerk) in the said school in accordance with law and upon grant of opportunity of hearing to the petitioners and the school authorities.

The decision so taken by the said Additional Inspector of Schools should be communicated to the petitioners as well as the school authorities.

The entire exercise should be concluded by the Additional District Inspector of Schools (SE), Basirhat Sub-division within a period of six weeks from communication of this Order.

The Writ applications are accordingly disposed of.'

Pursuant to the Order passed by the Hon'ble Justice Tapabrata Chakraborty the Writ Petitioner and the Headmaster Chowdhury Chawk Santimay Siksha Niketan (H.S.). was called for hearing by the Additional District Inspector of Schools (S.E.). Basirhat Sub-Division. Upon hearing the Writ Petitioner and the Headmaster of Chowdhury Chawk Santimay Siksha Niketan High School, the Additional District Inspector of Schools (S.E) Basirhat sub-division approved the panel prepared by the School Authority. It appears from the Order passed by the Additional District Inspector of Schools that the Additional District Inspector of Schools after considering the number of candidates appearing pursuant to being sponsored by the Employment Exchange and the Writ Petitioner appearing pursuant to Order of Court and having found that the papers regarding approval of the panel of Clerk in the School in Order was pleased to approve the panel.

The appellant pursuant to the Order of approval given by the Additional District Inspector of Schools has preferred this Appeal challenging the Order passed by the learned trial Court. The Appellant along with the appeal prayed for leave to prefer the appeal and, filed application for condonation of delay. This Court by Order dated 22-09-2014 granted the leave to prefer the appeal after condoning the delay.

It is the contention of the appellant that the appellant being sponsored by the Employment Exchange for the post of Clerk at Chowdhury Chwak Santimay Siksha Niketan (H.S.) post-office- Kamarganti, Police Station – Haroa District- 24 Parganas (North), was issued with an Interview Letter by Nirapada Mondal the then Secretary of the said School requiring him to appear at the interview on 8.07.07. It is further contended that

appellant appeared at the interview and performed well and was under a legitimate expectation that he would be selected as the 1<sup>st</sup> empanelled candidate and appointed to the post in question. It is also contended that the appellant met the Headmaster of the said school to ascertain the fate of selection process and everytime was assured that as per his academic qualification and performance amongst all participated candidate the appellant deserves 1<sup>st</sup> position and on completion of formality panel would be published. On such assurance the appellant had been passing days with a great hope that either today or tomorrow he would be appointed to the post in question. The appellant all on a sudden came to learn that one Dipankar Mondal son of Nirapada Mondal village Chowdhury Chwak Post Office – Kamarganti, Police Station-Haroa, District- 24 Parganas (North) filed a Writ Application vide WP No. 14353 (W) of 2010 claiming himself as 1<sup>st</sup> empanelled candidate of the panel for said post in question and praying for approval of said panel, without impleading appellant as a party to said Writ Application and the said Writ Application has been disposed of on 10.01.2014 by the Hon'ble Justice Tapabrata Chakraborty inter-alia directing the Additional District Inspector of Schools concerned to take a decision regarding approval of panel for said post in question. It is contended by the appellant that the appellant came to learn that throughout the selection process mal practice and/or nepotism has been adopted. The appellant further contends that he came to know that though name of son of the then Secretary of the said school was not sponsored by the Employment Exchange he appeared in the interview on the basis of an interim Order dated 15-06-2007 passed in WP. No. 11949(W) of 2007. It is also

contended, that the appellant came to know that the then Secretary of said school took active part throughout out the selection process with an ill motive to favour his son the Writ Petitioner who was a candidate by virtue of Courts Order and on 27-06-2007 said Nirapada Mondal issued interview letter in favour of all candidates. The said Secretary of the Managing Committee influenced unduly the Selection Committee to procure a panel by placing his son i.e. the Writ Petitioner at the top denying the performance and academic qualification of other candidates and illegally placed the appellant in the 2<sup>nd</sup> position instead of first. The Managing Committee though was represented on the hearing dated 10-01-2014 but relation of the Writ Petitioner and Nirapada Mondal was never disclosed before the Court. It is also contended that in another Writ Application filed by 4 other candidates being WP. No. 20719 (W) of 2007 was also pending before this Court and appearing in the list of Hon'ble Justice Tapabrata Chakraborty when the said Order was passed in W.P. No.14353 (W) of 2010. The pendency of WP. No. 20719 (W) of 2007 was suppressed when Order in WP. No. 14353 (W) of 2010 was passed.

Heard Learned Advocate for the appellant and Learned Advocate for the respondents. Perused the petition of appeal and the materials on record.

Mr. Bari Learned Advocate appearing for the appellant has confined his argument to the ground of eligibility of the Writ Petitioner/Respondent no-1 to appear at the interview for the post of Clerk at Chowdhury Chwak Santimay Siksha Niketan (HS), although this ground was not taken in the memorandum of appeal. However as the point raised by Mr. Bari is a question of law, we propose to deal, with the same even though it is not taken as a ground of appeal. Mr. Bari submits that as the Writ Petitioner

was not sponsored by the Employment Exchange he is not eligible to appear at the interview in absence of advertisement. Mr. Bari submits that the Learned Judge permitted the Writ Petitioner to appear at the interview by virtue of interim-Order which is not sustainable in the eye of law.

Mr. Bari relies upon the following decisions passed by a Division Bench of this Court. Debendra Nath Mondal. Vs Ratan in 2008(1) CLJ Cal-912.

Gaya Rajbanshi vs State of West Bengal and Ors reported in 2007 (2) CLJ Cal-P-105

Judgment of the Hon'ble Special Bench in the matter of:

Tulshi Ray Vs Sri Krishnau Roy and Ors.

FMA No-768 of 2007

With

WP 30027 (W) of 2008

Shymal Kumar Jana

Vs

State of West Bengal and Ors.

With

WP. No. 27411 (W) of 2009.

Rabindra Nath Pradhan.

Vs

State of West Bengal and Ors.

The Division Bench of this Court in the case of Debendra Nath Mondal Vs Ratan Kumar Das and Ors (supra) observed as follows:

“Learned Advocate appearing for the respondent Writ Petitioner has opposed this appeal by contending that on 27<sup>th</sup> February 2001, when the secretary of the Managing Committee allowed participation of the appellant in the interview, the judgment passed by the Special Bench in the case Sri Debasis Dutta (supra) was holding the field and it was overruled subsequently in the case Rabindra Nath Mohata (supra). On 7<sup>th</sup> July 2005 and since the Order passed by D.P. Kundu, J (as His Lordship then was) never was an Order allowing participation in the interview but only an order directing to dispose of the prayer of respondent no. 6 for permanent appointment the Secretary of the Managing Committee was bound to reject the application as under the recruitment procedure there was no scope either to absorb someone in a permanent post irrespective of his alleged working on taking a device of backdoor method by regularizing his service or there was no scope to allow participation in the interview as per law applicable in the field.”

In the case of Gaya Nath Rajbanshi Vs State of West Bengal and Ors reported in 2007 (2) CLJ. (Cal) P-105 a Division Bench of this Court observed as follows:

“Hence, it appears that Visweshwara Rao (supra) is a judgment not in personem but a judgment in rem and the same was a judgment declaring the law under Article 141 of the Constitution of India. From the judgment of Visweshwara Rao (supra) it appears that an individual non-sponsored candidate got no right to appear suo motu and/or by decision of the

Managing Committee and/or employer concerned allowing any individual non-sponsored candidate to appear in the interview as per their sweet will unless the right of a non-sponsored candidate for appearance in the interview matures on the contingency of advertisement of the concerned vacancy in the daily Newspapers and/or Employment Exchange notification having a wide publication and/or other media advertisement, radio and television as held by the Apex Court. As a corollary thereof since an individual non-sponsored candidate got no right to appear in the interview simplicitor in the absence of the aforesaid contingency of advertisement of the post in the Newspapers and other media, the High Court also sitting in the Writ Jurisdiction cannot allow the appearance of the individual candidate until and unless there is an advertisement of the particular post inviting the names of the general candidates by publishing the same in the State Wide published daily Newspaper for the reason that allowing of any individual candidate in absence of those contingencies in exercising the power under Article 226 of the Constitution of India would be nothing but an exercise of power which per se violative of Article 14 of the Constitution of India as the other identically placed candidates who may be the next door neighbour of the Writ Petitioner who since could not approach the High Court due to financial stringency or for any other reason would be denied to appear in the interview despite fulfillment of qualification alike the Writ Petitioner. On considering that aspect of the matter, the Apex Court accordingly in the case Visweshwara Rao (supra) opined the right of non-sponsored candidates to appear in the interview only in the contingency when such post would be advertised in the newspaper and/or any employment news publication along with

displaying on the notice boards etc. as has been quoted in paragraph-8 of Arun Kumar Nayak (supra). In the case Visweshwara Rao (supra) the Apex Court accordingly held “Better 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 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.”

In the case of Tulsi Ray Hon’ble Special Bench of this Court observed as follows:

“From the decision of the Supreme Court in the case of Exise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao (supra), quoted by us while dealing with first question, it is clear that the aforesaid direction of the Supreme Court to advertise, being a law declared by it, a valuable legal right accrued in favour of a person having the requisite qualifications for the post concerned to apply for being considered for appointment even if such a person is not sponsored by the Employment Exchange pursuant to the statutory Rules framed by the State in that behalf and the selection without such advertisement has been held to be violative of the fundamental rights

conferred under Articles 14 and 16 of the Constitution. Therefore, if the school authority proceeds to fill up the vacancy without complying with the direction of the Supreme Court, a person not sponsored by the Employment Exchange having requisite qualification can approach the High Court for a direction upon the employer to follow the said direction so that pursuant to an advertisement so given, he can apply for being considered for the post along with other applicants.

A person by taking aid of the said decision can most certainly come to a High Court for enforcing the aforesaid direction. But he cannot approach the Court for permitting him to appear at the selection process on the strength of the said decision of the Supreme Court if he simply prays for permitting him to appear at the process of selection but without praying for direction for giving advertisement with the object of avoiding contest with the others, similarly placed with him, who would also apply pursuant to such advertisement. In our opinion, the High Court in such circumstances should reject his prayer. In the cases before us, all the petitioners prayed for direction for giving advertisement but in the case of Tulsi Roy, the Learned Single Judge did not pass such direction and disposed of the writ-application on the very first day of moving the same. Thus, in this type of a writ-application, it is the first duty of the Court is to see whether the allegations of the writ-petitioner that he has the requisite qualification for the post concerned. If the Court is satisfied on that aspect then it should verify whether the allegation of the writ-petitioner that no advertisement was given was correct or not. After being so satisfied from the materials on record and after giving an opportunity to contest the allegation, the writ-petition should be disposed of by

directing the authority to give advertisement for the post with liberty to the writ-petitioner to apply pursuant to such advertisement.”

Upon perusing the Order passed by the learned trial Court it will appear that although the learned trial Court disposed the Writ applications after granting liberty to file affidavits to the respondents and the respondent no-5, Headmaster Chowdhury Chawk Santimay Siksha Niketan (H.S.) filed affidavits and the State Authorities were also represented at the time of hearing of the matter but learned trial Judge did not pass any mandatory Order but left the issue of approval of panel to be decided by Additional District Inspector of Schools in accordance with law, upon giving opportunity, of hearing to the School Authority and the Writ Petitioner.

As the Additional District Inspector of School was permitted to take decision with regard to approval of panel, he had the authority to either approve the panel or refuse to approve -the panel by citing the reasons.

It appears from the Order of Additional District Inspector of Schools (S.E.) Basirhat Sub-Division that in terms of the Order dated passed in the Writ Application being WP. No-14353 (W) of 2010 with WP 11494 (W) of 2007, that the Additional District Inspector of Schools (S.E.) upon hearing the Writ Petitioner, the Secretary and the Headmaster of Chowdhury Chawk Santimoy Sikhsha niketan School and upon finding the panel in Order approved the said panel. Thus at the time of consideration of panel it was open to the Additional District Inspector of Schools to reject the entire panel, or to cancel the interview of the Writ Petitioner, as he was not sponsored by the Employment Exchange. It is to

be remembered that by the interim Order dated 15-06-2007 passed in WP No. 1494 (W) of 2007 a direction was issued upon the respondent authorities to permit the Writ Petitioner to appear at the interview for filling up the post of Clerk/Group – 'C' staff in Chowdhury Chawk Santimay Siksha Niketan (High School) P.O. Kamarganti, P.S. Haroa and when such an interview is going to be held by the said Authorities and if he is otherwise eligible. It was further clarified that the appearance in interview will create no equity in favour of the Writ Petitioner in getting the Employment and the same to abide by the result of the Writ Petition.

Thus from the interim Order passed in the Writ Application it will be clear, that firstly the School Authorities were directed to allow the Writ Petitioner to appear at the interview if the petitioner is otherwise eligible and the same will not create any equity in favour of the Writ Petitioner in getting the employment. Now the question of eligibility contains different factors, firstly it involves educational qualification secondly with regard to age and thirdly with regard to nationality. Hence when requisition is sent to the Employment Exchange to sponsor candidates whose names are registered in the said exchange of the District the said exchange does the needful after considering the criteria. However, when an application is made pursuant to an advertisement for a post the Employer concerned has to verify the credentials of the applicants to ascertain as to whether the applicants have fulfilled the eligibility criteria similarly when a candidate appears in the interview as per Order of Court the applicant is required to furnish necessary particulars in Order to enable the employer to ascertain as to whether the said candidate is eligible to appear at the interview.

The interim Order dated 16-06-2007 passed by a learned Single Judge of this Court clearly gave the discretion to the School Authority to verify and consider as to whether the Writ Petitioner was eligible to appear at the interview prior to granting opportunity to appear at the interview. Thus it is clear that the learned Judge did not pass any blanket Order directing the School Authority to permit the Petitioner to appear at the interview for the post of clerk. The School Authority after being satisfied about the eligibility of the Writ Petitioner permitted him to appear at the interview. Although no dispute is raised with regard to the educational qualification, age or nationality but the main point of law urged by the Appellant and is required to be decided in this appeal is whether a non-sponsored candidate from Employment Exchange has right to appear in the interview when the said post is not advertised by the employer/School Authority.

Learned Advocate for the appellant in support of his argument relied upon two decisions of Division Bench of this Court namely *Gaya Rajbanshi Vs State of West Bengal and Ors* (supra) and *Debendra Nath Mondal Vs Ratan Kumar Das and Ors* (supra). The Hon'ble Division Bench of this Court in the above matters held that a non-sponsored candidate of employment exchange had no right to appear in the interview unless the said post was advertised. The Hon'ble Division Bench by the said Judgments struck down the selection of the candidate who was not sponsored by the employment exchange and directed that the selection process to be confined on the basis of results of those candidates whose names were sponsored by the employment exchange. Thus a candidate who stood second in the selection test got the opportunity to get

appointed as his name was sponsored by the employment exchange on the other hand a candidate who stood first in the selection test could not be considered for appointment as their names were not sponsored by the employment exchange but appeared for interview on the basis of order of Court or was permitted suo moto by the School Authority. However as there are contrary decisions of division bench of this Court a special Bench was constituted in the matter. The Hon'ble Special Bench while considering the issue formulated the following questions for decision in the said writ application.

1. Whether the principle laid down in the aforesaid case of Excise Superintendent Malkapatam Krishna district A.P versus K.B.N Vishesh Warra Rao, reported in (1996) 6 SCC 216 is applicable also to a case of a government sponsored school.
2. Whether for the post of non-teaching staff of a government-sponsored school, a person whose name has not been sponsored by the employment exchange, can file a writ application thereby praying for allowing him to participate in the process of selection without praying for a direction for advertisement for that post in the newspaper as held by the Supreme Court in the case Excise Superintendent.
3. Whether the West Bengal schools service commission (selection of post of non-teaching staff) rules 2009 is applicable in respect of vacancy where the selection of the selected candidate has been set aside by a writ court for non-compliance of the formalities mentioned by the Supreme Court in the case of Excise Supt (Supra) notwithstanding the fact that the process of initial selection for the

post concerned started at a point of time when the aforesaid rules of 2009 had not come into operation.

The Hon'ble Special Bench observed as follows:

“From the decision of the Supreme Court in the case of Excise superintendent Malkapatnam's, Krishna district , versus K. B. N.visweshwara Rao (SUPRA), quoted by us while dealing with first question, it is clear that the aforesaid direction of the Supreme Court to advertise, being a law declared by it, a valuable legal right accrued in favour of a person having the requisite qualifications for the post concerned to apply for being considered for appointment even if such a person is not sponsored by the employment exchange pursuant to the statutory rules framed by the State in that behalf and the selection without such advertisement has been held to be violative of the fun fundamental rights conferred under article 14 and 16 of the Constitution. Therefore, if the school authority proceeds to fill up the vacancy without complying with the direction of the Supreme Court, a person not sponsored by the employment exchange having requisite qualification can approach the High Court for a direction upon the employerto follow the said direction so that pursuant to an advertisement so given, he can apply for being considered for the post along with other applicants.

A person by taking aid of the said decision can most certainly come to a High Court for enforcing the aforesaid direction. But he cannot approach the court for permitting him to appear at the selection process on the strength of the said decision of the Supreme Court if he simply prays for permitting him to appear at the process of

selection but without praying for direction for giving advertisement with the object of avoiding contest with the others, similarly placed with him, who also apply pursuant to such advertisement. In our opinion the High Court in such circumstances should reject his prayer. In the cases before us, all the petitioners prayed for direction for **giving advertisement** but in the case of Tulsi Roy, the learned single Judge did not pass such direction and disposed of the writ application on the very first day of moving the same. Thus in this type of a writ application, it is the first duty the court is to see whether the allegation of the writ petitioner that no advertisement was given was correct or not. After being so satisfied from the materials on record and after giving an opportunity to contest the allegation, the writ petition should be disposed of by directing the authority to give advertisement for the post with liberty to the writ petitioner to apply pursuant to such advertisement.

We thus answer the second question formulated by us in the negative...”

The Hon’ble special bench while answering the second question which was formulated, in the negative was pleased to observe that a person taking the aid of the decision passed by the Hon’ble Supreme Court in the case of Malkapatnam, Krishna district A. Pvs KBN. Vishesh Wara Rao reported in (1996)6 SCC.216, can most certainly come to a High Court for enforcing the aforesaid direction. But he cannot approach the court for permitting him to appear at the process of selection but without praying for direction for giving advertisement with the object of avoiding contest with others

similarly placed with him who also apply pursuant to such advertisement. The High Court in such circumstances should reject his prayer. The Hon'ble bench was further pleased to observe that in this type of writ application it is the first duty of the court to see whether the allegation of the writ petitioner that no advertisement was given was correct or not. After being so satisfied from the materials on record and after giving an opportunity to contest the allegation, the writ petition should be disposed of by directing the authority to give advertisement for the post with liberty to the writ petitioner to apply pursuant to such advertisement.

Now it is necessary to consider as to whether the decision of the Hon'ble Special Bench in the case of Tulsi (Supra) is applicable to the facts of the case. In the case of Tulsi Roy the learned single Judge while disposing the writ application on the first day directed the school authority to permit the writ petitioner to participate in the process of selection which according to the Hon'ble Special Bench is bad in law. In this matter it appears from record that the petition by the respondent no 1/writ petitioner being WP no. 11494 (W) of 2007 was moved on 15/06/2007 upon notice to all parties, and State of West Bengal was represented on the date fixed and other parties including school authority did not appear. The learned Judge while allowing the writ petitioner to appear at the interview was pleased to observe as follows.

In the circumstances, I am of the clear opinion that in the instant writ petition an interim order can be passed by following the ratio of the decision of division bench of this Hon'ble Court rendered

on 18th May, 2007. I therefore direct the concerned respondent authorities to permit the writ petitioner to appear at the interview for filling up the post of clerk'/Group-C staff in Chowdhury Chawk Santimoy Shiksha Niketan high School P. O, Kamarganti, P. S. Haroa when such an interview is going to be held by the said authorities and if he/she is otherwise eligible. However this will create no equity in favour of the writ petitioner in getting the employment, and the same shall abide by the result of the writ application.'

Thus upon a plain reading of the interim order passed by the learned single Judge of this court in WPNo.11494 (W) of 2007 it will appear that the learned Judge being convinced by following the ratio of the decision of the division bench of this court rendered on 18 May 2007 in Mat No: 4912 of 2006 (ManikChandra Das vs State of West Bengal and others and the judgments of the Hon'ble Supreme Court relied upon passed the interim order permitting the writ petitioner to appear at the interview. As the school authority did not appear on the date of moving the writ application there was no scope for the court to verify as to whether the writ petitioner possessed the required qualification to appear at the interview. Thus the school authority concerned was directed to permit the petitioner to appear at the interview if the writ petitioner was otherwise eligible. The learned Judge was further pleased to direct that the appearance of the writ petitioner in the interview will create no equity in his favour in getting the employment and the same to abide by the result of the

writ application. Hence the learned trial judge kept all the points open to be raised at the final hearing of the writ application.

Thus upon perusal of the interim order passed in WP11494 (W) of 2007 and the observation made by the Hon'ble Special Bench in the case of Tulsi Roy which considered the order passed by the learned trial judge in the said writ application it will appear that the facts of the said case slightly differed from this case. The observation made by the Hon'ble Special Bench and the requirement laid down are partly complied with. It is a settled legal position that a decision is an authority for what it decides and not that everything said therein constitute a precedent. A decision of the court takes its colour from the question involved in the from which it was rendered. Reliance may be placed to the Constitution bench judgment passed in the case of State of Punjab versus Baldev Singh reported in 1999 (6) SCC172. It has been held by the Apex Court in the case of Commissioner of income tax versus sun engineering Works (P) LT D, reported in 1992 (4) SCCP363 at para-39' "judgment have to be considered in the light of the questions which were before the court. A decision takes colour from the questions involved court must carefully try to ascertain the true principle laid down by decision and not to pick out words and sentence from the judgment divorced from the context of the questions under consideration by the court to support their reasoning."

Further it is a settled legal position that one additional or different fact can make a world of difference between the conclusions

in two cases even when the same legal principles are applied in each case.

In the case before us observation made by the Hon'ble Special Bench is considered with the interim order passed by the learned single Judge. The learned Judge except passing an order of making publication in newspaper for the post of clerk in the concerned school gave liberty to the school authority to verify and allow the writ petitioner to appear at the interview if he was otherwise eligible. All points in the said writ petition were kept open. The Hon'ble Special Bench observed that the writ court while deciding a writ petition praying for permission to appear at the interview should verify the eligibility of the writ petitioner and after being satisfied about the eligibility of the writ petitioner direct publication in the newspaper and other media so that the writ petitioner can apply for the post along with others. In the instant case the school authority was not specifically directed to make advertisement. The challenge in the said writ petition was absence of advertisement and an observation was made by the learned Judge in the interim order about the acts of the School authority in not making advertisement for the said post. Thus, it was open to the school authority to give advertisement for large participation of candidates and it was also open to the District Inspector of schools to pass direction upon the school authority to give advertisement so that there was wide choice to the school authority to select a suitable person from large number of applicants.

In the instant case no such steps were taken prior to holding interview nor was any objection raised by the District Inspector of schools at the final hearing of the writ application. Moreover the writ petition WP. NO-14353 (W) of 2007 was disposed along with WPNO-14353 W of 2010 by directing Additional District Inspector of schools to take a decision as regards approval of the panel for group C Post (clerk) in Chowdhury Chawk shantimoy Shiksha Niketan (high School) upon granting opportunity of hearing to the writ petitioner and the school authority. Thus upon hearing the writ petitioner and the school authority and upon perusing the panel the Additional District Inspector of schools decided to approve the panel. In the event the Additional District Inspector of schools was of the view that more participation of candidates were required by advertisement for selecting a suitable candidate or that there was objections from people regarding holding interview without publication by which lot of persons deprived from participating in the interview he had the discretion to refuse the grant of approval of panel and direct school authority to make fresh publication. Moreover no challenge by any person who could not appear in the interview due to non-publication in the newspaper has been made by any representation to the District Inspector of schools or by filing writ application.

The object of making publication in the newspaper is to grant reasonable opportunity to all the persons eligible to participate in the interview and not to deprive any persons whose name do not appear in the employment exchange but are otherwise eligible.

Further by making publication for a post a school or undertaking can select a suitable candidate from a large number of participants. Thus in the absence of any objection from third party who could not appear in the interview due to non-publication and in the absence of any objection from school authority or District Inspector of schools before the trial court or before this court that due to non-publication of advertisement a suitable candidate could not be appointed as there was participation by only 25 candidates and the fact the writ petitioner/respondent No.1 is already appointed in the school and is discharging service for a period of eight and half years it would not be just and proper to strike down the appointment of the writ petitioner/respondent No.1 and direct the school authority to start a fresh selection process.

Upon considering the facts of the case and the decision of the Hon'ble Special Bench in the case of Tulsi Roy and others (Supra) this court with due respect to the Hon'ble special bench is of the view that as the facts of the case differs from that of Tulsi Roy and considering the special circumstance that the writ petitioner/respondent No.1 is already in service for 8 ½ years it would not be reasonable to strike down the appointment of the writ petitioner/respondent No. 1. In the event the appointment of the writ petitioner after serving for 8 ½ years is struck down the school authority will again have to start fresh selection process incurring huge expenditure and the work will also be affected for a considerable period till a new candidate is appointed. Moreover the writ petitioner after serving for a period of 8 ½ years will be thrown

out of employment. Courts should normally refrain from passing orders against any person which will cause extreme hardship to the said person and put him into a helpless situation unless the said person has committed fraud as fraud and justice cannot dwell together and fraud vitiates justice. In the instant case no fraud is committed by the writ petitioner thus no harsh order be passed in the instant case.

Now with regard to the ground raised by the appellant in the appeal although not argued at the time of hearing is that there was large malpractice at the time of interview for the purpose of enabling the writ petitioner/respondent No.1 to succeed in the interview this court is of the view that this is a question of fact and in the event the appellant was aggrieved by such acts of the School authority and Interview Board it was open to him to complain before District Inspector of schools against such malpractice immediately after the interview. The appellant has neither made any representation before the District Inspector of schools regarding malpractice nor moved any writ petition after the interview was held challenging such malpractice. The appellant knowing fully well that he was 2<sup>nd</sup> in the panel chose to come up in appeal after the period of about six months from the date of appointment of the writ petitioner in the concerned school. Even if it is assumed that the writ petitioner was not eligible to appear at the interview as there was no publication the appellant does not become automatically eligible to be selected as fresh selection process is to be initiated by making publication in terms of judgment of Hon'ble Special Bench.

Now the point to be considered and decided is whether in the present facts and circumstances of the case the appellant can be considered and appointed. It appears from record that the appellant was registered in the employment exchange and was sponsored for interview at the age of 40 years. The appellant although did not stand first in the said interview but stood second. During the year 2007 when the interview was held a decision of the division bench of this court in (Gaya Nath Rajbanshi vs State of West Bengal) reported in 2007(2) CLJ (Cal) p105 held that non-sponsored candidates from employment exchange were not eligible to appear for interview unless the post was advertised. Thus in the said case selection was to be confined within the sponsored candidates. Although there were contrary judgments in this regard but the appellant did not move writ application when non-sponsored candidate appeared in the interview by enquiring about the situation or preferring an appeal on the basis of the said judgment when the interim order was passed. The appellant chose to wait for seven years till the appointment process was completed and challenged the appointment of the writ petitioner in the year 2014 when the judgment of the Hon'ble Special Bench became binding precedent. Even if appointment of non-sponsored candidate is held to be bad by virtue of the said judgment the selection process is to start afresh by making necessary publication. Thus there is no scope for the sponsored candidates who stood 2<sup>nd</sup> to be selected for appointment as the judgment of the Hon'ble Special Bench is to be followed and fresh process of appointment is to be initiated by publication in newspapers.

Considering the special circumstances of this case that the appellant was a sponsored candidate from the employment exchange and stood second in the panel and the judgment of the division bench of this court in Debendra Nath Mondal (supra) and (Gaya Nath Rajbanshi) (supra) which held a non-sponsored candidate had no right to appear at the interview unless the post was advertised the appellant having stood second in the panel had the right to be selected for appointment to the exclusion of the writ petitioner by virtue of the said decisions. However there are contrary decisions and the subsequent decision of the Hon'ble special bench came in the year 2011. It can be said that the appellant proceeded with a legitimate expectation. Upon further consideration of the fact that the name of the appellant was sponsored when he was 40 years old and the fact that the appellant pursuant to the appointment of the writ petitioner preferred this appeal and is now about 56 years age the appellant should be appointed in the event there is vacancy in the post of clerk in the school. However if there is no vacancy a supernumerary post of clerk should be created and the appellant should be appointed in the said post.

Thus this appeal stands disposed by affirming the order dated 10 January 2014 passed in WPNO14353 (W)2010 and the appointment of the writ petitioner/respondent No. one in the post of clerk in Chowdhury Chawk shantimay Shiksha Niketan and with the direction upon the respondents to appoint the appellant in the event there is vacancy in the post of clerk in Chowdhury Chawk Shantimoy Shiksha Niketan within eight weeks of communication of

the Order and in the event there is no vacancy supernumerary post of clerk be created by Sec Department of Education (schools) State of West Bengal and the appellant appointed within the aforesaid period. Notional pay scale be fixed by treating the appointment from the date when the writ petitioner was appointed. The school authority shall intimate the District Inspector of schools (secondary education) North 24 Parganas as to whether there is vacancy or not, within three weeks of communication of the Order.

The appeal stands disposed.

**I agree**

**(I.P. MUKERJI, J)**

**(BISWAROOP CHOWDHURY, J)**