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**(1982) 07 CAL CK 0029**

**Calcutta High Court**

**Case No:** None

Dr. Baidyanath Mukherjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

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**Date of Decision:** July 29, 1982

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 226, 234

**Hon'ble Judges:** Bankim Chandra Ray, J

**Bench:** Single Bench

**Advocate:** Somnath Chatterjee and Samir Kumar Ghosh Respondent No. 10, for the appearing parties; Saktinath Mukherjee, Satyajit Banerjee, Tapas Kumar Mukherjee and Smt. Bharati Chatterjee, Pulak Ranjan Mondal for the College Service Commission, for the Respondent

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### **Judgement**

Mr. Justice Bankim Chandra Ray

1. This is an application for vacating the interim order passed by this Court on 11.8.81, filed by Respondent No. 10, Dr. Jayanta Kumar Banerjee. It has been stated in the petition that Respondent No. 10 was appointed temporarily as the Principal of Bijoy Narayan Mahavidyalaya on the basis of the selection made by the College Service Commission. The interim order that was made by this Court at the time of issuance of the Rule on 11.8.81 was in the following terms : -

There will be an interim order restraining the respondents from making any appointment to the post of Principal of Bijoy Narayan Mahavidyalaya, Itachuna, Hooghly, for three weeks from to-day with liberty to pray for extension of the interim order on this application with notice to the respondents.

The application for variation of the interim order which was affirmed on 25.1.82 was filed on 18.2.82.

2. Mr. Chatterjee, learned Counsel appearing in support of the application, has submitted before this Court that the interim order stood vacated in view of the provisions of Article 226(3) of the Constitution of India inasmuch as after the filing of the application on 18.2.82 the application was not heard within two weeks as required under the provisions of Article 226(3) of the Constitution and as such the interim order died its natural death, or in other words, is no longer in existence. It has been next submitted by Mr. Chatterjee that the list that has been prepared after holding the interview of different candidates by the College Service Commission, was not prepared on the basis of merits and as such even if it is assumed without admitting that the name of the petitioner of the original writ petition, viz., Dr. Baidyanath Mukherjee though appears in Item No. 1 in the selection list, that does not entitle him to get any preference in the matter of appointment of Principal over all other candidates including Respondent No. 10 who had also been selected by the College Service Commission for being considered for appointment in the post of Principal in Government-Sponsored-Colleges. It has been thirdly submitted that true that the petitioner of the writ petition had indicated in his application which he filed pursuant to the advertisement made by the College Service Commission for empanelment of the candidates for appointment of Principal in Government-Sponsored-Colleges, the petitioner expressly mentioned his option for being appointed as Principal in the "Bijoy Narayan Mahavidyalaya at Itachuna" or any other place nearer his permanent residence, but this does not enjoin that the authorities concerned are to give him appointment as Principal in the Bijoy Narayan Mahavidyalaya. It is a mere option that was asked for in the advertisement inviting application made at the instance of the College Service Commission. Therefore, it has been submitted that the petitioner's claim for appointment in this particular college as Principal has got no legal basis nor the authorities concerned can be compelled to issue appointment letter in favour of the petitioner in this particular college. It has been submitted by Mr. Chatterjee that the balance of convenience and inconvenience is also in favour of vacating the interim order as it has been submitted with great perseverance by Mr. Chatterjee that the petitioner has been working as a Principal in Assansol College whereas Respondent No. 10 is not working anywhere and this particular college at Itachuna is without a Principal even though the College Service Commission had asked the college at Itachuna to appoint Respondent No. 10 as Principal and an appointment was made by the President of the Governing Body of the College on 13.8.81 but in view of the interim order made by this Court the President by his letter dated 13.8.81 intimated Respondent No. 10 not to join service till the interim order is vacated or the matter is finally disposed of. It has been, therefore, urged by Mr. Chatterjee that the balance of convenience and inconvenience is in favour of vacating the interim order. Mr. Chatterjee went to the extent of urging before this Court that this high prerogative writ jurisdiction should not be made as "discriminate use" of and as such the interim order should be vacated. He further submitted that if any interim order is made it should be made in the form that the appointment be given but it

will abide by the result of the Rule. Mr. Chatterjee has also dealt at length by referring to the averments made in paragraph 5 of the writ petition where the petitioner has stated that he has come to know that the Service Commission after interviewing various candidates who appeared before Commission prepared a list and in order of merit the name of the petitioner was placed in Item No. 1. Mr. Chatterjee submitted that the averments of this paragraph has been made as true to his knowledge. But nothing has been said from which this knowledge has been derived. In this circumstance this averment is not to be taken into consideration. It is a mere case of suspicion, as such on a mere plea of suspicion this Court should not make any interim order. It has been further submitted by Mr. Chatterjee that there is no representation before the College Service Commission by the petitioner and the representation that has been made to the Secretary, Education Department, Government of West Bengal as well as to the Chief Minister to this matter by the petitioner does not amount to demand of justice which is an essential pre-requisite in coming to this Writ Court with a prayer for a Writ in the nature of Mandamus and as such this essential pre-requisite having not been complied with, the writ application and for that the interim order should not be allowed to continue at all and the same should be vacated immediately, if in case it is held that the interim order is continuing. Lastly, Mr. Chatterjee has submitted that the decision cited on behalf of the petitioner, viz., that even if it is assumed that interim order has lapsed as the application for variation of the interim order was not heard within a period of two weeks from the date of filing the said application, there is no application before the Court for issuance of a fresh interim order and the only application before this Court is this application for vacating the interim order and as such the question of issuing a fresh interim order cannot and does not, under any circumstance, arise.

3. I am really sorry to say at the out-set that the scope and amplitude of writ jurisdiction and its applicability have been well settled by several pronouncements of this Court as well as of the Supreme Court. It is too late in the day to urge before this Court where this writ jurisdiction is to be exercised and to caution the Court that there should not be an indiscriminate use of this jurisdiction. It is the basic and cardinal principle of Article 226 of the Constitution which confers its extraordinary jurisdiction to prevent illegal interference, arbitrary action, and unreasonable orders affecting the rights of the parties; does not matter whether the order is made by a quasi-judicial tribunal or by an administrative authority, and it is well-settled by the latest decision of the Supreme Court in the case of (1) Fertiliser Corporation, Kamagar Union v. Union of India, reported in AIR 1981 SC 344 that a person whose proprietary right or whose legal right has not been apparently affected but when it is found that he is really aggrieved, such a person can come before this Court for redress of his grievances and it is within the jurisdiction of this Writ Court to afford appropriate relief if it is of opinion that the person has been aggrieved by an order of an administrative authority. I do not want to deal with this matter any longer.

4. Now coming to the question whether this interim order has died its natural death or not in view of the provisions of Article 226(3) of the Constitution, it is necessary to state that because of the large number of writ applications interim orders issued by this Court for a limited period, even though the matter is appearing in the list for days together, cannot be taken up for consideration. It is also equally correct some time back, because of the business of the Court being overcrowded, cannot be taken up in time and that is why undoubtedly in several Writ Courts there was an indication given at the top of the list that interim orders which were granted for a limited period and matters which are due to appear or are appearing in the list, shall be taken to be continuing. Assuming for argument's sake that the interim order has died its natural death in view of the provisions of Article 226(3) of the Constitution, even then there is no bar nor is this Court bereft of jurisdiction in issuing a fresh interim order if the Court finds that such an interim order is imperative and is necessary in aid of doing or rendering justice for the redress which has been asked for in the writ application. Therefore the Division Bench decision that has been cited by Mr. Saktinath Mukherjee appearing on behalf of the petitioner in (2) [Bokaro and Ramgur Ltd. Vs. The State of Bihar](#), is also binding on this Court, that this Court is not powerless if it appears to this Court just and proper in aid of the final decision of the Rule to issue fresh interim order in the manner and in accordance with the terms which appear to this Court just and fair and which will promote justice instead of hampering justice. Therefore, it is pertinent to consider the broad and salient facts of this case.

5. An advertisement was issued undoubtedly by the West Bengal College Service Commission inviting applications from candidates desirous of being empanelled for vacancies in the non-Government Colleges for appointment to posts of Principal. In its advertisement in Item No.11 it has been mentioned "preference of area of service" may be stated in the application. The petitioner pursuant to this advertisement undoubtedly made an application and Respondent No. 10 and other candidates also applied for being empanelled. Interviews were taken by the members of the College Service Commission who have been impleaded as Respondent No. 3 to 7 in the writ application. A panel was prepared wherein the name of the petitioner and undoubtedly the name of Respondent No. 10 amongst others do find place. It has been stated an oath in paragraphs 8 and 9 of the writ application that the petitioner gave the preference for area of service to Bijoy Narayan Mahavidyalaya or any other place nearer to his permanent residence in the said application made before the Service Commission. It has been further stated in paragraph 9 of the said writ application that in the panel of selected candidates for appointment as Principals in different Non-Government Colleges he has been placed at the top of the list. That has been prepared by the College Service Commission and according to the available information the petitioner was placed at the top of the list. It has been further stated on oath that unfortunately he was not being appointed to the post although persons placed below him were given

appointments in different Colleges and the petitioner wrote a letter to the Secretary, Department of Education, requesting to exercise his good office so that justice may not be denied to him and his name be duly recommended as Principal of Bijoy Narayan Mahavidyalaya, Itachuna, according to his preference for the same.

6. Now, the first question that requires to be decided is whether on these facts taken together including the representation that has been made by the petitioner which has been annexed as Annexure C to the writ petition, it can be said that there has not been a demand of justice, I am sorry that I am unable to hold in the circumstances that the petitioner has not demanded justice and on this technical plea the petitioner's writ application or for that the prayer for interim order has to be rejected in limine, even though there are merits in the contention raised in the writ application. In my opinion, all these facts together do clearly amount to demand of justice, and no reply being given the natural conclusion is that justice has been denied. Therefore, I am of opinion that the pre-requisite as to demand of justice has been in substance duly complied with. The next question that arises for consideration which is vital in this case is whether the standard that has been laid down in the aforesaid advertisement has been followed by the authorities concerned viz., the College Service Commission while sending the name of Respondent No. 10 to Itachuna Bijoy Narayan Mahavidyalaya for favour of issuing appointment letter to him. It is well-known that acts done by the Selection Committee which is a public body must be done, even in the matter of giving employment, fairly, reasonably and totally devoid of any arbitrariness. The petitioner has stated on oath that his name stood first in the list of selection in order of merit. There is no whisper in the whole application for variation of the interim order sworn by Respondent No.10 either denying or in any way controverting this vital statement made in paragraph 9 of the writ application. It is also very curious that Mr. Pulak Ranjan Mondal, learned Advocate appearing on behalf of the members of the College Service Commission who, it is admitted that the copy of the writ application was served on him as early as on 18.8.81, did not find time to deal with this material allegation which is very vital, nor has the time to ask his client to produce the relevant papers so that this Equity Court can see what is the real position. If this allegation not denied, then what does it come to" The statement of the petitioner that his name was appearing in the selection list prepared by the members of the Selection Committee in order of merit at the top remains uncontroverted. If that be the position, does equity, justice and fair-play require that in the matter of public employment the statutory authority has to act in a manner which will not only be fair and reasonable but which will seem to be fair, reasonable and devoid of arbitrariness. I fail to understand how a person who has been selected in order of merit at the top of the list of selected candidates will be denied consideration of his case for appointment of Principal and others who are below him will be given preference. If this is not arbitrariness, if this is a sample of equity. I fail to understand what is discrimination, what is inequality. Article 14 of the

Constitution and also Article 16 of the Constitution which embodies in Part III of the Constitution the fundamental rights of the citizens that there must be equality and fair treatment in the matter of employment in Government offices, it has been observed by the Supreme Court that arbitrariness and/or unreasonableness is the other name of inequality which is contrary to the spirit embodied in Articles 14 and 16 of the Constitution. Therefore, I am not inclined to accept the argument, that because the petitioner's name stood in order of merit in the first position, his name should be passed over, should be overlooked and other candidates will be recommended for appointment by the College Service Commission. The College Service Commission is a statutory body. It has been formed, I think, with the purpose of fair and proper and not arbitrary selection of candidates for being appointment as Principals and that is the spirit and sole object which played with the mind of the legislature while enacting the College Service Commission Act, 1978. Therefore, the refusal to consider the claim of the petitioner for appointment is undoubtedly an act of arbitrariness, an act not justified by reason nor justified by the principle of equal treatment in the matter of public employment. Statutory body has been given powers to select candidates, but the power is to be exercised in a manner, which is justifiable, which is reasonable, which is not tainted with unfairness, unreasonableness or arbitrariness. It is necessary to consider another question which is inexplicably connected with this is that in the advertisement there is a requirement viz., that candidates can give their option regarding area of service. This cannot be said to be a mere formal requirement. The petitioner who is also working as Principal of the Assansol college has given his option and according to the terms of the advertisements, I am constrained to hold, the authorities cannot according to their sweet will and pleasure do away with this requirement which they had laid down in the advertisement aforesaid. Many a decision have been cited at the Bar by Mr. Mukherjee but Mr. Chatterjee, an eminent Counsel, has stated that these principles are well-known. I shall simply repeat this that an administrative authority or a public authority is bound to comply with the standard which it has laid down while inviting applications for employment to the public place. I cannot but quote a very lucid and tense observation made by Mr. Justice Bhagwati in (3) [Ramana Dayaram Shetty Vs. International Airport Authority of India and Others](#), at page 1635, paragraph 10. It is in the following terms: -  
It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

The observation has been made by the learned Judge relying on an observation of Mr. Justice Frankfurter in the case of (4) *Vitarelli v. Seaton*, (1959) 359 U S 535. I have also held in the case of (5) [Barun K. Sinha and Another Vs. District Magistrate, Murshidabad and Others](#), after considering several pronouncements of the Supreme Court that the standard that has been laid down by the administrative

authority in the matter of distribution of contract is to be observed otherwise its action will be invalid. It is pertinent to refer in this connection with the decision of a Division Bench of this Court in (6) State of West Bengal v. Tapan Kumar Sen, reported in 86 CWN 121. In this case it has been observed by Mr. Justice M. M. Dutt in the following terms: -

Although the State Government has the absolute right in the matter of appointment of Munsifs, it cannot act arbitrarily or capriciously without reasonable ground. Article 234 cannot confer a right on the State Government to proceed in a manner violative of Article 14 and 16(1) of the Constitution.

Therefore, on a conspectus of these decisions referred to hereinbefore, I am constrained to hold that the interim order that was made by this Court is re-issued in similar terms till the disposal of the Rule and the application for variation or vacation of the interim order is summarily rejected.

7. As the matter is urgent because this Court is not unmindful of the fact that it involves the appointment of a Principal of the College, I fix this matter main Rule for hearing on 18.8.82.

8. Mr. Chatterjee with his junior has also appeared for Respondent No. 10. Mr. P. R. Mondal appearing for Respondent Nos. 3 to 7. Copy of the rule need not be served on them.

9. Petitioner will put in cost for service of the rule by special messenger by Monday next. Office will take expeditious steps for service of the rule by special messenger on Respondent Nos. 1, 2 and 8 as early as possible so that the rule may be ready as regards service and can be taken up for hearing on the date fixed. The respondents may, if they so desire, file their affidavits within 10 days after the date of service of the rule.

10. Before concluding it is pertinent to deal with one submission of Mr. Chatterjee, viz., that as no fresh application for issuance of interim order has been made the Court is powerless even though it has jurisdiction to issue a fresh interim order. This submission of Mr. Chatterjee I am unable to accept because the terms of the interim order was that the interim order was granted for a limited period of three weeks with liberty to pray for extension of the interim order on this application with notice to the respondents. Therefore, the writ application contains the prayer for interim order and on consideration of that this Court is within its jurisdiction and competence to pass fresh interim order. Therefore, this submission is not sustainable.

As prayed for, let A.O. be filed by the appearing respondents by 11.8.82 and A.R. by 17.8.82.