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**(1990) 02 CAL CK 0039**

**Calcutta High Court**

**Case No:** Civil Order No. 6959 (W) of 1988

Health Service Association

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** Feb. 16, 1990

**Acts Referred:**

- Constitution of India, 1950 - Article 309
- West Bengal Public Service Commission (Exemption from Consultation) Regulations, 1955 - Regulation 10

**Citation:** (1993) 2 ILR (Cal) 429

**Hon'ble Judges:** Mahitosh Majumdar, J

**Bench:** Single Bench

**Advocate:** Moloy Kumar Basil, Dilip Kumar Haider and Aurobinda Sen, for the Appellant; Samaresh Banerjee and Anjali Chowdliury, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Mahitosh Majumdar, J.

1 Health Service Association, West Bengal (for short the "writ Petitioner" hereinafter), is an association of persons belonging to the West Bengal Health Services, Government of West Bengal, registered under West Bengal Societies Registration Act, 1963, is the writ Petitioner. The object of the writ Petitioner, inter alia, states in the manner following:

safeguard the interest of the Health Service officers, to encourage healthy atmosphere and social co-operation amongst the members and the public, to improve the standard of medical education, to establish and. maintain good relations with fraternal organisations in the country, - to promote advancement of medical science and research amongst the members and to arrange conferences and meetings relating to the members" interest etc.

2. Any Medical Officer of Health Services is eligible for membership of the writ Petitioner. No formal order of recognition was necessary as would be evident from the relevant correspondence between the writ Petitioner and the Respondents. The facts of the case, in brief, are stated hereunder.

3. By an order issued, vide memo No. H/MA/1749/85- -10/88 dated April 30, 1988, two posts, i.e. Director of Medical Education, West Bengal, and Director of Health Service were created in the scale of Rs. 2500 to Rs. 2750 with the intent of giving re-employment to Dr. K. Bhalta-charyya for brevity, Respondent No. 4 hereinafter, the Director of Health Service who was due to retire on that very date, i.e. on April 30, 1988, when the aforesaid order was issued. By Notification No. Health/MA/1755/85-10/88 dated May 2, 1988, the Respondent No. 4 has been re-employed as Director of Medical Education, in addition to his own duties, as Director of Health Services with effect from the same date of his retirement thus depriving many incumbents capable of holding the said post of Director of Medical Education. The new post of Director of Medical Education has been created when the Respondent No. 4 was superannuated but surprisingly was reemployed depriving a numerous suitable Medical Officers available in the West Bengal Health Services in clearest deviation of the principles laid down in the Government Order No. Estt/7012/Admn/IP-69/66 Pt. I dated December 21, 1967.

4. Further by memo. No. 431(5) PAR (GENL) dated August 6, 1977, issued by the Chief Secretary, in supersession of all previous administrative instructions on the question of re-employment laying down in the principles in the manner following:

(i) Unless special reasons exist, a Government employee must retire at the age of 56-60 years which is the prescribed age of superannuation under the present rules. A Government employee may, however, be reemployed if such a course is found to be unavoidable. A Government employee should not be re-employed for his personal benefit and re-employment must be in the public interest.

(ii) The Department/Officers concerned are to arrange substitutes well in advance for the Government employees who are due to superannuate. Such attempt should normally begin between one year and six months prior to superannuation depending on the nature of the post.

(iii) No one should be re-employed so long as a suitable officer can be found as substitute. When a suitable serving officer is not available, the superannuated officer may be granted re-employment for six months and attempt should be made to select the substitute.

(iv) If a Government employee with expert qualification or experience be considered indispensable for any post, he may be re-employed for more than six months for such time as may be necessary to find a suitable substitute.

(v) A Government employee on re-employment by a State/Public Sector undertaking should not be kept in employment beyond 60 years of age without the prior approval of the Cabinet.

(vi) Each case of re-employment which may be sponsored by the Department in terms of the aforesaid, guidelines, should be taken to the Cabinet with the approval of the Minister-in-Charge of, the Department concerned and the views of the Finance Department.

This should be circulated for the guidance of all concerned subordinate officers including public sector undertaking etc.

5. In this context, the Petitioners further pointed out that even Mr. Jyoti Basu, Chief Minister of West Bengal, by his D.O. No. 5566 / (42) dated October 1, 1962, clearly stated that such cases of indiscriminate re-employment after superannuation is curtailing the promotional scope of other suitable incumbents which is not a happy state of affairs. The letter being No. 5556/(42) dated October 1, 1982, is quoted below:

This is regarding re-employment of retired Government servants in Government and various Government controller institutions.

As you know, it is our policy not to encourage re-employment in view of the mounting members of the unemployed. I recognise there may be need here and there for re-employment when substitutes are not available. However, a number of cases have come to my notice in which the proposals for re-employment have been initiated because of some lapse in preparing the recruitment rules or delay in initiating steps for filling up the post. There cases where persons" are re-employed without prior approval and the re-employment has to be approved as a fait accompli. Moreover, such indiscriminate reemployment " of superannuated officers is curtailing the promotion scope of others. It is not a happy state of affairs. I would request you to direct all officers under your control to take advance that arises in normal course. The officers may also be advised to give their suggestions for filling up the vacancies by suitable officers in time.

I seek your co-operation in the matter without which the policy of the Government in this regard will only remain on.

6. The Respondents did not take any steps before the date of retirement of the Respondent No. 4 i.e." April 30, 1988, for selecting a suitable and eligible person from amongst numerous Medical Officers. Re-employment given to the Respondent No. 4 violates all the Government Orders aforesaid, in particular, the Order dated August 6, 1977, and also the D.O. letter dated October 1, 1982, of the Chief Minister. Re-employment given to the, Respondent No. 4 by the Respondents is in excess of jurisdiction, and thus the power conferred upon the Respondent No. 4 to hold the two posts cannot be exercised by the Respondent No. 4 inasmuch as he was or is

not legally entitled to hold the said two posts. It appears that, the Respondent No. 4 has been re-employed to the post of both the Director of Health Services and the newly created post of Director of Medical Education, West Bengal, for his personal benefit and not-in the public interest and also no special reason existed for his re-employment to the said two posts, despite the fact that there are many officers in- the Special Selection Grade" who have requisite qualifications and experiences, as for example, the Respondent No. 5 not only a Special Selection Grade Officer holding the rank of Professor in the paediatric Department but also possesses Post-Graduate qualification with requisite experience to hold the post of Director of Medical Education and such re-employment of the Respondent No. 4 in violation of the principles laid down in the memo. No. 431/(50)-PAR(Genl.) dated August 6, 1977, and the clear direction of the Chief Minister contained in his D.O. No. CM/5566/(42) dated October 1, 1982, to the posts of Director of Health Services and Director of Medical Education, West Bengal, (the newly created post) is illegal, mala fide, without any application of mind and in excess of jurisdiction and in contravention of the, aforesaid Government Orders. The writ Petitioner by referring to the representation dated March 31, 1988, before the date of retirement of the Respondent No. 4 to the Minister-in-Charge, Department of Health and Family Welfare, Government of West Bengal, i.e. long before the re-employment, categorically claimed and pointed out that the Health Service Association came to learn that a proposal regarding re-employment or extension of service of the Respondent No. 4 after his Superannuation was under consideration by the Government; it clearly reveals that such an action of Respondents in giving re-employment to Respondent No. 4 is or was done in gross violation of established principles and rules of the Government and is an instance of favouritism by the State Government. The writ Petitioner claimed that such action of re-employment of the Respondent No. 4 to the two posts given, a large number of Selection Grade Medical Officers was published in the "Statesman" on "May 5, 1988, causing frustration among the senior Health Officers eligible for the said post." By this illegal way, the Respondent authorities again gave re-employment to Dr. Ajit Kumar Dutta, the Respondent No. 5 herein on February 28, 1984, and such re-employment being challenged before this Court, whereupon Basak J. was pleased to grant interim order to the effect that Dr. A. K. Dutta should not function to the said post of Director of Health Services (Administration) which order was later on modified and/or varied by Basak J. on June 8, 1984, directing that the decision of the Cabinet regarding such re-employment to be followed by issuing a formal order thereon. The writ Petitioners asserted that the appeal against that order having being preferred, the learned Judge of the Appeal Court were pleased to direct that before giving any further extension of service to Dr.. A.K. Dutta, the State Respondents shall consider the representation of the Petitioner No. 1 and also the memo No. 431/(50)-PAR(Genl.) dated August 6, 1977, as also the letter of the Chief Minister dated October 1, 1982, in F.M.A.T. No. 2162 of 1984. The Petitioner submits that in view of the purported re-employment the State Health Administration would suffer

and such re-employment of the Respondent No. 4 has been made without consultation with the Finance Department and prior approval of the Government which is violative of the Government Order and the principles laid down in Government Order No. Estt/3808/OP-2/68 dated April 30, 1988, and such other memoranda issued thereon and thus the powers assigned and/or conferred to the said two offices cannot be exercised by the Respondent No. 4 inasmuch as he was or is not legally qualified person to hold the said offices. The Petitioner further submits that the Respondent No. 4 was re-employed to the two posts purely for his personal benefit and not in public interest! and that prior and/or advance action/step should have been taken at least six months ahead of the Respondent No. 4's superannuation as envisaged in the Government directives and/or orders as mentioned aforesaid and not taking any such steps and further giving re-employment to the Respondent No. 4 is clear violation of the directions and/or orders mentioned in the different notifications and/or circulars as noted above.

7. Re-employment of the Respondent No. 4 constitutes an arbitrary blockage of promotional prospect or promotion of the Special Grade Officer of the service in question. This also completely affects the public interest.

8. In the affidavit-in-opposition affirmed on behalf of the Respondents Nos. 1 to 4 i.e. the State Respondents on September 16, 1988, the State Respondents categorically denied that there was no necessity to bifurcate the Directorate of Health and Family Welfare-into two different Directorates, viz. the Directorate of Health Services and the Directorate of Medical Education nor the post of the Director of Medical Education was created to accommodate the Respondent No. 4. The State Respondents state that the necessity of affecting a major re-organisation in the Health Administration was keenly felt as the cadre of Health Services has grown bigger for which expansion and improvement of services was also felt and it became necessary to create the new post to the Health Services. It further states that the ultimate decision in this respect was taken on the verge of retirement of the Respondent No. 4 is a mere coincidence and not a contrived affair to favour a particular person. The Respondents contended that the State Administration has every right to create a new Directorate and also to create a new post as the present one. The Respondents further submit that because of the necessity for affecting a major re-organisation in the Health Administration of the State and for attending to the problems of Medical Education, a proposal was made by the Health Secretariat for creation of a separate teaching cadre, and while making such a proposal which was so genuinely felt that the Respondents thought it desirable to retain the services and expertise of the Respondent No. 4 who has got wide experience both in the administration and the teaching fields and such a re-employment of the Respondent No. 4 will be in the public interest as the State Government would get the benefit of the experience of the Respondent No. 4 and that the post of Director of Medical Education was created for development of appropriate infrastructure at the Head Quarters, for streamlining the Medical Education and also monitoring the

demands at the very initial phase of a competent senior Medical Teacher and that creation of the said post as well as re-employment of the Respondent No. 4 was placed before the Cabinet meeting on April 28, 1988, and duly approved by it. The State Respondents further claimed that since the date of reemployment of the Respondent No. 4 by Notification dated April 30, 1988 to act for both the posts, the Respondent No. 5 has been functioning to act for both the posts of Director of Health Services as well as Director of Medical Education by the orders of the Governor by a further Notification dated May 2, 1988, as mentioned earlier. In fact, by and under a Notification dated April 30, 1988, one Dr. Arunansu Dutta has been functioning as Director of Health Services when the Respondent No. 4 was no more discharging the duties of the Director of Health Services and the re-employment of the Respondent No. 4 has been made with the approval of the Cabinet in consultation with the Finance Department not for the benefit of the Respondent but under exceptional circumstances for public interest, and as the post of Director of Medical Services was created newly, there was no scope for making process of selecting an incumbent immediately although such two posts are obviously selection posts, yet mere eligibility and seniority for appointment to such posts cannot be the only criteria for filling up those posts. The State Respondents further claimed that the administrative experience of the Respondent No. 4 was certainly much more than the Respondent No. 5. The Respondents claimed that the Respondent No. 4 had been re-employed to the posts in public interest and not a favoured child of the authorities concerned or his re-employment was violative of all the canons of law. The Respondents further asserted that as the process of finding out of a suitable incumbent till the date of superannuation of the Respondent No. 4 was not complete, the Respondent No. 4 was given to act for both the posts of Director of Health Services and Director of Medical Education (a newly created post) on ad hoc basis and by way of stop-gap arrangements as will be evident from the fact that additional duties as Director of Health Services was for two months only. Further, it was stated that the decision taken by the Government as a matter of policy for administrative convenience and in the interest of the public for which some reservations may have by a few citizens but that does not either make such decision illegal or unreasonable when such decision is taken in lawful exercise of power for administrative convenience and in public interest. The Respondents contended that the order of the Hon'ble Appeal Court dated August 16, 1984, was not against the State Government nor the Court ever came to any finding that the re-employment of the Respondent No. 5 was illegal or arbitrary.

9. In the affidavit-in-reply the writ Petitioner stresses that the submissions and/or allegations made in the said affidavit-in-opposition by the Respondents lacks in material particular and the Respondents have deliberately suppressed the material facts involved in the case. The writ Petitioner further claimed that the need for so-called expansion was felt only when the Respondent No. 4 was on the verge of retirement and to provide him with the re-employment and not for any other

considerations as allegedly the State Respondents. It is strange that the State Government woke up to the necessity of creating a new post by way of bifurcating the Health Directorate on the eve of retirement of the Respondent No. 4. In this context, the writ Petitioner pointed out that the State Government felt that the Respondent No. 4 was the only person capable of manning the post of Director of Medical Education whereas there were at least 200 capable and eligible Medical Officers who could man the said post, as for example, Dr. Ajoy Chandra, Director of the Institute of Post-Graduate Medical Education and Research, and the Dean, Faculty of Medicine, as also the Respondent No. 5, Professor of Paediatrics, Institute of Post-Graduate Medical Education and Research, Calcutta, and not even Dr. Chhetri who had much more experience in the field of both Medical Education, and Administration than the Respondent No. 4. The writ Petitioner denies the statements of the Respondent No. 4 that till the date Dr. K. K. Bhattacharyya, the Respondent No. 4, has been functioning" as the Director of Health Services as alleged. The writ Petitioner took up the stand that the impugned Notifications dated April 30, 1988, and May 2, 1988, have been issued giving a go-bye to the Rules and norms relating to the re-employment of superannuated persons as well as in violation of the provisions of Arts. 14 and 16 of the Constitution of India. The writ Petitioner further claimed that it was a deliberate misrepresentation of fact that such appointment of the Respondent No. 4 was a temporary period purely on stop-gap measure as alleged. Moreover, the Respondents have very clearly avoided to give clarification as to why proper steps have not been taken before-hand by the State Government in selecting proper and suitable persons for the posts in terms of Government memo. No. 431/(50)-PAR(Genl.) dated August 6, 1977, and the Chief Minister's direction dated October 1, 1982. In the supplementary affidavit, the writ Petitioner claimed that during the pendency of the case, before this Court on the subject-matter of the Respondent No. 4's re-employment after superannuation, the State Respondent by a further Notification No. Health/MA/1563/B-10/88 dated April 28, 1989, extended the period of re-employment of the Respondent No. 4 to the post of Director of Medical Education and ex officio Secretary to the Health and Family Welfare Department, Government of West Bengal. On being pointed out by the learned Counsel appearing for the State Respondents submitted that when a separate order has been made, fresh cause of action has arisen. So a writ petition is to be moved before this Court, on which the writ Petitioner asserted that the aforesaid submissions of the State Respondents is fallacious and baseless inasmuch as the subsequent order dated April 28, 1989, is mere an extension order of re-employment of the Respondent No. 4 made in 1988 ; so the question of any fresh cause of action does not arise. The writ Petitioner submits that the extension of re-employment of the Respondent No. 4 is disrespectful to this Court, and such an order of extension as made on" April 28, 1989, should not have been made without the leave of this Hon"ble Court when the very subject-matter of re-employment is pending before this Court.

10. Mr. Moloy Kumar Basu, after presenting the facts of the case as indicated above, claimed the re-employment of the Respondent No. 4 was neither in public interest nor the same was made after proper application of mind. Mr. Basu further referred to and relied on the letter No. HSA/95/88 dated March 31, 1988, being Annex. "F" to the writ petition and claimed that the writ Petitioner by the said letter recorded that they were given to understand that the "State Government was considering a proposal of offering reemployment or extension of service of the Respondent No. 4 after his superannuation, and if the same was found to be "true, that would be an instance of favouritism vis-a-vis violation of established rules of the Government. A request was made to the effect that the Government should refrain from committing such act of favouritism at the cost of morale of the Medical Officers of the West Bengal Health Service and the highest post in the Directorate should not be denigrated to a piece of bargaining.

11. Further reference was made to Annex. "B" to the affidavit-in-opposition filed on behalf of the Respondents Nos. 1 2 and 3 being the order No. Health/MA/2526/IM-99/88 dated June 30, 1988, appointing Dr. Arunanshu Dutta of the West Bengal Health Service then employed as Chief Medical Officer of Health, Howrah, to act as Director of Health Services, West Bengal, with effect from the date of his joining the post.

12. Mr. Basu also referred to the appeal proceedings being F.M.A.T. No. 2141 of 1988 against the order dated June 29, 1988, passed by this Court and, further, placed reliance on the order passed by the Appeal Court on July 4, 1988. The Appeal Court modified the interim order to the following effect:

The Respondent No. 4 should not hold the post of Director of Health Services, West Bengal, but as the post of Director of Medical Education, West Bengal, has been created very recently in bifurcating the Health Directorate, the Respondent No. 4 may hold and continue with the post until a new incumbent is selected and appointed to the said post by the State Government and such selection of the new incumbent to be made by the State Government and such selection of the new incumbent to be made by the State Government within the period as may be fixed by the learned trial Court.

13. Thereafter the hearing of the matter was taken up and continued for a number of days when this writ application was pending before this Court. /

14. The Secretary, Department of Health, and Family Welfare, by his Notification No. Health/MA/1563/88-I/0/88 dated April 28, 1989, extended the term of re-employment of Dr. K. K. Bhattacharya, a retired Medical Officer of the W.B.H.S., as Director of Medical Education and ex officio Secretary, Department of Health and Family Welfare, Government of West Bengal, for a further period of one year with effect from May 1, 1989 (F.N.) or until further orders of the Hon"ble High Court Calcutta, if any, whichever is earlier.



15. The writ Petitioner filed a supplementary affidavit annexing the order of extension of re-employment being Annex. "X" thereto. The State Respondents also filed an affidavit-in-opposition to the supplementary affidavit whereby a serious contention has arisen sequel to the issue of the Notification, being Annex. "A" to the supplementary affidavit. The writ Petitioner also filed an affidavit-in-reply to the affidavit-in-opposition of the Respondent in answer to the supplementary affidavit by the Petitioner. It is claimed by ML Basu that the State Government all of a sudden woke up from a slumber and found the necessity of temporary post of Director of Medical Education, West Bengal, by way of bifurcation of the Health Directorate to be manned by the Respondent No. 4. Such process of bifurcation, according to Mr. Basu, "could have been settled after finalising all the formalities. The sphere of activities and the manner or mode whereby the position is to be filled up have not been drawn up at all till this date. But the State Government thought it fit that the Respondent No. 4 was the only fittest person from the West Bengal Health Service for managing the post of Director of Medical Education. Whereas it is a matter of fact that there are about 100 eligible Special Selection Grade Officers in the West Bengal Health Service for managing the post in question. Dr. Ajoy Chandra is the Director, Institute of Post-Graduate Medical Education and Research, Calcutta, and the University of Calcutta, but he has not been given the opportunity to hold the post of the Director of Medical Education, West Bengal. The Respondent No. 5, Professor in Institute of Post-Graduate Medical Education and Research, Calcutta, is competent enough to hold the said post.

16. Further contention of Mr. Basu is that if the State Government intended to ; post someone with more experience and then there are many professors much experienced and qualified than the Respondent No. 4. It could have without least difficulty re-employed Dr. Moni Chhetri as the Director of Medical Education as he has and had much more experience than the Respondent No. 4 in the field of Medical Education and Administration. For reasons best known to the Respondents, the Respondent No. 4 was picked up as the only competent person to hold the post and such pick-up policies are not tenable and betrayed rather administrative bias and patent manifestation of discrimination which in consequence stands out to be arbitrary overlooking the experience of numerous Special Selection Grade Officers in the Health Department and depriving them of such promotion and posting them in the said post. The said re-employment of the Respondent No. 4 amounts to give a complete go-bye to all the rules and the norms relating to the re-employment of superannuated persons.

17. One of the fundamental objections taken by the Respondents that in view of the accrual of fresh cause of action, the writ Petitioner could not be permitted to challenge the Notification dated April 28, 1989, extending the/period of re-employment of the Respondent No. 4 for a period of one year with effect from May 1989. In the affidavit-in-reply to the affidavit-in-opposition filed on behalf of the Respondents in answer to the supplementary affidavit of the writ Petitioner, the writ

Petitioner claims that it is preposterous on the part of the Respondents to suggest the fresh cause of action having arisen the fresh writ petition challenging the said Notification being Annex. "A" to the supplementary affidavit is warranted to be moved before this Court. Such challenge against the Notification dated April 28, 1989; is wholly permissible and the same is within the purview of the main writ application.

18. Mr. Basu also claimed that the re-employment of the Respondent No. 4 to the post of Director of Medical Education was deliberately made for bestowing personal favour upon the Respondent No. 4. It is, further, claimed that the approval of the Cabinet and the sanction of the Finance Department do not constitute the legality of the order impugned in the writ application as also Annex. "A" to the supplementary affidavit; that the re-employment of the Respondent No. 4 is neither made on the ground of administrative exigency, nor any public interest; that the public interest, according to Mr. Basu, is required to be governed by the interest of public service and not for any other grounds. The Notification dated April 30, 1988, according to Mr. Basu, suffers from vice of mala fide inasmuch as bifurcation of Health Directorate was made just on the eve of the superannuation of the Respondent No. 4 with the object of granting and/or extending personal benefit to the Respondent No. 4 by re-employing him in the post of Director of Medical Education. The Respondent No. 4 on retirement has been rendered ex-cadre so the reemployment to the cadre post of Director, Medical Education, which is seriously assailed by Mr. Basu as ex facie illegal, bad, arbitrary, without any application of mind and violative of all the canons of law. There are numerous eligible Special Selection Grade Officers, namely, (1) Dr. A. K. Chandra, Director, I.P.G.M.E. & R., Calcutta, (2) Dr. S. C. Roy, Prof, of P.S.M., C.N.M.C, Calcutta, (3) Dr. P. K. Raha, Professor, Department of Path. & Bacteriology, R. G. Kar Medical College, Calcutta, (4) Dr. S. Sen, Prof, of Chest Diseases, I.P.G.M.E. & R., Calcutta, (5) Dr. Sm. Snigdha Sinha, Prof, of Paediatrics, B. C. Roy Children Hospital, (6) Dr. (Sm.) Santi Dutta, Prof, of G.& O., N.R. S.M.C., Calcutta, (7) Dr, (Sm.) Gita Mukherjee, Prof, of G. & O., (8) Dr. (Sm.) Mira Roy, Prof, of P.S.M. Medl. College, Calcutta, (9) Dr. (Sm.) Maya Sanyal, School of Tropical Medical College and (10) Dr. (Sm.) Mira Sen, Professor of Plastic Surgery, I.P.G.M.E.R., Calcutta, in the queue for promotion to the post of Director, Medical Education. Even the Respondents in para. 15 of the affidavit-in-opposition affirmed on June 1, 1988, stated in the manner following:

the Respondent No. 5 in the Gradation List is also quite junior and has become a Professor only in the year 1985. In this "connection, a list of ten senior Professors of the Health Directorate as per the Gradation List of the teachers is annexed hereto and is marked with the letter "B" wherefrom it will appear that excepting Dr. A. K. Chandra who is topping the said list none else has got any administrative experience.

19. It is claimed by Mr. Basu that the Respondents did not take any step" for selecting a Special Grade Officer before the date of retirement of the Respondent No. 4 for the purpose of appointment to the post of Director of Medical Education. Re-employment of the Respondent No. 4, as effected for the personal benefit of the Respondent No. 4, is not in public interest and there did not and does not exist any special reason for re-employment of. the Respondent No. 4 to serve the post of Director of. Medical Education. The re-employment of the Respondent No. 4 apart from being not made in public interest militates against the principles as laid down in the Government order dated 6, 1977, and D.O. letter of the Chief Minister, West Bengal, dated October 1, 1982. Serious comment on the re-employment of the Respondent No. 4 has been advanced on behalf of the writ Petitioner on the ground that in no circumstances it could be claimed that the Respondent No. 4 possesses exclusively such administrative experience and expertise constituting his indispensibility for the aforesaid purpose. No one could be treated as indis-pensible. for the higher post and the State cannot take up such plea at the time and/or when the Respondents themselves have admitted that there are admittedly ten Special Grade Officers having equal or more administrative and teaching experience.

20. The seriormost qualified person is the Director of the Institute of the Post-Graduate Medical Education and Research, Calcutta, Dean of Faculty of Medicine, University of Calcut'i. The competence, capability or experience of Dr. A. K. Chandra as against the Respondent No. 5, has.not been tested. The Respondent No. 4, according to Mr. Basu, is competent to hold the said post of Director, Medical Education.

21. Mr. Basu farther contended that the entire action of the Respondents in effecting the creation of the two posts, namely, Director of Medical Education, West Bengal, and Director of Health Services, West Bengal, is also wholly unauthorised inasmuch as the condition on which the Respondent No. 4 was given re-employment as Director, Medical Education, is still persisting because still now the division in the Directorate into Medical Education and the Health Administration has not been worked out.

22. After making such comments, Mr. Basu invited the attention of the Court to the relevant portion of the Note of Mr. Ashis Roy dated April 26, 1984. While referring to the Note dated September 7, 1980, of Mr. Ashis Roy, Mr. Basu also sharply pin-pointed in the said Note prepared by Mr. R. N. Sen Gupta in the manner following:

I have gone through the papers. The Cabinet memo, dated 30.4.1988 at Fl. "A" below creating the two posts of Director of Medical Education, West Bengal, and Director of Health Services, West Bengal, also mentions that the posts will be borne on the unified cadre of the W.B.H.S. The memo, also goes on to add the qualifications expected of the incumbents who may fill up the posts. If posts are borne on a cadre, no separate qualifications are normally prescribed as to how

incumbents are going to be selected for the posts. Had these two posts not been mentioned as being borne on the W.B.H.S. cadre, then separate Rules of Recruitments for filling up these two posts under Article 309 of the Constitution could have been framed. In a cadre, normally separate guidelines are not prescribed for filling up specified posts. Either a post is the cadre and selection is made having regard to the normal method of selection or a post is not on the cadre and separate Rules of Recruitments are framed for filling up the post.

It is neither customary nor necessary to mention in the Recruitment Rules of a post that a retired officer can be appointed to that post by way of re-employment. Re-employment of a Government officer in a post is permitted in terms of Regulation 10 of West Bengal Public Service Commission (Exemption or Consultation) Regulation, 1955, as amended from time to time. Unless the relevant cadre rules contained anything to the contrary, re-employment can normally be given by the Government in respect of any post when Government is the appointing authority. It is never specifically mentioned as such.

Health Department may please reconsider the matter.

23. The Department also considered the question of necessity amending the eligibility of criterion for manning the post of Director of Medical Education and the Director of Health Services, belonging to the West Bengal Health Service and further took note of the fundamental objection of the writ Petitioner that no retired person can be appointed as a Director, Medical Education, because of the absence of such provisions in the Recruitment Rules framed while creating the post of Director, Medical Education. The Chief Secretary, as pointed out by Mr. Basu, is of the opinion that there is no scope of having separate recruitment rules for the post of Director, Medical Education/ Director, Health Service, other than Recruitment Rules of West Bengal Higher Service Cadre, and Chief Secretary is also of the opinion that it is not necessary to mention in the recruitment rules of a post that the retired officer can be appointed as the provisions clearly exist in terms of r. 10 of the Public Service Commission Regulation, 1955. A note is prepared on September 10, 1988, in the manner following:

It is felt by us that in a vast cadre like W.B.H.S. (strength is about 8500 at present) where diverse types of posts requiring different but highly specialised qualified and experienced officers, same set of recruitment rules will fail to do justice to different posts. This will invariably lead to administrative chaos and consequent difficulties of the department.

In view of the position explained above, we would like to obtain views of learned L.R. on two points: (i) Whether separate recruitment rules can be framed for manning higher and important posts of W.B.H.S. cadre where W.B.H.S. cadre officers are only eligible, (ii) Whether we can amend the recruitment Rules for appointing D.M.E./D.E.S. in terms of the draft cabinet memo, placed herewith.

24. The re-employment of the Respondent No. 4, as repeatedly pointed out by Mr. Basu, is made not on the basis that at the time when the post was created, there is no scope for selecting suitable incumbents to the said post well in advance as alleged that the re-employment of the Respondent No. 4 was unauthorisedly made on the ground that this was done under special circumstances and in public interest. Mr. Basu further claimed that it was too late in the year 1989 to raise the question of locus standi in view of the judgment of the Supreme Court in case of [S.P. Gupta Vs. President of India and Others](#), even the affidavit affirmed on June 1, 1989, Jyoti Prakash Ghosh, the deponent of the said affidavit, took up a stand inter alia in the manner following:

That the necessity for effecting a major reorganisation in the Health Administration of the State was being keenly felt for a long-time post, that it was also felt necessary that the problem of medical education had to be attended to ; furthermore, the need for centralisation of power in certain spheres also become very urgent that the reemployment of Respondent No. 4 would be for the public interest as the same would enable the State to get the benefit of the experience of the Respondent No. 4 enabling the teaching cadre to reach the standard for academic excellence at each stage and for lateral entry.

25. Mr. Samaresh Banerjee, the learned Advocate appearing for the Respondent, claims that at the very outset of his submission the writ petition is not maintainable at the instance of the writ Petitioner No. 1 which is claiming to be an association of various persons belonging to the West Bengal Health Services and the Petitioner No. 2 who is the Secretary of the said association. Mr. Banerjee claims that all the necessary parties not being impleaded, the writ petition cannot be sustained ; that the other senior incumbents including the Respondent No. 5 neither joined the writ Petitioner, nor did they move a separate petition challenging the impugned order of the re-employment-in the first year and the subsequent re-employment in the second year. The senior incumbents including the Respondent No. 5 are not aggrieved by the action of Respondents ; that the writ petition could not be sustained as the writ Petitioner No. 1 cannot be treated as a personnel aggrieved by the impugned order of re-employment that the reemployment of the Respondent No. 4 was, therefore, made in public interest and under such circumstances non-appointment of a senior incumbent of the West Bengal Health Services in the said post certainly cannot affect public interest ; that at most, if such employment was done illegally or arbitrary, the same merely affects an individual interest, namely, the interest of senior incumbent of the West Bengal Health Services who was said to be eligible for the said post ; that furthermore, certainly it cannot be said that the senior incumbent of the West Bengal Health Services, who might have been deprived of being appointed in the said post, because of impugned order of re-employment, is economically handicapped and, therefore, unable to move the Court in its writ jurisdiction.

26. It is further claimed that a careful reading of the Government Circular, including the Circular of the Chief Minister, would indicate that re-employment had not been prohibited altogether ; that on the contrary, the combined reading of all the Circulars would indicate that although reemployment should not be given normally, re-employment could be given in exceptional cases and, in fact, in the said Circulars including the Circular of the Chief Minister, the necessity of re-employment in the exceptional circumstances was admitted ; that the circumstances under which the Respondent No. 4 was appointed as Director of Medical Education on re-employment was indeed exceptional, arising out of bifurcation of Directorate and creation of a new Directorate and a new post of Director of Medical Education where the administrative and teaching expertise of Respondent No. 4 was regarded by State as indispensable ; that the aforesaid various Circulars of the State Government including that of the Chief Minister clearly indicate that, although normally re-employment should not be given, the State does have the power to give re-employment in exceptional cases ; that in the instant case falling within the category of such exception the State, therefore, has jurisdiction to give such re-employment and it is certainly open for the State to give re-employment in a fit and proper case like the instant case ; that the State has every right to create a new Directorate and to create a new post of Director of Medical Education, and the same being a policy decision of the State, it is not open to the writ Petitioners to challenge such policy decision of the State ; that the writ Petitioners also failed to give any materials to show that such policy decision of the State was not in public interest or re-employment of the Respondent No. 4 as Director of Medical Education was not under exceptional circumstances or was made arbitrarily or in colourable exercise of power ; that the bifurcation of the Directorate and creation of such new post being a policy decision of the State for administrative convenience and in public interest, the same was not open to challenge by the writ Petitioner ; that the circumstances under which how the Director of Medical Education and the post of Director of Public Health Services were created had been explained in details in para. 7 of the main Affidavit-in-opposition wherefrom it would appear that there was no scope of making a process of finding out a suitable incumbent in the said newly created post of Director of Medical Education well in advance; that such extension of re-employment could not have been made without leave of this Court when the very issue of re-employment was pending before this Court.

26A. Before I embark upon the merits of the case, it is fit and proper to consider the preliminary objection raised by Mr. Banerjee that the Association has no locus standi to maintain this application. The real aggrieved person not having challenged the order of re-employment of the Respondent No. 4, this application on behalf of the writ Petitioner is bound to fail. Such preliminary objection of Mr. Banerjee was seriously resisted by Mr. Moloy Basu who in his turn claimed that it was too late in the year 1989 to raise such objection" which was wholly unwarranted. It is true that the preliminary objection thus raised by Mr. Samaresh Banerjee involves short

debate.

27. During the fifties and the sixties the concept of locus standi was not broad. The contention of Mr. Banerjee that the writ Petitioner No. 1 has no locus standi to move this writ application on the grounds as are detailed above, in my view, has no substance in it inasmuch as the horizon of locus standi has expanded during the seventies and eighties. It is an admitted position that the writ Petitioner is an Association registered under the Societies Registration Act. The writ Petitioner, in my view, is a legal entity and can, therefore, sue and be sued in its own name in accordance with the provisions of the West Bengal Societies Registration Act, 1963. The writ Petitioner is an Association. The objects of the writ Petitioner cannot be overlooked. Any action of the State affecting the rights of the members of the writ Petitioner can be challenged by the writ Petitioner as it acquires the status of a legal entity. In the event, the Court throws away this application on a narrow and hypertechnical ground it would do grave injustice to those members of the writ Petitioner. The Court is not to be swayed nor prevented by out-moded technical rules of locus standi nor it should debar the writ Petitioner from bringing the matter to the attention of the Court to vindicate the rule of law and get illegality stopped. Expansion of the rule of locus standi could not have been made possible but for the development of public law, because it is only the availability of judicial remedy the enforcement of which invest law with the meaning and purpose ; otherwise law would be treated mere mirage. If the writ Petitioner with his genuine grievance is turned away simply because it is not sufficiently affected personally that would demonstrate that some Government agencies are given unchartered liberty to violate the law and that is contrary to the public interest. In my view, the writ Petitioner has locus standi.

28. Elaborate narration of the facts-situation as made hereinbefore now requires the probe whether the reemployment of the Respondent No. 4 for the two consecutive years was warranted or not. The file as produced before this Court does not show whether the cases of those Special Selection Grade Officers were at all considered or not nor the concerned authority including the Respondents herein did effectively and properly ponder over the cases of other Selection Grade Officers. The Respondents did not say anything about the cases of other Special Selection Grade Officer. Non-consideration of the cases of Special Selection Grade Officers constitutes an incurable infirmities in the entire process of the re-employment of the Respondent No. 4. It is fit and proper to record that mere administrative experience and other qualifications of the Respondent No. 4 could not be a ground for completely overlooking the case of other Special Selection Grade Officers. It is very unfortunate that the concerned Respondent never took into account that one day the post of Director, Medical Education, is to be filled up by some other Special Selection Grade Officers.

29. Apart from above, "the record is very eloquent on the focal point that the Department also considered the question of necessity of amending the eligibility of criteria for manning the post of Director, Medical Education, and Director, Health Service, belonging to the West Bengal Health Service and also the absence of any provision in the Recruitment Rules framed while creating the post of Director, Medical Education. The note dated September-10, 1988, records that in a vast cadre like West Bengal Higher Services (strength is about 8500 at present) where diverse types of posts requiring different but highly specialised qualified and experienced officers, same set of recruitment rules will fail to do justice to different posts. This will invariably lead to administrative chaos and consequent difficulties of the Department. This goes to the root of the entire matter. The Respondents proceeded to re-employ the Respondent No. 4 without having any due regard to the fundamental issues as are indicated above. The contention of Mr. Banerjee that the State considered the administrative and teaching expertise of the Respondent No. 4 as indispensable for the efficient administration of the new Department. Such contention of Mr. Banerjee is to be viewed from the Government Circular bearing No. 431-(50)-PAR(Genl.) dated August 6, 1977. The Government, as it is well-settled, cannot act contrary to the Circular. The principles laid in the said Circular can neither be departed from nor any deviation thereof could be affected by the Respondents. No special reasons in terms of the said Circular could be found for the purpose of re-employment of the Respondent No. 4.

30. The record does show that the re-employment of the Respondent No. 4 could not be avoided.

31. The record does reveal that the Department, in fact, did make an arrangement for substitutes well in advance for the Government employee who are due to superannuate, nor it appears from the records that any attempt, in fact, was started between one year and six months prior to superannuation depending on the nature of the post. There is no decision prior to the order of re-employment of the Respondent No. 4 as Director of Medical Education being Annex. "D" to the writ petition and Annex. "A" to the supplementary affidavit that no suitable officer could be found as a substitute of the Respondent No. 4. The record does not show that suitable officer is not available and, even in such circumstances, the Respondents acted in violation of the said Circular by granting re-employment by two different orders for the period of two years from the date of his superannuation. Even before the expiry of the period of one year from the date of re-employment of the Respondent No. 4, the Respondents did not take any step for finding out suitable person. Even almost on the expiry of one year, the condition on which the Respondent No. 4 was given re-employment as Director of Medical Education was allowed to persist inasmuch as no division of the Directorate of Medical Education and Health Association has been worked out. It is really startling and shocking that the Government machinery is not geared up for the purpose of effective division in the Directorate of Medical Education and Health Administration, nor did they take



any step for such division. Even the conditions under which the Respondent No. 4 was allowed to continue, are contrary to public interest. In fact, nobody took any interest by his applying mind to the Circular dated August 6, 1977. The views of the Finance Department were not made available in terms of Clause (vi) of para. 1 of the Circular dated August 6, 1977. Even the Chief Minister's D.O. letter being Annex. "E" to the writ application was given a total go-bye. The Chief Minister's Circular bearing No. D.O.C.M. 5566(42) dated October 1, 1982 cannot be adhered to is serpental. the said D.O. letter records that it is a policy not to encourage re-employment in view of the mounting number of the unemployed. It is further recorded that a number of cases have come to the notice in which the proposal for re-employment have been initiated because of some lapse in preparing the recruitment rules or delay in initiating steps for filling up the post. It is also very much significant that the said D.O. letter records that re-employment of superannuated officers is curtailing the promotion scope of others. It is not a happy state of affairs. D.O. letter of the Chief Minister is also not at all taken into account. In fact, on careful analysis of the facts and circumstances, as indicated above, it appears that the Respondents did not act with any sense of responsibility, nor with care and caution in the matter of re-employment of the Respondent No. 4. The Respondent No. 4 after superannuation could not be treated as indispensable. The question of public interest in such circumstances is required to be viewed in its conceptual, contextual and legal perspective.

32. The contention of Mr. Banerjee that the public interest being the foundation of the re-employment of the Respondent No. 4, the Court shall not embark upon the examination of the validity or otherwise of the question of public interest and no exception could be taken to the re-employment as it was effected in public interest.

33. Let us now examine what is meant by the term "Public interest". Public interest is not an abstract term. In the contextual background of the present case, it takes within its sweep several factors such as number of Special Selection Grade Officers, the qualification, teaching and administrative expertise, responsibility and experience attached to the post of Director, Medical Education, as are required for the said post. Number of Special Selection Grade Officers required for the purpose of, effective division in the Directorate of Medical Education and Health Administration. The prevailing conditions in the Health Directorate and the measures that were to be taken to streamline the Medical Education. Whether the post should be manned by retired persons by the expenditure to be borne by the State Exchequer for the purpose of re-employment of the Respondent No. 4 etc. Public interest in the background of the facts and circumstances docs not mean the interest of the Department only. It also involves the welfare activity which involves not only improvement of Medical Education but also service to the people. Various elements and/or factors constitute public interest.

34. Public interest, therefore, is something in which community at large has some interest, economic or some interest by which their legal rights and liabilities are affected. It does not mean anything so narrow which may be affected by the matter in question. The interest shared by citizens generally in affairs of local, State or National Government is also public interest. The factors which are enumerated above are only illustrative but not exhaustive. Public interest does not mean any individual group of other extraneous interest and public interest should not be used as the tool of personal or group interest. Efficiency, administrative and teaching experience of other Special Selection Grade Officers have been completely overlooked. It is also an admitted position that nothing was done for changing the conditions under which the Respondent No. 4 was given re-employment. It is a very sorry state of affairs that the Respondents did not take any step to see the condition under which Dr. Bhattacharya was given employment as Director of Medical Education still persists because till now no division in the Directorate in the Medical Education and Health Administration has yet been worked out. In such circumstances, the indispensability of the Respondent No. 4 becomes merely myth and becomes non-existent. It appears very clear that the Respondents never applied their minds to the entire situation as was there on April 30, 1988, to continue without any change. Therefore, the public interest becomes merely illusory. It is well-known principles of law that powers conferred by a Statute or Regulation or Administrative instructions or executive or administrative authority must be exercised in good faith for the purpose of which they are granted. It does not appear from the re-employment of the Respondent No. 4 power was either exercised properly or the relevant materials were taken into account. Re-employment of the Respondent No. 4 after retirement, in view of the detailed finding thus reached, could not be said to be in public interest ; the fact that the Respondent No. 4 happens to be efficient and experienced as compared to other next incumbents is no ground to re-employ him.

35. The contention of Mr. Banerjee that the order being Annex. "F" to the writ application can only be challenged by separate application, in my view, has no substance in it. The Supreme Court in the case of [B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others](#), while dealing with similar situation held in the manner following:

It is true that writ petition contained a prayer for quashing of the gradation list in so far as it related to inter se ranking of the Petitioner vis-a-vis Respondents Nos. 3 to 8 and the Petitioner (Appellant) had also sought the issuance of a writ of mandamus directing Respondents Nos. 1 and 2 to forbear from implementing or acting upon the said gradation list. But, subsequent to the institution of the writ petition, the Central Government had refixed the ranks of Respondents Nos. 3, 4, 5; 7 and 8 (Telengana Officer) and placed them below the Appellant thereby redressing the grievance of the Appellant in so far as it pertained to the ranking of the aforesaid Respondents. It, therefore, became necessary for the Appellant to pursue his claim

for relief with respect to the ranks assigned to those five Respondents. It was under those circumstances that the Appellant submitted before the learned single Judge of the High Court, at the time of final hearing of the writ petition, that he was pressing the writ petition only in so far as it related to his claim for seniority over the 6th Respondent. We fail to see how the fact that the Appellant had sought in the writ petition the issuance of a writ of mandamus directing Respondents Nos. 1 and 6 to forbear from implementing or acting upon the provisional gradation list will operate to preclude him from seeking a lesser relief, namely, the quashing of the list only in so far as it pertains to the fixation of the inter se seniority between himself and the 6th respondent. The material facts and circumstances had undergone a substantial change subsequent to filing of the original petition and it was in the consequence thereof that it had become unnecessary for the Petitioner to pursue his original prayer for the grant of a larger relief. Besides ignoring this crucial aspects, -the Division Bench of the, High Court also lost sight of the well-established principle that in an action where a party has prayed for a larger relief it is always open to the Court to grant him any smaller relief that he may be found to be entitled in law and thereby render substantial justice. The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case as far as possible the anxiety and endeavour of the Court should be to remedy and justice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds.

36. All the contentions of Mr. Samaresh Banerjee cannot but fail. The orders of re-employment being Nos. H/MA/1750/85-10/88 dated April 30, 1988, and No. H/MA-/2526/1M-99/88 dated June 30, 1988, are set aside. Since the Respondent No. 4 worked all these months, no recovery of the salary drawn by the Respondent No. 4 shall be effected. Since the orders stand set aside, the Respondents are directed to take immediate steps for the appointment to the post of Director, Medical Education, forthwith. The Respondent No. 4, in any event, shall not be allowed to function from as Director, Medical Education, the forenoon of this day. Accordingly, the writ application is allowed. No order as to costs.

37. After delivery of the judgment, Mr. Samaresh Banerjee, the learned Counsel appearing for the Respondents, prays for stay of operation of the order. His prayer is refused.