

(2008) 12 CAL CK 0071

Calcutta High Court

Case No: F.M.A. No. 260 of 2008 and W.P. No. 10789 (W) of 2001

Bimal Barman and Others

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Dec. 10, 2008

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21, 21A, 226
- Management of Recognized Non Government Institutions (Aided and Unaided) Rules, 1969 - Rule 28

Citation: (2009) 2 CALLT 245 : 113 CWN 102

Hon'ble Judges: Pratap Kumar Ray, J; Manik Mohan Sarkar, J

Bench: Division Bench

Advocate: Kamalesh Bhattacharjee and Rezaul Hossain, Partha Sarathi Bhattacharjee, Tapabrata Chakraborty and Uttar Dinajpur, for the Appellant; Jayanta Mitra, Tapan Mukherjee, Ekramul Bari and Syed Mansur Ali for Respondent No. 10, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.

Challenging the judgment and order dated 12th June, 2007 passed by the learned trial Judge in the writ application registered as W.P. No. 21128 (W) of 2006, this appeal has been preferred by the writ petitioners. Learned trial Judge dismissed the writ application on the ground of lack of locus standi to move the writ application by the writ petitioners, which was on the grievance that the respondent No. 10 in the writ application though was not eligible to be recommended by Service Commission and thereby to be appointed in the post of Headmaster due to lack of minimum percentage of marks fixed for academic qualifications from Secondary level to Master Degree but was recommended by the School Service Commission and thereby was appointed for the post of Headmaster in the concerned school, wherein the writ petitioners wards are studying, by committing fraud and suppressing the

material facts of his service status in the application seeking recommendation before the School Service Commission and purportedly disclosing the wrong facts to deceive the said School Service Commission for the purpose of availing exemption from the embargo of securing minimum percentage of marks in Master Degree, Secondary and Higher Secondary level as was granted to the existing Headmaster of a school by contending, *inter alia*, that he was an approved existing Headmaster of a school, namely, Uttar Sankarpur S.C. High School, though his such claim was negated by the judgment passed by Barin Ghosh, J. (as His Lordship then was) being the judgment and order dated 13th August, 2001 passed in W.P. No. 10789 (W) of 2001, whereby and whereunder in the writ application he prayed for a declaration of his status as Headmaster on the ground of holding the post of Teacher-in-Charge of the concerned school for a long period to resist the selection of a candidate in the post of Headmaster in the concerned school. Learned trial Judge did not consider the point about commission of fraud by the respondent No. 10 who joined in the post of Headmaster of Purgram S.C. High School, Uttar Dinajpur on the recommendation of West Bengal School Service Commission, wherein admittedly for consideration of his candidature under exempted category, said respondent No. 10 disclosed his service status as existing approved Headmaster of Uttar Sankarpur S.C. High School to avail the exemption from academic qualification standard and more particularly, securing of minimum percentage of marks in the Master Degree, Secondary and Higher Secondary level. Learned trial Judge held that prayers for writ of mandamus and certiorari were not maintainable by the writ petitioners as they were not the party aggrieved by such appointment irrespective of the fact of commission of fraud and thereby dismissed the writ application. Order of the learned trial Judge under appeal reads such: The twelve petitioners took out this writ petition questioning appointment of the tenth respondent (Subhrangshu Chakraborty) as headmaster in Purgram S.C. High School, Uttar Dinajpur. In 2001 the tenth respondent moved a writ petition, No. 10789 (W) of 2001, before this Court questioning and advertisement of the school service commission dated July 14th, 2001 inviting applications for the post of headmaster in Uttar Sankarpur S.C. High School, Uttar Dinajpur. In that case the tenth respondent claimed that he was the approved headmaster of Uttar Sankarpur S.C. High School and hence the school service commission was not authorized to initiate any selection process for appointing any headmaster in that institute. By order dated August 13th, 2001 that writ petition was dismissed with costs. It was held that the tenth respondent was not an approved headmaster of that Uttar Sankarpur S.C. High School. Counsel for the tenth respondent submits that appeal preferred against that order dated August 13th, 2001 is pending decision in this Court.

In 2005 the school service commission issued advertisement inviting applications from eligible candidates for the post of headmaster in certain secondary schools in the state. As a candidate the tenth respondent applied claiming that as an existing

headmaster of that Uttar Sankarpur S.C. High School he was entitled to get relaxation. Nothing was said about the order of this Court dated August 13th, 2001. The commission, in ignorance of the order of this Court dated August 13th, 2001 and accepting that the tenth respondent was an existing headmaster of a secondary school, granted him relaxation, and he was selected for appointment as headmaster in a secondary school. Ultimately the commission, by its letter dated February 8th, 2006 recommended him for Purgram S.C. High School that appointed him as the headmaster.

After the tenth respondent joined the school as headmaster, the petitioners, I am told, initiated a public interest litigation in this Court. It is submitted that after withdrawing that public interest litigation they took out the present writ petition; they are questioning the selection and appointment of the tenth respondent. They are claiming that as guardians of their wards who are students at the institute, they are entitled to approach the writ court questioning the selection and appointment of the tenth respondent, accordingly to them an ineligible person.

The tenth respondent has questioned the petitioners' locus standi. Their counsel has cited to me Tazamul Haque and Ors. v. State of West Bengal and Ors. 2007 (1) SLR 567. In that case I held that guardians of a secondary school were not entitled to take out the writ petition concerned questioning the validity of a decision of the managing committee of the school, taken in connection with a selection process initiated for appointing a non-teaching member of the staff. I said that guardians who took out the writ petition were just meddlesome interlopers. My decision supports the contention of counsel for the tenth respondent that in the present case the twelve petitioners have no locus standi to take out the writ petition questioning the selection and appointment of the tenth respondent.

I brought to the notice of counsel for the parties the apex court decision in B. Srinivasa Reddy v. Karnataka Urban Water Supply and Drainage Board Employees' Association and Ors. (2006) 1 SCC 731 holding that questioning appointment to public post a writ of certiorari or of quo warranto can be sought only by an aggrieved person. Their Lordships of the apex court also said that unless the person or persons challenging the appointment was a qualified candidate for the post, he would not be entitled to take out a writ petition seeking a writ of certiorari. Counsel for the tenth respondent submits that in view of the decision it must be held that the petitioners in the present case, admittedly not candidates in the selection process, are not entitled to take out this writ petition seeking a writ in the nature of certiorari. Facing with the situation, counsel for the petitioners argues that the petitioners have simply brought to the notice of this Court the fact that by exercising fraud the tenth respondent frustrated the previous decision of this Court dated August 13th, 2001. His submission is that once the matter has been brought to the notice of the court, the court should exercise its inherent power to make appropriate order for bringing the consequences of the fraud exercised by the tenth

respondent to an end. Counsel for the school service commission has drawn my attention to The [The West Bengal Board of Secondary Education and Others Vs. Sm. Basana Rani Ghosh and Others](#), . He has said that in that case the division bench held that guardians of students at the secondary schools concerned were entitled to approach the writ court questioning the revision of syllabus by the board. According to him I should follow that division bench decision, and I should hold that the petitioners in the present case have locus standi to take out the writ petition.

I am unable to agree with counsel for the petitioners and the school service commission. In Basana Rani it was held that when the interest of a community was affected by any action of the government or a statutory authority, any member of the community would be entitled to complain against that action by presenting a writ petition in the high court. It is clear that the locus standi issue raised in that case was decided in the affirmative keeping in view the principles which govern the public interest litigations. In those days public interest litigations would come up for consideration before the regular writ courts.

Subsequently, the special forum, a division bench, was specified for entertaining and deciding the public interest litigations. In this case also the petitioners at first moved a public interest litigation. That was withdrawn by them. When they decided to take out the present writ petition, in my view, they are not entitled to justify their locus standi on the basis of the principles which apply to the public interest litigations. As is known, the writ proceedings can be initiated, except for habeas corpus, only by a person aggrieved. In the present case the petitioners cannot be said to be aggrieved by the selection and appointment of the tenth respondent. There is absolutely no scope for exercising the writ powers only because the petitioners have brought to the notice, according to them, the fraud practised by the tenth respondent for getting selected and appointed. Writ powers cannot be exercised in cases such as this unless the person initiating the proceedings seek any relief for himself. In the present case, the petitioners are not seeking any relief for themselves.

For these reasons, I hold that the petitioners have no locus standi to take out the present writ petition. Hence while I dismiss it on this ground, I make it clear that nothing in this order shall prevent the school service commission and the state authorities from initiating appropriate proceedings and taking appropriate steps in accordance with law against the tenth respondent. There shall be no order for costs in the case.

Mr. Bandyopadhyay prays for stay of operation. He says that the clarifications I have given by saying that nothing in this order shall prevent the school service commission and the state authorities from initiating appropriate proceedings in accordance with law, should be stayed. I do not see any reason why I should make a stay order. I have not made any order directing the school service commission and the state authorities to do anything I have only clarified the situation for removing

any confusion that may arise in future.

Urgent certified xerox copy of this order shall be supplied to the parties, if applied for, within three days from the date of receipt of the file by the department concerned.

2. Before us, a stay application was filed by the writ petitioners/appellants. Affidavit-in-opposition and reply thereof also were filed. Before dealing with the issue of the appeal on merit as the locus standi point is not contoured with any straight jacket formula but depends upon many factors and also in view of the fact that under Article 226 of the Constitution of India the writ Court has power and jurisdiction to reach anywhere to protect the constitutional mandate of Article 14, 16 and 21 of the Constitution of India, which are the basic structure of the Constitution by identifying the issue as to whether the concerned authority properly selected a candidate in accordance with law and the statutory provision, more particularly, when such selection and appointment is to a post of Headmaster of a school, wherein the students of tender age are studying, whose future prospects depends upon the quality of teaching of the teaching staff as well as their moral character and the personal reputation, the Court directed the production of the records from the School Service Commission to identify the issue whether in fact the respondent No. 10 misrepresented his service status in his application seeking consideration of his candidature for the post of Headmaster of Purgram S.C. High Court, Uttar Dinajpur by disclosing himself as an existing approved Headmaster of Uttar Sankarpur S.C. High School and also to test the another vital facts of the case as to whether the judgment delivered by Barin Ghosh, J. (as His Lordship then was) aforesaid, declaring the service status of the respondent No. 10 was breached by the said gentleman disclosing his service status otherwise. The documents produced. The Court perused the materials thereof, including the original application submitted by the respondent No. 10 seeking consideration of his candidature for the said post of Headmaster.

3. It appears from the records produced as well as the documents filed before this Court, which is in the Paper Book at page 88, that the gentleman in the application form at Col. 8, which is under the heading "Record of continuous teaching experience in approved service as on the date of advertisement" disclosed that with effect from 1st May, 2000, he was working in the post of Headmaster as approved Headmaster of Uttar Sankarpur S.C. High School, Uttar Dinajpur. This application form was signed by the petitioner on 22nd August, 2005. The exact language as used in Col. 8 reads such:

08. RECORD OF CONTINUOUS TEACHING EXPERIENCE IN
APPROVED SERVICE AS ON THE DATE OF ADVERTISEMENT.

School/ Madrasah	Name of School/Madrasah	Date of Joining &	Total No. of Years &
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		Leaving	months
HIGH	Uttar Sankarpur S.C.	01.08.1988	17 YEARS
SCHOOL	High School.	(A.T.)	
	P.O. Dalimaon	01.05.2000	
	P.S. Kaliaganj, Dt. U/D.	as H.M.	

4. In this application form respondent No. 10 disclosed his academic qualification with percentage of marks secured, which reads such:

Passed Higher Secondary (11th standard) in Arts in the year 1975 from W.B.B.S.E. securing 33.8% of marks.

Passed B.A. from N.B.U in the year 1978 securing 34.7% of marks.

Passed M.A. from N.B.U in Bengali securing 40% of marks.

Passed B.Ed. in the year 1992 from N.B.U. securing 55.5% of marks.

5. At the relevant time when respondent No. 10 filed application seeking consideration for the post of Headmaster by concerned School Service Commission, the eligibility criteria of a candidate for a post of Headmaster of Higher Secondary/High School/High Madrasah was to this effect:

A. For the post of Headmaster/Headmistress of Higher Secondary/High School/High Madrasah.

Essential Qualifications:

(1) Master Degree with at least 45% marks both at the Secondary & Higher Secondary level, 40% marks in the Honours subject in the Honours level or 45% marks at the Pass level for a candidate without having Honours Degree, and 40% marks at the Post- Graduate level and a degree in Bachelor of Teaching/Bachelor of Education/Post Graduate Basic Training from any recognized University or any training recognized by the Government of West Bengal as equivalent to Bachelor of Teaching/Bachelor of Education/Post Graduate Basic Training.

(2) 10 years" continuous teaching experience in approved service in a Higher Secondary School/High School/High Madrasah/Junior High Madrasah/Junior High School/Senior Madrasah recognized by the West Bengal Board of Secondary Education/West Bengal Council of Higher Secondary Education/West Bengal Board of Madrasah Education on the date of Advertisement.

(3) Desirable: Knowledge of Islamic Studies and Culture in respect of candidates opting for Madrasahs.

N.B.: The above criteria of marks shall not apply to a Headmaster/Headmistress in approved service in High/Higher Secondary School/High Madrasah.

6. The said eligibility criteria of academic qualification is stipulated in the Recruitment Procedures framed by the West Bengal School Service Commission. The advertisement as published inviting the names, also published the eligibility criteria so far as the academic qualifications and the teaching experience are concerned. From the eligibility criteria of academic qualification for the post of Headmaster of a High School/Higher Secondary School in which we are concerned, it appears that under the heading "NB" a provision made to exempt the eligibility criteria of securing certain percentage of marks in the Master Degree, Secondary and Higher Secondary level only in respect of Headmaster/Headmistress in approved service in High/Higher Secondary/High Madrasah Institution.

7. The respondent No. 10, Sri Subharangshu Chakraborty, in the year 2001 while he was working in the approved post of Assistant Teacher of Uttar Sankarpur S.C. High School within the district Uttar Dinajpur moved a writ application numbered as W.P. No. 10789 (W) of 2001, seeking a writ of mandamus commanding the respondents particularly the concerned School Service Commission not to give any effect or further effect to the vacancy declaration of the post of Headmaster in Uttar Sankarpur S.C. High School on the ground that the petitioner already was appointed in the post of "Headmaster" as Teacher-in-Charge of the school and after such appointment, the concerned District Inspector of Schools (SE) Uttar Dinajpur had withdrawn the vacancy declaration. In the said writ application the respondent No. 10 being the writ petitioner contended that he was appointed in the post of Assistant Teacher of the said school on 4th August, 1988 and due to vacancy in the post of Headmaster he was appointed as Teacher-in-Charge thereafter. The writ petitioner further claimed his service status as Headmaster of the school. Barin Ghosh, J. (as His Lordship then was) on 13th August, 2001 dismissed the writ application by a reasoned judgment discussing the status of the writ petitioner, the present respondent No. 10 of this appeal, Sri Chakraborty. It was held in the judgment that petitioner's service status at the relevant time was only an approved Assistant Teacher of Uttar Sankarpur S.C. High School and he had no right to oppose the selection process for appointment of a Headmaster by School Service Commission for which the advertisement was issued being the subject matter of challenge in the said writ application. The judgment of Barin Ghosh, J. (as His Lordship then was) reads such:

In the present writ petition, the petitioner seeks a mandamus commanding the respondents not to give any effect or further effect to the publication of the vacancy for the post of Headmaster in Uttar Sankarpur S.C. High School, Uttar Dinajpur on the ground that the petitioner has already been appointed the Headmaster of the school, and that after such appointment the District Inspector of Schools (SE) Uttar Dinajpur, in fact has withdrawn the vacancy notification. The petitioner was

appointed as the Assistant Teacher of the school on 4th August, 1988. His appointment as Teacher-in-Charge was approved. After such approval, it is the case of the petitioner that he worked for one month. The post of Teacher-in-Charge is not a teaching. In order to became a teacher a Teacher-in-Charge, no extra qualification is required. The Teacher-in-Charge is a stop gap arrangement until the Headmaster takes over so as to look after the administrative functions of this school. Any Assistant Teacher can, therefore, be appointed as the Teacher-in-Charge to render the administrative duties of the Headmaster or the Headmistress when the post of Headmaster or the Headmistress has not been filled in. It is the case of the petitioner that he was again appointed as a Teacher-in-Charge. This appointment of the petitioner as Teacher-in-Charge was approved on 1st March, 2001, with effect from 1st May, 2000. There is no dispute that the school has no Headmaster and accordingly, there was nothing in proper in appointing an Assistant teacher as the Teacher-in-Charge. The question is whether the petitioner could at all be appointed as Headmaster of the school? Since the post of Teacher-in-Charge does not signify a teaching post, the same has not been dealt with by the West Bengal School Service Commission Act while defining the expression "teacher". The expression "teacher" as used in Rule 28 of the 1969 Management Rule, should be read with the definition of the said word, as occurring in the West Bengal School Service Commission Act. That includes Headmaster/Headmistress. There is no dispute that before the Act came into effect there had been a difference in the minimum qualification and experience for an Assistant Teacher vis-a-vis the Headmaster or Headmistress. That difference has also been retained even after the Act has come into effect. The petitioner may have such qualification and experience for being appointed as a Headmaster; but the fact remains that he was never appointed as such. The petitioner contends that he was the Teacher-in-Charge of the school before the School was upgraded and, accordingly, in terms of the circular of the Government dated 8th March, 2001, the petitioner having the requisite qualification to become a Headmaster, should be appointed as Headmaster of the upgraded school. The circular does not say what the petitioner seeks. The circular says that in the event the Headmaster of a school which has been upgraded, has the qualification of the Headmaster of the upgraded school, he shall be appointed the Headmaster of the upgraded school. But if he does not have such qualification, then, he shall only be appointed as Teacher-in-Charge and within three years from the date of appointment as such Teacher-in-Charge, he shall be required to acquire the necessary qualification. The circular, therefore, applies to only those persons who have been properly appointed as Headmaster of the school. In the instant case, the petitioner was never appointed the headmaster of the school at any point of time until 1st May, 2000. With effect from 1st May, 2000, the petitioner was only appointed as the Teacher-in-Charge and not as the Headmaster. If after 1st May, 2000 the petitioner was to be appointed as the Headmaster of the school, he could only be appointed on the basis of the recommendation of the School Service Commission and not otherwise. Inasmuch after 1st May, 2000 the school could not

appoint anyone as Headmaster without being recommended by the School Service Commission and since in terms of the provisions contained in the said Act, any appointment made of a headmaster without he being recommended by the School Service Commission, such appointment is so illegal that the incumbent so appointed should not be treated to be a teacher, the school did not appoint the petitioner as Headmaster. The District Inspector of Schools (SE) Uttar Dinajpur was never, nor is at all the appointing authority. He was only the authority to oversee the discharge of functions by the schools in accordance with law and has power to grant approval. The District Inspector of Schools (SE) without there being a proper appointment by the appointing authority in accordance with the provisions of law, had no business, nor had any jurisdiction to give approval to the purported appointment of the petitioner as Headmaster of the school. This purported appointment dated 21st March, 2001 has been procured by the petitioner as the same is so illegal that unless the same had been procured by the petitioner, there was no just reason to issue the same. The petitioner did act positively in procuring the said document and filed the frivolous writ petition on the strength of the said document.

The writ petition is thus dismissed. The petitioner shall pay cost of this writ petition assessed of Rs. 2500/- to the State of West Bengal. This payment shall be made within a period of two months from today, in default it shall be open to the state to recover the same from the salaries payable to the petitioner.

8. An appeal was preferred by the present respondent No. 10, against the judgment of Barin Ghosh, J. (as His Lordship then was) aforesaid, which was numbered as MAT 3117 of 2001, thereafter renumbered as FMA 743 of 2006. It stood dismissed for default during hearing of this appeal. Subsequently, this appeal was heard on 15th May, 2008 by the Division Bench (Coram: Ashim Kumar Banerjee and Tapas Kumar Giri, JJ.) restoring it in file and by the judgment and order dated above, appeal stood dismissed on merit. The said judgment dated 15th May, 2008 reads such: (it will appear from the annexure XI of the affidavit affirmed on 17th November, 2008, by the appellant No. 1)

The appellant Subhransu Chakraborty was working as Assistant Teacher in Uttar Sankarpur S.C. Junior High School. The school was subsequently upgraded to the High School. Subhransu was appointed as Teacher-in-Charge with effect from August 2, 1988 as would appear from page 23 of the paper book. He continued to work as such till the school was upgraded.

By memorandum dated March 1, 2001 the District Inspector of Schools (SE), Uttar Dinajpur regarded him as Teacher-in-Charge with effect from May 1, 2000. Xerox copy of the memorandum of the District Inspector of Schools be kept on record.

The State issued a circular on March 5, 2001 to the effect that in case any school was upgraded, the Headmaster working in the Junior High School should be approved as Headmaster of the upgraded High School provided he had the requisite

qualification. Even in case he did not have the requisite qualification, he could be appointed as such on undertaking to improve his qualification within three years from the date of approval. The said circular appearing at page 30 of the paper book also provided that Teacher-in-Charge was not a permanent post and are nothing but a stop gap arrangement.

The District Inspector of Schools at the time of upgradation of the said school recognized him as Teacher-in-Charge, although he claimed that he improved his educational qualification in the meantime by obtaining post graduate degree in addition to training qualification. The District Inspector of Schools however, by memorandum dated March 27, 2001 appearing at page 24 of the paper book approved his appointment as Headmaster with effect from May 1, 2000 without considering the earlier memorandum dated March 1, 2001. Pertinent to note, the District Inspector of Schools was not the appointing authority. The District Inspector of Schools could only approve his appointment after overseeing that the recruitment procedure was properly followed.

The School Service Commission however, ignored such notification (possibly they were not aware of such memorandum). The School Service Commission declared the vacancy and issued an advertisement appearing at page 26 of the paper book inviting applications for the post of Headmaster in the concerned school. The appellant immediately rushed to this Court by filing a writ petition *inter alia*, challenging the said advertisement on the ground that since he had already been appointed as Headmaster in the concerned school and was acting as such, the School Service Commission could not have declared such vacancy and could not have undertaken the recruitment process.

The learned single Judge dismissed his writ petition by considering the facts so discussed above. While doing so, His Lordship made some adverse remarks as against the petitioner. The learned single Judge observed that such appointment and/or approval was a "procured" one. His Lordship dismissed the writ petition with cost of Rs. 2500/- Hence, this appeal by the appellant.

During the pendency of the appeal the appellant was recommended by the School Service Commission in another school namely Purgram S.C. High School. We are told that his present appointment is also under challenge in another proceeding. We have heard Mr. Kalyan Bandyopadhyay, learned senior Counsel appearing for the appellant and Mr. Kamalesh Bhattacharya, learned Counsel appearing for the respondent No. 8. On appreciation of facts and on perusal of the judgment we are of the view that the learned single Judge rightly dismissed the writ petition. We do not find any scope of interference with the ultimate conclusion arrived at by His Lordship. We however, feel that His Lordship could have avoided making of such adverse remarks. The appellant has already been accommodation in another school. He has relinquished his claim in Uttar Sankarpur S.C. High School. Whether the appellant procured such appointment as observed by His Lordship or not, may not

be gone into, firstly because those points were not in issue and secondly because such issue has now become academic. The appeal is disposed of with the above observation. The cost awarded by His Lordship is however, made easy.

There would be, however, no order as to costs in this appeal. Urgent xerox certified copy of this order, if applied for, may be given to the parties on priority basis.

9. The said affidavit annexing the judgment of other appeal F.M.A. 743 of 2006 as quoted, was filed while the present appeal was under "CAV" by mentioning the matter before us on supplying copy of affidavit to all respondents and as this supplementary affidavit relates to some admitted documents annexed, for effective adjudication, we have allowed to file it for our consideration.

10. In the said writ application W.P. 10789 (W) of 2001 of Sri Chakraborty, the Central School Service Commission and its officers were parties including the concerned District Inspector of Schools (SE) Uttar Dinajpur. Judgment was delivered on 13th August, 2001. Though an appeal was preferred, no stay was granted. Despite the judgment, said Sri Chakraborty as was continuing with the function of Headmaster of Uttar Sankarpur S.C. High School as a Teacher-in- Charge, a contempt application was moved, registered as CPAN 1663 of 2004. Said contempt application is pending for hearing, wherein parties have exchanged their respective affidavits-in-opposition and reply. In the contempt application the respondent No. 10 is the alleged contemner No. 1, one Sri Prodyut Sarkar, the District Inspector of Schools (SE), Uttar Dinajpur, contemner No. 2 and one Sri A.S. Biswas, Director of School Education, Government of West Bengal, contemner No. 4.

11. During pendency of the said contempt application and after the judgment dated 13th August, 2001 was delivered by Barin Ghosh, J. (as His Lordship then was) declaring the service status of respondent No. 10 as approved Assistant Teacher only and not the Headmaster of Uttar Sankarpur S.C. High School, in response to an advertisement for appointment in the post of Headmaster of Purgram S.C. High School, the respondent No. 10, Sri Chakraborty, filed an application seeking consideration of his candidature before the West Bengal Regional School Service Commission, Northern Region by disclosing his service status as approved Headmaster of Uttar Sankarpur S.C. High School with effect from 1st May, 2000 and also disclosing his experience as Headmaster for 5 years.

12. From the said application filed it is clear that the respondent No. 10 did not fulfil the minimum academic eligibility criteria so far as securing of percentage of marks in respective academic qualifications from secondary level to Master Degree level, namely, 45 per cent marks. As such, his application was required to be rejected outright but gentleman Sri Chakraborty suppressed the material facts about his service status by disclosing his status as existing approved Headmaster of Uttar Sankarpur S.C. High School. He suppressed the material facts that he was at the relevant time was only an approved Assistant Teacher of the said school and did not

qualify the minimum eligibility criteria so far as the academic qualifications and teaching experience of 5 years working in the post of Headmaster. Said factual statement made, was contrary to the judgment delivered by Barin Ghosh, J. (as His Lordship then was) aforesaid. He was successful to make the School Service Commission to believe about fulfillment of eligibility criteria under exempted category as was available to the existing approved Headmaster of another school, wherein the minimum percentage of marks as fixed from Secondary to Master Degree level were not required to be fulfilled. The School Service Commission though was a party in the writ application as was dismissed by Barin Ghosh, J. (as His Lordship then was) but it considered Sri Chakraborty's application under exempted category and thereby recommended him for the post of Headmaster of Purgram S.C. High School. The School Managing Committee in view of such recommendation of School Service Commission as was bound to appoint as per statute appointed him in the post of Headmaster of Purgram S.C. High School. Such appointment was even approved on 8th February, 2006 by the District Inspector of Schools concerned, who also was party in the case where Barin Ghosh, J. (as His Lordship then was) passed judgment.

13. The writ petitioners who are guardians of their respective ward studying in the said Purgram S.C. High School as mentioned in paragraph 2 of the writ application moved the writ petition W.P. No. 22128 (W) of 2006, which was dismissed on the ground of locus standi, by the learned trial Judge, where recommendation of School Service Commission and appointment of Sri Chakraborty in the said school assailed. In paragraphs 2 to 10 of the writ application, the writ petitioners-appellants categorically contended their legal status, relationship with the Purgram S.C. High School and also their grievance against appointment of Sri Chakraborty, respondent No. 10, which reads such:

2. The petitioners are guardians of their wards who are studying in different classes from Class-V to X in the said school. Particulars of students being wards of petitioners is stated below:

Petitioner No.	Name of Ward of the petitioners	Class	Section	Roll No.
1.	Jitu Barman	VI	A	15
2.	Sangita Sarkar	IX		
3.	Pradip Roy	VIII		
4.	Latika Deb Sharma	VI	B	26
5.	Rajib Bhowmik	VI	A	75
6.	Dipali Barman	IX		82
7.	Sentu Deb Sharma	VII	B	54
8.	Swapna Bhowmik	VI	A	87

9.	Manab Bhowmik	VII	B	70
10.	Rabi Barman	VI	B	7
11.	Dipu Bhowmik	V	B	3
12.	Pankaj Guha	V	A	37

3. That the petitioners being the guardians of their wards are largely affected due to corruption exercised in the process of selection for the post of Head Master of the said school which has polluted the education system in the said school. Serious issues with fraud practice is subject matter in the present case. The facts are not only strange but thrilling. The person who has played fraud to snatch a public employment suppressing the order of Hon"ble Court was encouraged to do so by high ranking public officers who had vested interest to give employment to their designed person in the post. Public bodies totally ignored to look into the fact that the person who has been chosen by them for the post of Head Master does not deserve to contest for the post in question even.

4. The petitioners herein have all interest in the present proceeding to protect the educational atmosphere in school. The petitioners have locus standi and have right to approach this Hon"ble Court to highlight the fraud committed in the process of selection in which not only the respondent D.I. of schools is a party but also the School Service Commission and the respondent No. 10 have joined hands together and they have shown their colour by allowing an illegal appointment in school in utter violation of recruitment rules.

5. It is a known position in law that for filling up the post of Head Master in High School, eligibility qualification is inter-alia as follows:

(I) 45% marks both at Secondary and Higher Secondary level.

(II) 10 years continuous teaching experience.

(III) 45% marks at the graduation for pass course.

The above criteria of marks shall not apply to an existing Head Master/Head Mistress in approved service in high/higher secondary school. Relevant portion of the said advertisement prescribing such qualification by West Bengal School Service Commission of 2005 is annexed hereto and marked with the Letter "P-1.

6. The respondent No. 10 Subhransu Chakraborty has been selected by the W.B. Regional School Service Commission Northern Region as Head Master for the said school. Said Sri Chakraborty has already joined as Headmaster in the said school. Said respondent No. 10 Sri Chakraborty in order to be qualified for the post of Head Master was supposed to satisfy requisite criteria for such post. It is understood from the School Service Commission being the respondent herein by the petitioners that respondent No. 10 although does not possess 45% marks in higher secondary level or the graduate level as he is a pass graduate, he has been chosen as Head Master

on the basis of the fact that said respondent Chakraborty had produced certificate showing that he is an existing Head Master of Uttar Sankarpur S.C. High School and he was given exemption of the conditions as stated in foregoing paragraph because of his existing status as Head Master.

7. The respondent No. 10 was not at all the Head Master of Uttar Sankarpur S.C. High School. In fact Uttar Sankarpur S.C. High School is consistently giving advertisement since 2001 till 2005 through School Service Commission showing that there is existing vacancy in the post of Head Master for the said school. Copies of such advertisements are annexed hereto and collectively marked with the Letter "P-2".

8. It is needless to mention that if respondent No. 10 was the Head Master of said Uttar Sankarpur S.C. High School there would have been no occasion for that school to notify vacancy in the post of Head Master since 2001 to 2005.

9. In fact said respondent No. 10 managed to obtain an approval of his appointment as Head Master in the Uttar Sankarpur S.C. High School prior to 2001 by exercising fraud. Said respondent No. 10 wanted to stall engagement of Head Master through School Service Commission and accordingly he challenged the notification declaring vacancy in the said Uttar Sankarpur S.C. High School by the respondent School Service Commission. It was alleged by respondent No. 10 in his Writ Petition that since respondent No. 10 was the Headmaster with the approval of District Inspector of Schools, there should have been no occasion on the part of the respondent School Service Commission to notify the vacancy once again.

10. The said Writ Petition being W.P. No. 10789 (W) of 2001 was moved by respondent No. 10 challenging the notification of the School Service Commission declaring vacancy for the post of Head Master in Uttar Shankarpur S.C. High School. The said Writ Petition was heard by the Hon'ble Justice Barin Ghosh (as His Lordship then was) and by the judgment and order dated 13.08.2001 His Lordship was pleased to hold that Sri Chakraborty was never appointed as Head Master but he was appointed as Teacher-in-Charge with effect from 01.05.2000 and as such the claim of petitioner (respondent No. 10) as Head Master is having no legs to stand. His Lordship further held that respondent No. 10 was never appointed as Head Master in any School and even if any appointment is given in his favour and any approval is accorded in his favour by the District Inspector of Schools in the post of Head Master, the same is totally illegal as after School Service Commission came into force in 1997 no appointment to the post of Head Master can be done without being recommended by the School Service Commission. It has been held by the Hon'ble Court that respondent No. 10 procured an appointment letter dated 21.03.2001 in the post of Head Master from the District Inspector of Schools and the said purported appointment dated 21.03.2001 is illegal and respondent No. 10 did act positively in procuring the said document and filed frivolous writ petition on the strength of said purported letter of appointment dated 21.03.2001 in the post of

Head Master. His Lordship was accordingly pleased to dismiss the writ petition filed by respondent No. 10 and awarded cost of Rs. 2,500/- . Copy of the said judgment dated 13.08.2001 is annexed hereto and marked with the Letter "P-3". In the present writ application averments made about the judgment delivered by Barin Ghosh, J. (as His Lordship then was) in the earlier writ application being W.P. No. 10789 (W) of 2001 filed by respondent No. 10 claiming his service status as Headmaster of Uttar Sankarpur S.C. High School to resist the advertisement published by School Service Commission to appoint a fullfledged Headmaster in the said school, the qualification of Sri Chakraborty right from Secondary to Master Degree level and percentage of marks obtained therein to satisfy the Court that minimum academic educational qualifications were not fulfilled for the post of Headmaster in terms of Recruitment Rule of School Service Commission as well as the advertisement issued by the Service Commission and also the unholy link of respondent No. 10 with the School Service Commission so far as his recommendation was concerned despite being not qualified for the post in terms of the statutory provision. An affidavit-inopposition was filed by the School Service Commission disclosing the fact that they were misled in view of the application dated 22nd August, 2005 filed by respondent No. 10, wherein he disclosed his service status as existing approved Headmaster of Uttar Sankarpur S.C. High School and as such, the School Service Commission exempted the minimum eligibility criteria of academic qualification, namely, securing of minimum percentage of marks thereon prescribed by the statute and in the advertisement. It was contended in the affidavit that School Service Commission considered the application of respondent No. 10 as an application of an existing approved Headmaster of Uttar Sankarpur S.C. High School wrongly.

14. An affidavit-in-opposition was filed by one Sri Buddhadev Kundu, Secretary of the West Bengal Central School Service Commission before the learned trial Judge affirming the same on 17th May, 2007. The relevant portion of the affidavit of the said Service Commission disclosed a sorry state of affairs about transparency in the works of Service Commission as well as the fraudulent action of Sri Chakraborty. In paragraph 2, the case made out by the Service Commission, which reads such:

I state that I have received a copy of the writ application (hereinafter referred to as the said application) and I have understood the purport and contents of the said application. Before dealing with the said application I state as follows:

- i) The present writ petition has been filed by the guardians of the wards who were studying in different classes in Purgram S.C. High School, Post Office - Mudafat, Police Station - Kaliaganj, District - Uttar Dinajpur (herein after referred to as the said school)
- ii) Sri Subhransu Chakraborty being respondent No. 10 had been recommended by the West Bengal Regional School Service Commission, Northern Region, Malda on 08.02.2006 as Headmaster of Purgram S.C. High School, Post Office - Anantpur,

District - Uttar Dinajpur.

iii) It is stated that Sri Chakraborty did not possess 45 per cent marks in the Higher Secondary level and in the graduate level. He is a pass graduate and the candidature of Sri Chakraborty for the post of Headmaster was considered by the commission on basis of the declaration made by Sri Chakraborty as Headmaster of Uttar Sankarpur S.C. High School in the application form submitted by Sri Chakraborty. In support of such declaration Sri Chakraborty furnished the approval certificate of his service as Headmaster of Uttar Sankarpur S.C. High School from the District Inspector of Schools, Secondary Education, Uttar Dinajpur. A copy of the certificate submitted by the District Inspector of Schools, Secondary Education, Uttar Dinajpur, on 27.03.2001 is annexed hereto and marked as annexure P-1. A copy of the application submitted by Sri Chakraborty before the Commission is annexed hereto and marked as annexure P-2.

iv) It is submitted that the Rule prevailing for appointment to the post of Headmaster as per the extent Rule of the Commission is annexed hereto and marked as annexure P-3.

v) It is submitted that Sri Subhransu Chakraborty also submitted one letter containing pay fixation as Headmaster from the office of the District Inspector of Schools, Secondary Education, Uttar Dinajpur and a copy of the same is annexed hereto and marked as annexure P-4. It is stated further that such letter dated 06.07.2004 issued by the District Inspector, Secondary Education, Uttar Dinajpur, was submitted by Sri Chakraborty before the commission. It is further stated that Sri Chakraborty joined Purgram High School as Headmaster on 23.03.2006 and the service of Sri Chakraborty as Headmaster of Uttar Sankarpur S.C. High School had been approved by the District Inspector of Schools, Secondary Education, Uttar Dinajpur, with effect from 01.05.2000 and a copy of the approval of appointment as Headmaster issued by the District Inspector of Schools, Secondary Education, Uttar Dinajpur, had already been annexed in the present affidavit. It is stated that the Hon"ble Mr. Justice Barin Ghosh had delivered a judgment on 13.08.2001 in W.P. No. 10789 (W) of 2001 filed by Sri Subhransu Chakraborty. In the said writ petition, Sri Chakraborty sought for a mandamus commanding the respondents not to give effect or further effect to the publication of vacancy for the post of Headmaster in Uttar Sankarpur S.C. High School, Uttar Dinajpur on the ground that the petitioner had already been appointed as Headmaster of the school and after such appointment the District Inspector of Schools, Secondary Education, Uttar Dinajpur, has withdrawn the vacancy notification. On 13.08.2001 the Hon"ble Mr. Justice Barin Ghosh was please to dismiss the writ petition. The Learned Judge further commented that the District Inspector of Schools, Secondary Education, Uttar Dinajpur, without there being a proper appointment by the appointing authority in accordance with the provisions of law, had no business, nor had any jurisdiction to give approval to the purported appointment of Sri Chakraborty as Headmaster of

the school.

vi) It is submitted that the copy of the judgment and order delivered by the Hon"ble Mr. Justice Barin Ghosh on 13.08.2001 in W.P. No. 10789 (W) of 2001 came to the knowledge of the Commission after issuance of the recommendation letter in favour of Subhransu Chakraborty on 08.02.2006.

vii) it is stated that the judgment and/or order dated 13.08.2001 passed by the Hon"ble Mr. Justice Barin Ghosh was received by the Commission on 17.05.2006 and immediately thereafter the Commission enquired about the appointment of Sri Chakraborty as Headmaster of Uttar Sankarpur S.C. High School to the District Inspector of Schools, Secondary Education, Uttar Dinajpur by a letter dated 20.10.2006 seeking clarification as to how and when Sri Chakraborty had been appointed as Headmaster of Uttar Sankarpur S.C. High School.

viii) It is stated that on an earlier occasion and more particularly after receipt of the judgment on 17.05.2006 the Assistant Secretary, West Bengal Regional School Service Commission, Nothern Region, Malda informed the District Inspector of Schools, Secondary Education, Uttar Dinajpur to send clarification as to how and when Sir Chakraborty had been appointed as Headmaster of the said school and on what ground the then District Inspector of Schools, Secondary Education, Uttar Dinajpur, had accorded approval to the appointment of Sri Chakraborty as Headmaster of the school. Copies of the letters dated 25.05.2006 and 20.10.2006 issued by the Assistant Secretary, West Bengal Regional School Service Commission, Northern Region, Malda are annexed hereto and marked as annexure P-5. No information had been received by the Commission from the concerned District Inspector, Secondary Education, Uttar Dinajpur, till date and the Commission is ignorant about the appointment of Sri Chakraborty as Headmaster of Uttar Sankarpur S.C. high School. It is submitted further that no copy of the judgment and/or order dated 13.08.2001 passed in W.P. No. 10789 (W) of 2001 had been received by the Commission before issuance of the recommendation letter in favour of Subhransu Chakraborty as Headmaster, Purgram S.C. High School on 08.02.2006.

ix) Having regard to the facts and circumstances of the case as stated hereinabove and also in view of the directions passed on 13.08.2001 in W.P. No. 10789 (W) of 2001 by the Hon"ble Mr. Justice Barin Ghosh, appropriate direction may kindly be passed so that the wrong which has been committed be remedied.

15. In the affidavit, School Service Commission has submitted that as the judgment delivered by Barin Ghosh, J. (as His Lordship then was) was not available to them prior to recommendation made, there was a mistake to recommend and the gentleman, Sri Chakraborty, was not qualified for consideration of his candidature for the post of Headmaster due to lack of minimum percentage of marks in academic field prescribed by the statute but his application was considered under exempted category as he disclosed his teaching status as an existing Headmaster of

Uttar Sankarpur S.C. High School. On that contention, in paragraph 2(ix), accordingly, the Service Commission prayed for appropriate direction for implementation of the judgment of Barin Ghosh, J. (as His Lordship then was) so that the wrong as committed could be remediate. Sri Chakraborty, respondent No. 10 filed an affidavit-in-opposition affirmed on 12th February, 2007. It was his contention that writ application was not maintainable on the ground of locus standi to seek a writ of certiorari and also mandamus. It was further contended that he participated in the selection process and was selected by the Service Commission, that challenging the judgment of Barin Ghosh, J. (as His Lordship then was) passed in W.P. No. 10789 (W) of 2001, an appeal preferred and as per one circular letter of Education department he accrued status of "approved Headmaster" due to discharge of duty as Teacher-in-Charge. No answer given about his application filed before School Service Commission suppressing the material facts that he was not at all approved Headmaster and he suffered judgment delivered by Barin Ghosh, J. (as His Lordship then was) declaring his service status as approved Assistant Teacher irrespective of holding the responsibility as Teacher-in-Charge to perform the duty of head of the institution in absence of Headmaster of the school for which advertisement was issued to select a candidate on merit.

16. Despite all the materials as placed before the learned trial Judge, namely, the writ application contending the judgment of Barin Ghosh, J. (as His Lordship then was) and the qualification of Sri Chakraborty, opposition of School Service Commission disclosing the fact that Sri Chakraborty misled the Service Commission by disclosing his identity as approved Headmaster of Uttar Sankarpur S.C. High School and also the opposition of the respondent No. 10, wherein no answer given about his action to submit an application disclosing his identity as approved Headmaster of Uttar Sankarpur S.C. High School even after the judgment delivered by Barin Ghosh, J. (as His Lordship then was) on 13th August, 2001, which was not stayed by the appeal Court even at that time and a contempt application was pending for his self style functioning as head of the institution in breach of the judgment delivered by Barin Ghosh, J. (as His Lordship then was) registered as CPAN 1663 of 2004, learned trial Judge did not consider the writ application for adjudication on merit when a clear case of commission of fraud was disclosed and proved and when there was a clear case of willful and deliberate violation of the solemn order and judgment passed by Barin Ghosh, J. (as His Lordship then was) was disclosed. Learned trial Judge simply rejected the writ application on the ground of locus standi of the writ petitioners.

17. Having regard to the aforesaid factual matrix, now the question as raised before us, namely, the locus standi to move the writ application, the commission of fraud by the respondent No. 10, breach of order passed by Barin Ghosh, J. (as His Lordship then was) as well as the jurisdiction and power of the writ Court, to be dealt with.

18. The question of locus standi to move a writ requires an adjudication on considering the multi faceted factors, namely, the lis in the nucleus of the writ application, the interest of the writ petitioners in such lis, the prejudice or injury, if any, is being sustained by the writ petitioners as an effect of the action impugned in the writ application and the nature of the lis, namely, whether subject matter of the writ is within the private law field exclusively or in the public law domain, wherein interest in general including the writ petitioners is being affected.

19. From the pleadings of the writ application it appears that writ petitioners are not strangers to the educational institution, wherein their children are studying, but they have interest to take care so that better education is transmitted by provider-institution through best teaching staff and its functional activity thereon. Education is now a fundamental right under Article 21A of the Constitution of India, which mandates providing of education, which always indicative of quality education to the students of tender age below 14 years by state. The school is a secondary school where all staffs are getting salary from State Government and some of the wards of the writ petitioners are studying in those classes where the age group of student is below 14 years. Since the wards of the writ petitioners are studying in the concerned school irrespective of the fact that there is a Managing Committee to look after the functional activity of the institution including the administrative and academic faculty, the writ petitioners cannot be said as having no voice to raise any question on issue of appointment of a teaching staff and/or head of the institution. A quality teaching is the sine qua non of proper learning by the students. Such quality teaching only could be provided by a competent teacher, who is not only duly qualified with the academic qualifications in terms of the standard framed by the School Service Commission but he must be a man of character as the student's mind and their psychological impulses are directly influenced by the teacher, his mode of teaching and the personal life activity including the character of the teacher. The head of the institution is a prime post in an educational institution, who is the main navigator in the ocean of learning to sail the knowledgeship in a proper direction by guiding the navigation, namely, by taking administrative control of the institution, by providing academic environment in the institution and by creating a congenial environment of study by his wisdom, personal character and ability. The International Commission on Education for 21st Century has observed that "a good school head who is capable of establishing effective team work and is seen as being competent and open minded often achieves major improvements in the quality of his or her school". In that angle, as the progress of an educational institution and the learning skill of students could be advanced and increased by a competent head of the institution who is not only capable of good teaching in academic field only but also by proper navigating the educational institution by his guidance lead it to a highest standard, as the influence of a teacher is also a major factor for the growth of knowledge of the students. In that angle, the present writ petitioners as per our view has a very close interest to intervene so far as proper running of the

educational institution by a competent head of the institution satisfying the academic standard prescribed by the statute and his unblemished character.

20. Beside such, the writ petitioners have direct interest to see that educational career of their children who are studying in the school is taken proper care of by the institution by imparting education manned by competent teaching staff with unblemished character. The writ petitioners are paying the fees on account of study of their wards in the school in question and accordingly they are vitally interested and party affected if in any educational institution, a teacher is appointed without qualifying the minimum qualification/standard prescribed under the statute. Hence, they have locus to move a writ application assailing such appointment.

21. From the pleading it appears that the writ petitioners have raised a point about breach of statutory provision of selection process, which is framed as Recruitment Rule for appointment of Headmaster by West Bengal School Service Commission in terms of the power exercised by them under West Bengal School Service Commission Act providing minimum eligibility criteria of academic qualification, namely, securing of minimum percentage of marks as 45 per cent and above in the Master Degree level with consistency of percentage of marks in Secondary or Higher Secondary level to that extent. Such fixation of minimum academic qualification being an eligibility criteria of a Headmaster, which will allow the person to appear in the selection process, if is not properly considered and a person who did not fulfil the aforesaid minimum academic qualification being the eligibility criteria, is selected by the School Service Commission, the guardians whose wards are studying in the school, surely has a positive interest to agitate this matter before the writ Court when Managing Committee failed to discharge their statutory obligation of considering the aforesaid illegalities. In the pleading of the writ application writ petitioners had set up a positive foundation of their locus standi by pleading their interest and close attachment with the school as well as breach of a statutory Recruitment Rule by the School Service Commission. It is a settled legal position that a writ of mandamus could be issued on breach of mandatory statutory provision as in such type of cases the writ Court is to enforce such statutory public duty involved in the matter. This point has been considered by the Apex Court in the case [Supriya Basu and Others Vs. West Bengal Hsq. Board and Others](#), a judgment of two Judges Bench, wherein earlier views of the Apex Court passed in the case [U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others](#), was followed. The view of Supriyo Basu (supra) also has been followed in the case Madhya Pradesh Rajya Sahakari Bank Maryadit v. State of Madhya Pradesh and Ors. reported in (2007) 12 SCC 529. So far as locus of the writ petitioner to seek a writ of mandamus, the earlier conservative view that the person must be aggrieved or in respect of a selection process, the person must be a party in the selection process, now have got a sea-change by identifying the scope of Article 32 and 226 of the Constitution of India whereby it is now settled law that there is no such rigid limitation and/or technicality of maintainability of a writ application to reach

injustice wherever it may exist. Reliance may be placed to the judgment passed in the case U.P. State Cooperative Land Development Bank Ltd. (supra). The public law concept and the private law ingredients gradually now merged and the distinguishing features have been marginalized, reliance could be placed on the judgment passed in the case [Air India Statutory Corporation, etc. Vs. United Labour Union and others \[overruled\]](#), . When the impugned decision ex facie is illegal and there is a case made out for breach of mandatory statutory provision as in the instant case breach of Recruitment Rule relating to its minimum eligibility qualification of a candidate aspiring for the post of Headmaster, writ petition cannot be dismissed on the sole ground that the person who filed the writ has strictly no locus standi. Reliance may be placed to the judgment passed in the case [M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others](#), and *Sai Chalchitra v. Commissioner, Meerut Mandal and Ors.* reported in (2005) 3 SCC 683. Now the legal concept of locus standi to move a writ by a person seeking writ of mandamus has got its change of structural concept to "right concept". Reliance may be placed to the judgment passed in the case [Ghulam Qadir Vs. Special Tribunal and Others](#), . The relevant paragraph reads such:

There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi. In the case [Bangalore Medical Trust Vs. B.S. Muddappa and others](#), , the issue was considered in the following language "violation of rule of law either by ignoring or affronting individual or action of the executive in disregard of the provisions of law raises substantial issue of accountability of those entrusted with responsibility of the administration. It furnishes enough cause of action either for individual or community in general to approach by way of a writ and the authorities cannot be permitted to seek shelter under cover of technicalities of locus standi nor they can be heard to plead for restraint in exercise of discretion on grave issues of public concern outweigh such considerations.

22. Besides the aforesaid pleading about the breach of mandatory statutory Recruitment Rule in selecting the respondent No. 10 as Headmaster of the concerned school and the direct interest, which suffered an adverse effect, of the writ petitioners whose wards are studying in the school in question, on exchange of the affidavits of respective parties including the School Service Commission another factor has been proved, which is a grave nature of public interest, namely, the fraud and conduct of the respondent No. 10 due to filing his application claiming the service status as approved Headmaster in direct breach of judgment delivered by Barin Ghosh, J. (as His Lordship then was) in his writ application. The Court of law, particularly, the writ Court exercising jurisdiction under Article 226 of the Constitution of India cannot shut his eyes on the issue of fraud surfaced from the respective affidavits of the parties to reject the writ petition on the ground of locus standi. As already discussed, the locus standi point is practically within the domain of procedural and technical field and it cannot obstruct the justice delivery system by way of judicial review to identify the grave public interest issue including the issue of fraud. As already discussed that School Service Commission who recommended the candidature of respondent No. 10 for the post of Headmaster of Purgram S.C. High School has categorically contended that as the judgment of Barin Ghosh, J. (as His Lordship then was) was not in their knowledge, which declared the service status of the respondent No. 10 as only an approved Assistant Teacher of the school and not the approved Headmaster of Uttar Sankarpur S.C. High School, there was an illegality committed to recommend, which requires to be rectified by recalling the same in terms of the Courts order. On perusal of the annexure and perusal of the records as produced by the School Service Commission it appears that the respondent No. 10 in his application, which in detail has been discussed in earlier paragraphs claimed his service status as approved Headmaster of Uttar Sankarpur S.C. High School knowing very well that he suffered a judgment from the writ Court in terms of the judgment of Barin Ghosh, J. (as His Lordship then was) whereby his claim of such status was refused and a direction was given to fill up the vacancy of Headmaster of Uttar Sankarpur S.C. High School by not interfering with the action of School Service Commission, who advertised the vacancy for the post of Headmaster of the said school. It was a clear case not only of the fraud but a clear case of a contemptuous conduct in the angle of deciding the present appeal but not in angle of Contempt of Court's Act as a contempt rule is pending where such issue in angle of said Contempt of Court's Act to be decided by the appropriate Court in accordance with law, without being influenced by our view herein taken. On those facts locus standi issue also to be looked into in the angle so that public law elements involved on those issues are not damaged/fractured.

23. On cumulative effect of the pleading of the writ application and the respective contention of the opposition and the reply thereof, the question of maintainability of the writ application in the angle of the locus standi of the writ petitioners, accordingly, were satisfied when the learned trial Judge heard the matter on

exchange of affidavits. The view of learned trial Judge that writ petitioner had no locus standi to move the writ application cannot be subscribed by us in view of the aforesaid findings and observation.

24. It is the solemn duty of the writ Court to consider the lis and/or the issue by adjudicating the same irrespective of its technicalities, namely, locus standi etc. when a fraud is committed and issue of fraud when is surfaced from the affidavit evidence. It is a settled legal position that writ application is decided on the basis of the affidavit evidence. Reliance may be placed to the Constitution Bench judgment passed in the case [The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others,](#) . It is settled legal position that the fraud vitiates all action, reliance may be placed to the judgment passed in the case Smith v. East Elloe Rural District Council and Ors. reported in (1956) 1 All. E.R. 855. "No judgment of a Court no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything" as observed in the case by Lord Denning, LJ. in Lazarus Estates Ltd. v. Beasley reported in (1956) 1 All. E.R. 341, in the said case Lord Parker, CJ. observed "fraud vitiates all transactions known to the law of however high a degree of solemnity". Similar view echoed by Apex Court in the case [Ram Chandra Singh Vs. Savitri Devi and Others,](#) and in the case [Vijay Shekhar and Another Vs. Union of India \(UOI\) and Others,](#) a judgment of three Judges Bench. It is also a settled legal position that any judgment/order obtained by fraud is a nullity and all subsequent proceeding also will be nullity. Reliance may be placed to the judgment passed in the case [T. Vijendradas and Another Vs. M. Subramanian and Others,](#) . Even in the case of a fraud, the Apex Court held that second review by the High Court was permissible, reliance is placed to the judgment passed in the case [Hamza Haji Vs. State of Kerala and Another,](#) , wherein an order was procured by appellant from a Forest Tribunal by fraud on submitting a statement that the concerned land was under self-cultivation (though the fact was not true), to have an order u/s 3(3) of Kerala Private Forests (Vesting of Assignment) Act, 1971 to retain the land. High Court dismissed the appeal of State Government at admission stage. A statutory review before Tribunal failed on the ground that the order of Tribunal merged with the order of High Court in appeal. Thereafter a review application in High Court was dismissed on the ground of long delay, which was 8 years. Order of dismissal again placed for review along with review of original order. A body of citizens filed the writ application assailing Tribunal's order pointing out fraud. High Court quashed the order of Tribunal and its earlier order on hearing second review application and writ application analogously. The question raised before the Apex Court whether second review was permissible, where the Apex Court answered that when there was a fraud proved, it was permissible.

25. On careful scrutiny of the views of different judgments of English Court and Apex Court it is clear that when there is an exercise of fraud by anybody at any level and a challenge is made on such point before the writ Court, the question of locus standi cannot be a prime factor to dismiss a writ application. Dismissal of the writ in

such a situation is nothing but giving of a premium to the wrong doers, who committed fraud to avail some benefit, which is otherwise not available under the statutory provision, which in the instant case securing of minimum percentage marks, an academic eligibility criteria as fixed by the Recruitment rule for the post of Headmaster by the School Service Commission. In that angle also the writ was maintainable to adjudicate the issue and to render appropriate justice.

26. Having regard to our aforesaid finding and observation, we are answering the point of locus standi in favour of the writ petitioners and we hold that writ petition was maintainable for adjudication.

27. Now we decide about merit of the case. On the point of fraud it appears that it is a proved fact that the respondent No. 10 himself filed his application on 22nd August, 2005 to the School Service Commission claiming his service status as approved Headmaster of Uttar Sankarpur S.C. High School though prior to filing of such application he suffered a judgment in W.P. No. 10789 (W) of 2001 passed by Barin Ghosh, J. (as His Lordship then was) where his claim was negated by dismissing the writ application and directing the School Service Commission to fill up the post of Headmaster of Uttar Sankarpur S.C. High School, wherein he was working as Teacher-in-Charge holding substantive post of approved Assistant Teacher. Be it noted that Teacher-in-Charge is not a post, but for administrative purpose a teacher is placed to function as "Head of the Institution" in absence of a Headmaster, which is a sanctioned post. The School Service Commission in their affidavit has prayed for quashing their recommendation by the Court of law to undo the wrong as committed by them unknowingly the judgment of Barin Ghosh, J. (as His Lordship then was). Hence, we are of the view that a clear case of fraud was committed by the respondent No. 10 by filing his application before the School Service Commission to avail the exemption of securing minimum percentage of marks in Master Degree level as well as in Secondary and Higher Secondary level. At the time of filing his application he was only an approved Assistant Teacher of a school and not approved Headmaster of any school to seek said exemption. Due to his contention in the application claiming his service status as approved Headmaster, the Service Commission granted exemption of minimum eligibility criteria of securing minimum percentage of marks in Master Degree level and Secondary and Higher Secondary level and thereby he was recommended. In view of such discovery of fraud, naturally, Court of law should be prompt enough to set aside and quash everything to reach the injustice as committed in the selection process and respondent No. 10 is not entitled to have any sympathetic treatment from the Court of law. Respondent No. 10 on the basis of said recommendation of Service Commission was appointed as Headmaster and got approval of the same. All have been vitiated due to the fraud as discussed. Besides the fraud, the gentleman, respondent No. 10 also is under charge of contemtuous conduct for willful and deliberate violation of the order of the Hon"ble Court dated 13th August, 2001 passed by Barin Ghosh, J. (as His Lordship then was) in W.P. No. 10789 (W) of 2001. A

contempt proceeding is already pending since 2004 on such issue and despite the pendency of the contempt proceeding, respondent No. 10 dared to submit his application before the Service Commission claiming his service status as approved Headmaster, which was refused by the writ Court in the said judgment. He practically submitted a contra view against the judgment of Barin Ghosh, J. (as His Lordship then was). His appeal against the judgment delivered by Barin Ghosh, J. (as His Lordship then was) also now stand dismissed on merit.

28. The Court of law should be jealous to see that the rule of law is established. Function of the writ Court, accordingly, is not contoured by any limitations of prerogative writs alike the English Courts. In the jurisdiction under Article 226 of the Constitution of India, accordingly, a writ is issued in the nature of mandamus and/or in the nature of certiorari, which provides a broader space than the English Courts to deal with the matter. Furthermore, Article 226 is couched with the language "for any other appropriate order or orders, direction or directions", which also provide a scope to the writ Court to undo any wrong, which does not suffer from any embargo of technicalities like locus standi. Having regard to our findings and observation above, accordingly, we hold that respondent No. 10 since committed fraud upon the School Service Commission to avail exemption from securing minimum percentage of marks of academic qualifications deliberately and willfully even on breach of the judgment of the writ Court passed earlier by Barin Ghosh, J. (as His Lordship then was) disclosing his service status as approved Headmaster of Uttar Sankarpur S.C. High School and thereby got recommendation, which is the subject matter of challenge in the writ application, the recommendation itself was vitiated. Such recommendation recommending the respondent No. 10 for the post of Headmaster of Purgram S.C. High School, accordingly, stand set aside and quashed with retrospective effect. As a consequence of such, all subsequent actions, namely, the appointment of respondent No. 10 in Purgram S.C. High School and his approval of such appointment by the District Inspector of Schools concerned, all stand set aside and quashed with retrospective effect. From the affidavit affirmed on 17th November, 2008 as referred to above by Sri Bimal Barman, one of the appellants, it appears from the annexure at page 11 that the West Bengal Regional School Service Commission, Northern Region, Malda on 13th August, 2008 by their office letter under Reference No. 1061/WBRSSC/NR/CC-427 had withdrawn the recommendation letter dated 8th February, 2006 and cancelled it with retrospective effect from the date of issue by assigning the reason that the selection of Sri Chakraborty was done wrongly in the post of Headmaster of Purgram S.C. High School on the basis of his submission of application form claiming service status as Headmaster of Uttar Sankarpur S.C. High School though Sri Chakraborty was not the Headmaster of the said school when he applied for the post of Headmaster of Purgram S.C. High School. Irrespective of the fact that the recommendation on the basis of which Sri Chakraborty was appointed as Headmaster of Purgram S.C. High School now stood withdrawn by the said Service Commission, we have quashed and set aside the

same and all the subsequent effects thereof, namely, the appointment on the basis of such recommendation and other actions thereof, for the reason that a judgment of a Court is delivered with retrospective effect unless it is mentioned as prospective. Furthermore, due to the fraud as committed as observed by us, we are not inclined to declare the judgment with prospective effect to save the service period of Sri Chakraborty as Headmaster of Purgram S.C. High School to enjoy the service benefits already availed. The prospective overruling concept has developed from the case [I.C. Golak Nath and Others Vs. State of Punjab and Another,](#) as a device/path to give effect of a judgment prospectively as every judgment when is pronounced is considered as of retrospective effect from the date of initiation of the lis. That issue was on constitutional point about the challenge of the land laws as ultra vires. The power of prospective overruling so long was recognized as a power, which could be exercised by the Apex Court only. But very recently the Apex Court held that though such power directly cannot be applied by the High Court exercising the jurisdiction under Article 226 of the Constitution of India but High Court may grant a limited relief exercising the equity jurisdiction by directing the effect of judgment prospectively. Reliance may be placed to the judgment passed in the case [P.V. George and Others Vs. State of Kerala and Others,](#) wherein earlier view of the Apex Court referred to, namely, "it is feature of American Jurisprudence and is an exception to the normal principle of law" as viewed in the case [M.A. Murthy Vs. State of Karnataka and Others,](#) . We are not finding any equity to apply it here, due to proved fraud. Prayer to that effect stand rejected. Since respondent No. 10 was in the teaching post and by exercising fraud secured a job of Headmaster, which is otherwise in breach of judgment delivered by Barin Ghosh, J. (as His Lordship then was) also, this Court is of the view that the gentleman should suffer a consequential penalty of refund of all salary allowances and service benefits enjoyed by him while holding the post of Headmaster of Purgram S.C. High School. It is accordingly directed that respondent No. 10 will refund all salary allowances and service benefits as enjoyed by him while holding the post of Headmaster of Purgram S.C. High School to the Government Treasury. The respondents, Director of School Education and District Inspector of Schools (SE) Uttar Dinajpur both are directed to take appropriate steps for realizing the said amount and to ensure that money is deposited in Government Treasury within three months from this date. Respondent No. 10 is also directed to refund the said amount within one month from this date. 29. In view of the judgment delivered, now the post of Headmaster of Purgram S.C. High School is declared as vacant. School Service Commission and District Inspector of Schools both are directed to take steps to fill up the vacancy of Headmaster forthwith. This appeal is, accordingly, allowed on quashing and setting aside the impugned judgment under appeal on the aforesaid terms. Due to the very nature of the litigation and the conduct of the respondent No. 10, a cost of Rs. 25,000/- is imposed, which to be paid to the appellants within two months from this date by the respondent No. 10.

30. The Director of School Education and District Inspector of Schools concerned both are directed to submit a compliance report by realizing the salary allowances and service benefits as paid to Sri Chakraborty from public exchequer while he was working as Headmaster of Purgram S.C. High School within four months from this date to the High Court Registry. Sri Chakraborty is also directed to submit a compliance report by making a payment of cost of Rs. 25,000/- aforesaid to the High Court Registry within four months. Registry will place the matter in our list to consider those compliance reports.

31. We have been constrained to pass this judgment in view of the great public interest involvement in the matter, wherein a person by exercising fraud secured a recommendation for the post of Headmaster, a very vital post of educational institution, wherein students of tender age are studying and whose academic career and personal character were at the formation stage in the hands of the respondent No. 10. This judgment accordingly has been delivered by us as an exemplary measures against the respondent No. 10.

Pratap Kumar Ray, J.

32. I agree.