

(2016) 10 CAL CK 0007

CALCUTTA HIGH COURT

Case No: Writ Petition No. 24596 (W) of 2012

Governing Body of Bankim
Sardar College

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Oct. 6, 2016

Acts Referred:

- West Bengal College Service Commission Act, 1978 - Section 9

Citation: (2017) 1 CalJ 102 : (2016) LIC 4617

Hon'ble Judges: Girish Chandra Gupta, CJ. and Arijit Banerjee, J.

Bench: Division Bench

Advocate: Mr. Kishore Dutta, Mr. Kallol Basu, Mr. Debashis Sarkar and Mr. Nilanjan Pal, Advocates, for the Petitioners in WP No.24596(W) of 2012] and for the Respondents No. 3, 4 and 5 [in WP No.24023(W) of 2012; Mr. Saktinath Mukherjee, Mr. Aniruddha Chatterjee, M

Final Decision: Dismissed

Judgement

Arijit Banerjee, J. - The present reference arises out of an order dated 23rd December, 2013 passed by a learned Single Judge of this Court seeking views by a larger Bench on the following questions:

"1) Whether recommendation of the College Service Commission for the post of Principal, or for that matter for any teaching post is binding on the college and mandatory inasmuch as whether once a recommendation is made, the college may request the College Service Commission to revise or change the said recommendation;

2) If the candidate is a member of the teaching staff of the college and if his application is duly forwarded or routed by the college authorities whether the college can raise any objection at a later stage."

2. Briefly stated the facts and circumstances of the case are as follows:

Dr. Prasanta Kumar Sen, an Associate Professor in Botany working with Bankim Sardar College applied for the post of Principal in different non-government colleges in terms of advertisements issued by the West Bengal College Service Commission. Though there are allegations that Dr. Sen succeeded in obtaining a recommendation by resorting to malpractice but the fact remains that on 14th August, 2012 the West Bengal College Service Commission recommended the name of Dr. Sen for appointment to the post of Principal which fell vacant consequent to retirement of Dr. Tapas Kumar Banerjee. We are not taking note of the allegations as regards mal-practices allegedly adopted by Dr. Sen because that is a question which may be taken into account by the learned Trial Court. The recommendation dated 14th August, 2012 was received by the concerned college on 31st August, 2012. Dr. Sen, however, by a letter dated 14th August, 2012 had informed the college that he was willing to join with immediate effect. He was not allowed to join within a period of one month or at all.

Needless to mention that he already was an Associate Professor and has been continuing as such.

3. By a letter dated 6th March, 2012 attention of the teacher-in-charge of the concerned college was drawn by the auditors to certain financial irregularities allegedly committed by the teacher-in-charge. The teacher-in-charge at that point of time was none other than Dr. Sen himself. Further financial irregularities were brought to the notice of the Principal of the concerned college by a letter dated 3rd September, 2012. The Governing Body, presumably in that view of the matter, in its meeting dated 21st September, 2012 took the following decisions:-

"In view of the above discussion on the observations of the Statutory Audit Report 2010-11 and the Internal Audit Report 2011-12 the Governing Body is of the prima facie view that the college accounts was fraught with financial irregularities which cannot be ignored by the Governing Body and such financial irregularities can be attributed mainly to Dr. Prasanta Kumar Sen, Associate Professor of Botany as he served as the Teacher-in-charge of the college from 1st September 2010 to 31st August 2011.

The Governing Body unanimously resolved as follows:-

For purpose of proper investigation into such irregularities disciplinary proceedings be initiated against Dr. Prasanta Kr. Sen, as early as possible, and authorizes the President to take steps in this regard and place the same before the next GB meeting for consideration."

4. In the selfsame meeting the governing body decided to keep the recommendation dated 14th August, 2012 in abeyance until disciplinary proceedings were completed. A charge sheet was issued on 20th October, 2012,

followed by an appointment of an enquiry officer who we understand has completed the proceedings and has also filed his report. The report is lying in a sealed cover and has not as yet been opened consequent to an order dated 23rd May, 2016 passed in AST 142 of 2016 (Bankim Sardar College & Ors. v. Smt. Swapna Pal and Ors.) to which Dr. Sen is not a party. That we understand is a separate proceeding by two professors ventilating their grievances.

5. On or about 17th October, 2012 Dr. Sen filed a writ petition which was registered as W.P. 24023(W) of 2012 praying for a writ in the nature of Mandamus commanding the concerned college to issue a letter of appointment in his favour. The governing body of the college also filed a writ petition on 19th November, 2012 which was registered as W.P. 24596(W) of 2012. Both the writ petitions are pending before the learned Trial Court.

6. The questions referred by the learned Trial Court noticed above are in the context of two divergent views expressed by three Single Bench Judgments.

7. The first Judgment is in the case of C.O. 18223 (W) of 1985 passed on 11th February, 1988 by Umesh Chandra Banerjee, J. (as His Lordship then was). The views expressed in that case are as follows:-

"In my view, the language of the statute cannot be read into such a straight-jacket formula that there is no scope for the college authority to raise an objection in the matter of appointment of a principal. Principals are appointed for the proper administration of the college including the educational sphere. Educational qualification by itself would not be sufficient; the administrative capability and the dealings with the members of the staff-teaching and non-teaching the student teacher relationship etc. would have to be considered, as otherwise the educational institution would be in doldrums with no effective administrative system in the concerned institution. To say that the Governing body has no say in the matter and is bound to accept the recommendation of the commission without a demur or a protest or without any objection would be putting something into the words of the statute which the Legislature in its wisdom thought it fit not to incorporate. It is now well-settled that in the matter of interpretation of statutes, plain literal meaning ought to be attributed to the language used with no addition or supplemental to the language of the statute. In my view, the Governing Body of the college would be within its rights to request the college commission for appointment of the Principal from some-one outside the college by reason of lack of administrative capability and in any event, lack of confidence onto the concerned person. Confidence go a long way in the smooth running of the institution and in the event there being any lack thereof, the whole administrative system of the college concerned would crumble down and the interest of education would die a natural death. There must be proper cohesion understanding between the management of the school and the Principal of the institution. In the event of there being a lack of cohesion and understanding, the educational atmosphere would be polluted resulting in complete frustration of

the object with which the educational institution was founded. In the case under consideration it appears that the Governing Body has no confidence onto the person concerned. It would be unjust and unfair on the part of the Law courts to thrust someone who according to the authority does not deserve to be so appointed as the Principal of the College.

Whereas it is true that no Principal can be appointed by the statute 1978 without the recommendation of the college commission. But that does not mean and imply that whomsoever the College commission recognises, the administration would be bound to accept him in spite of special knowledge as regards the non-suitability of the concerned candidate in so far as the administration of the College is concerned."

In W.P. 4366(W) of 2003 (Dr. Bikash Ghosh v. State of West Bengal & Ors.) A.K. Banerjee, J.(as His Lordship then was) took the following view about the matter:-

"Mr. Subhasish Chakraborty, learned Counsel appearing for the college authority submits that the College Service Commission is a recommending body and the college is amply authorised to choose their own Principal. He has relied upon an Apex court decision in the case of **Brahma Samaj Education Society v. State & Ors. reported in 2004 Vol.6 SCC page 224**. In the said case the college authority enjoyed special constitution being run by a minority community. The college authority challenged the procedure for appointment of teacher through College Service Commission. According to them, since they were religious minority and enjoyed special constitution, they should not come under the purview of the College Service Commission Act. In that context, the Apex Court observed that the Government would be entitled to make regulation relating to the terms and conditions of the employment of teaching and non-teaching staff in the aided institution. However, the college authority was entitled to appoint their own teaching staff as they enjoyed special constitution being religious minority.

This judgment, in my view, does not apply in the instant case. Here, the concerned college is a Government sponsored college. The college is fully aided by the State. As such, they are bound by recommendation made by the College Service Commission.

Hence the writ petition succeeds. The college authority is directed to issue necessary letter of appointment forthwith. However, the petitioner should be given a month's time to join the post."

A similar view was taken in the case of **Baisakhi Banerjee v. Chairman, West Bengal College Service Commission reported in (2006) 110 CWN 538** wherein it was held that:-

"The recommendation of the West Bengal College Service Commission regarding appointment of lecturer is binding on the College Authority."

Mr. Mukherjee, learned Senior Advocate, appearing for Dr. Sen, submitted that a recommendation issued by the College Service Commission is neither a request nor

an advice.

He drew our attention to the preamble of the West Bengal College Service Commission Act, 1978 which provides as follows:-

"An act to provide for the constitution of a College Service Commission in West Bengal and for matters connected therewith or incidental thereto."

He also drew our attention to Sections 7, 8, and 9 of the aforesaid Act, which provide as follows:-

"West Bengal College Service Commission Act, 1978.

"7. Functions of the Commission. ♦ (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, it shall be the duty of the Commission to select persons for appointment to the post of Teachers of a College :

Provided that ♦

(i) For selection of persons for appointment to the posts of Teachers other than Principal, the Commission shall be aided by two persons having special knowledge on the subject for which such selection is to be made, of whom one shall be a nominee of the University to which such college is affiliated and the other shall be a nominee of the Chancellor of such University.

(ii) for selection of person for appointment to the post of Principal, the Commission shall be aided by the Vice-Chancellor of the University to which such college is affiliated or his nominee and a nominee of the Chancellor of such University.

(2) It shall also be the duty of the Commission to advise the Chancellor or the State Government on such matter as may be referred to it by either of them.

8. Manner of selection of persons and procedure for the conduct of business of the Commission. ♦ (1) The manner of selection of persons for appointment to the posts of Teachers of a college shall be such as may be provided for by regulations.

(2) The procedure for the conduct of business of the Commission shall be such as may be provided for by regulations.

9. Effect of recommendation of the Commission. ♦ Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, appointments to the post of Teacher of a college shall be made on the recommendation of the Commission."

He also drew our attention to the Regulations framed under the West Bengal College Service Act, 1978 and relied on Clauses 1 and 2 of Regulation 9 which are as follows:-

"(1) On receipt of a request made by the Principal of a college for recommending the name of a suitable candidate for appointment in a vacancy against, an approved post, the commission shall recommend only one name from the panel for appointment against the vacancy. A copy of the letter recommending the name shall be endorsed to the candidate concerned.

(2) The topmost name appearing in the panel at the material time shall be recommended every time."

8. He also relied upon the Judgment in the case of **Dr. Baidyanath Mukherjee v. State of West Bengal reported in (1982) 2 CLJ 134** paragraph 6, wherein the following views were expressed:-

"6. Now, the first question that requires to be decided is whether on these facts taken together including the representation that has been made by the petitioner which has been annexed as Annexure C to the writ petition, it can be said that there has not been a demand of justice, I am sorry that I am unable to hold in the circumstances that the petitioner has not demanded justice and on this technical plea the petitioner's writ petition application or for that the prayer for interim order has to be rejected in limine, even though there are merits in the contention raised in the writ application. In my opinion, all these facts together do clearly amount to demand of justice, and no reply being given the natural conclusion is that justice has been denied.

Therefore, I am of the opinion that the pre-requisite as to demand of justice has been in substance duly complied with. The next question that arises for consideration which is vital in this case is whether the standard that has been laid down in the aforesaid advertisement has been laid down in the aforesaid advertisement has been followed by the authorities concerned viz., the College Service Commission while sending the name of respondent No.10 to Itachuna Bijoy Narayan Mahavidyalaya for favour of issuing appointment letter to him. It is well-known that acts done by the Selection Committee which is a public body must be done, even in the matter of giving employment, fairly, reasonably and totally devoid of any arbitrariness.

The petitioner has stated on oath that his name stood first in the list of selection in order of merit. There is no whisper in the whole application for variation of the interim order sworn by the respondent No.10 either denying or in any way controverting this vital statement made in paragraph 9 of the writ application. It is also very curious that Mr. Pulak Ranjan Mondal, learned Advocate appearing on behalf of the members of the College Service Commission who, it is admitted that the copy of the writ application was served on him as early as on 18.8.81, did not find time to deal with this material allegation which is very vital, nor has the time to ask his client to produce the relevant papers so that this Equity Court can see what is the real position. If this allegation is not denied, then what does it come to? The

statement of the petitioner that his name was appearing in the selection list prepared by the members of the Selection Committee in order of merit at the top remains uncontroverted.

If that be the position, does equity, justice and fair-play require that in the matter of public employment the statutory authority has to act in a manner which will not only be fair and reasonable but which will seem to be fair, reasonable and devoid of arbitrariness. I fail to understand how a person who has been selected in order of merit at the top of the list of selected candidates will be denied consideration of his case for appointment of Principal and others who are below him will be given preference. If this is not arbitrariness, if this is a sample of equity. I fail to understand what is discrimination, what is inequality. Article 14 of the Constitution and also Article 16 of the Constitution which embodies in Part III of the Constitution the fundamental rights of the citizens that there must be equality and fair treatment in the matter of employment in Government offices, it has been observed by the Supreme Court that arbitrariness and/or unreasonableness is the other name of inequality which is contrary to the spirit embodied in Articles 14 and 16 of the Constitution. Therefore, I am not inclined to accept the argument, that because the petitioner's name stood in order of merit in the first position, his name should be passed over, should be overlooked and other candidates will be recommended for appointment by the College Service Commission. The College Service Commission is a statutory body. It has been formed, I think, with the purpose of fair and proper and not arbitrary selection of candidates for being appointment as Principals and that is the spirit and sole object which played with the mind of the legislature while enacting the College Service Commission Act, 1978. Therefore, the refusal to consider the claim of the petitioner for appointment is undoubtedly an act of arbitrariness, an act not justified by reason nor justified by the principle of equal treatment in the matter of public employment. Statutory body has been given powers to select candidates, but the power is to be exercised in a manner which is justifiable, which is reasonable, which is not tainted with unfairness, unreasonableness or arbitrariness. It is necessary to consider another question which is inexplicably connected with this is that in the advertisement there is a requirement viz., that candidates can give their option regarding area of service. This cannot be said to be a mere formal requirement.

The petitioner who is also working as Principal of the Assansol college has given his option and according to the terms of the advertisement, I am constrained to hold, the authorities cannot according to their sweet will and pleasure do away with this requirement which they had laid down in the advertisement aforesaid. Many a decision have been cited at the Bar Mr. Mukherjee but Mr. Chatterjee, an eminent Counsel, has stated that these principles are well-known. I shall simply repeat this that an administrative authority or a public authority is bound to comply with the standard which it has laid down while inviting applications for employment to the public place. I cannot but quote a very lucid and tense observation made by Mr.

Justice Bhagwati in (3) **Raman Dayaram Shetty v. The International Airport Authority, reported in AIR 1979 SC 1628 at page 1635**, paragraph 10. It is in the following terms:◆

"It is well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on plain of invalidation of an act in violation of them."

This observation has been made by the learned Judge relying on an observation of Mr. Justice Frankfurtr in the case of (4) **Vitarelli v. Seaton, (1959) 359 US 535**. I have also held in the case of (5) **Barun Kumar Sinha v. State of West Bengal, reported in AIR 1982 Cal 19** after considering several pronouncements of the Supreme Court that the standard that has been laid down by the administrative authority in the matter of distribution of contract is to be observed otherwise its action will be invalid. It is pertinent to refer in this connection with the decision of a Division Bench of this Court in (6) **State of West Bengal v. Tapan Kumar Sen, reported in 86 CWN 121**. In this case it has been observed by Mr. Justice M.M. Dutt in the following terms :◆

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

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

9. He also relied upon the Judgment in the case of **Dr. Baidyanath Mukherjee v. State of West Bengal & Ors. reported in (1982) 2 CLJ 300**. He drew our attention to paragraph 9, wherein the following views were expressed:-

"Mr. Saktinath Mukherjee, learned Advocate appearing on behalf of the petitioner, has urged in the first place that the purported order of appointment made by the President of the Governing Body of the Bejoy Narayan Mahavidyalaya, Itachuna, Hooghly on 13th of August, 1981 on the basis of the recommendations made by the West Bengal College Service Commission appointing the respondent No.10, Dr. Jayanta Banerjee as Principal of the said College is wholly illegal, arbitrary and discriminatory being violative of the provisions of Articles 14 and 16 of the Constitution of India inasmuch as the petitioner having occupied a much higher position than that of the respondent No.10 in the merit-list prepared by the West Bengal College Service Commission after taking interviews of all the candidates including the petitioner and the respondent No.10 is entitled to be recommended before any recommendation is made by the said Commission for appointing

respondent No.10 as the Principal in the said College. It has also been submitted in this connection that in the matter of public employment it is incumbent on the West Bengal College Service Commission which a public body to act fairly and reasonably without being guided by any extraneous consideration. The College Service Commission is under an obligation to act in a manner which conforms to the principle of equal treatment in the matter of public employment shorn of capriciousness, whims and unreasonableness. It has been next contended by Mr. Mukherjee that the said College Service Commission is not vested with any prerogative to act according to its own whims, caprice and sweet will and pleasure divorced from reasons, fairness and equal treatment in the matter of public employment. It has been next contended by Mr. Mukherjee that in the advertisement published on 13th January, 1981 in the "Statesman" it has been specifically provided in Item No.11 of the said advertisement, "preference of area of service". The petitioner in his application before the said College Service Commission specifically mentioned his preference for his area of service as B. N. Mahavidyalaya, Itachuna, Hooghly or any other college nearer to his permanent residence. At the time of interview the petitioner was supplied with a form to mention his preference in respect of place of posting. Similar forms were also supplied to all other candidates who appeared for the interview before the said College Service Commission. In the said form the petitioner gave his first preference for posting in Hooghly and second preference for posting in Burdwan and third preference in Calcutta. This will be evident from the Annexure "A" to the affidavit-in-opposition sworn on 13th August, 1982 by Sri Badal Krishna Choudhury, Secretary, West Bengal College Service Commission. It has been urged by Mr. Mukherjee that it has been wrongly stated in the paragraph 7 of the said affidavit-in-opposition that the petitioner had been duly recommended on 5.12.81 for the post of Principal according to his revised preference dated 7.4.1981 which is the only valid one in that respect. It has been submitted that this averment in the said affidavit-in-opposition which has been affirmed as true to the knowledge of the deponent is wholly misleading and incorrect inasmuch as the petitioner has exercised his preference for being posted as the Principal of the Bejoy Narayan Mahavidyalaya or to any other college nearer to his permanent residence in the District of Hooghly. The recommendation that was purported to be made in favour of the petitioner by the said College Service Commission for being appointed as Principal to a college at Chittaranjan is not in accordance with the preference given by him but contrary to the area of service mentioned in his application before the College Service Commission as well as the preference given by him on 7.4.81. The petitioner being placed much above the respondent No.10 in the merit-list prepared by the West Bengal College Service Commission it is incumbent on the Commission to recommend the name of the petitioner first for appointment as Principal to B. N. Mahavidyalaya, Itachuna, Hooghly in accordance with the preference given by him and his name should have been recommended prior to the recommendation of the name of the respondent No.10 whose position is much below that of the petitioner

in the merit-list. Mr. Mukherjee has submitted that the name of the respondent No.10 was recommended some-time in July, 1981, i.e., about 4 months after the issuance of the instant Rule on 13th of August, 1981. It has therefore been submitted that the impugned order of appointment of respondent No.10 as the Principal of B. N. Mahavidyalaya, Itachuna, Hooghly as well as the recommendation of his name to the said College for such appointment by the West Bengal College Service Commission are illegal and bad being violative of the Articles 14 and 16 of the Constitution of India. As such, it has been submitted that the aforesaid orders are liable to be quashed and set aside and in the facts and circumstances of the case it is fit and proper that a Writ of Mandamus should be issued commanding the respondents to appoint the petitioner as the Principal of B. N. Mahavidyalaya, Itachuna, Hooghly. It has also been submitted by Mr. Mukherjee that the said College Service Commission has acted mala fide and in arbitrary exercise of its discretion in recommending the name of respondent No.10 to the B. N. Mahavidyalaya for appointment as Principal in utter disregard of the claim of the petitioner who occupied a much higher place than that of the respondent No.10 in order of merit in the panel prepared by the West Bengal College Service Commission and also because of the fact that the petitioner mentioned his area of service as B. N. Mahavidyalaya or any other place nearer to his residence in the District of Hooghly whereas the respondent No.10 did not mention either this college or any other college in the District of Hooghly as his first preference of posting. Some decisions have been cited at the Bar in this connection."

Mr. Mukherjee, contended that a person selected has an indefeasible right and therefore he is entitled to pray for a writ in the nature of mandamus. He added that there may however be exceptional cases where the college may not agree to appoint the candidate.

Next submission advanced by Mr. Mukherjee, was that proceedings drawn up after the selection cannot stand in the way of appointment of the candidate. He in support of his submission relied upon a Judgment in the case of **Union of India & Ors. v. K.V. Jankiraman & Ors. reported in (1991) 4 SCC 109**. He relied on paragraphs 16 and 17 which read as follows:-

"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the

appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge sheet.

If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

"(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) * * *

(3)* * *

(4) the sealed cover procedure can be restored to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No.1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

10. Mr. Mukherjee contended that two questions have been referred by the learned Single Judge. The second question, he submitted, need not be answered. This Court has to answer question number 1 which is a question of law on which there is divergent opinion expressed by three learned Judges of this court.

Mr. Dutta, learned advocate, appearing for the Governing Body, of the college did not join issue on that aspect of the matter.

Mr. Mukherjee, concluded by saying that the merit list confers a right upon the candidate and he in support of his submission relied upon a Judgment of this Court in the case of **State of West Bengal v. Tapan Kumar Sen & Ors. reported in 86 CWN 121**. He drew our attention to paragraph 10 which reads as follows:-

"10. As the State Government has not given any reason why the respondents were not given appointments to the posts of Munsifs and as to what weighed with it to pick and choose from the list of candidates selected by the High Court, it must be held that the State Government has acted arbitrarily, in violation of the provisions of Articles 14 and 16 of the Constitution."

Mr. Mondal, appearing for the College Service Commission, advanced the following submissions:

(A) He adopted the submissions advanced by Mr. Mukherjee.

(B) He submitted that the effect of the recommendation made by the Commission is to be found in section 9 of the Act.

(C) There is no other source of appointment.

(D) That the candidate recommended for the college in question cannot be recommended for any other colleges unless the case is covered by Clause 4 of Regulation 9.

Mrs. Sarkar, learned advocate, appearing for the University, submitted that as per the statute of the University all teachers, whether whole time or part time teachers, can only be appointed in accordance with the provisions of the West Bengal College Service Commission Act, 1978.

11. Mr. Dutta, learned Senior Advocate, appearing for the Governing Body submitted that a negative answer should be given to the first question referred to by the learned Trial Court. He in support of his submission relied on a Judgment in the case of **Jatinder Kumar and Ors. v. State of Punjab and Ors. reported in AIR 1984 SC 1850**. He relied on paragraph 12 which reads as follows:-

"The establishment of an independent body like Public Service Commission is to ensure selection of best available persons for appointment in a post to avoid arbitrariness and nepotism in the matter of appointment. It is constituted by persons of high ability, varied experience and of undisputed integrity and further assisted by experts on the subject. It is true that they are appointed by Government but once they are appointed their independence is secured by various provisions of the Constitution. Whenever the Government is required to make an appointment to a higher public office it is required to consult the Public Service Commission. The selection has to be made by the Commission and the Government has to fill up the posts by appointing those selected and recommended by the Commission adhering to the order of merit in the list of candidates sent by the Public Service Commission.

The selection by the Commission, however, is only a recommendation of the Commission and the final authority for appointment is the Government. The Government may accept the recommendation or may decline to accept the same. But if it chooses not to accept the recommendation of the Commission the Constitution enjoins the Government to place on the table of the Legislative Assembly its reasons and report for doing so. Thus, the Government is made answerable to the House for any departure vide Article 323 of the Constitution. This, however, does not clothe the appellants with any such right. They cannot claim as of right that the Government must accept the recommendation of the Commission. If, however, the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made.

The process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to be appointed to the post which can be enforced by a mandamus. We are supported in our view by the two earlier decisions of this Court in **A.N.D. Silva v. Union of India (1962) Supp. 1 SCR 968** and **State of Haryana v. Subash Chander Marwaha and Ors., (1973) II LLJ 266 SC**. The contention of Mr. Anthony to the contrary cannot be accepted."

12. We have considered the rival contentions of the parties. The short point that falls for determination in this reference is whether or not the recommendation of the College Service Commission for appointment of a candidate is binding on the concerned college.

13. The question for consideration in the judgements in the case of **Dr. Baidyanath Mukherjee v. State of West Bengal and Ors. reported in (1982) 2 CLJ 134 and 300** was whether the claim of the first candidate in the list of selected candidates could be ignored by the School Service Commission and a person occupying a lower rank in the list could be recommended. It was a case challenging arbitrary exercise of power by the College Service Commission. Whereas the question before us is whether the college is bound by the recommendation made by the College Service Commission. No elaborate reasoning is required to demonstrate that these two judgements do not assist the Court in answering the question.

The third and last judgement relied upon by Mr. Mukherjee in the case of *UOI v. Janakiraman (supra)* is equally of no assistance for the simple reason that the question for consideration was whether promotion could be withheld in a case where no charge memo/charge-sheet had been filed in a disciplinary or criminal proceedings. We are obviously not concerned with a case of promotion.

14. We are also unable to accept the submission of Mr. Mukherjee that recommendation by the College Service Commission is neither an advice nor a request. The dictionary meaning of the word "recommend" is "to speak or write of or suggest as fit for employment or favour"; "to advice that a thing should be done" (the Pocket Oxford Dictionary of current English, 5th Ed.).

15. We are also unable to accept the submission of Mr. Mukherjee that the person selected has an indefeasible right which can be enforced by a writ of mandamus. He conceded that in exceptional cases a writ in the nature of mandamus may be refused. We are of the opinion that a writ in the nature of mandamus may be refused by the Court for good reasons. We are supported in our view by the judgement of the Apex Court in the case of **Jai Singh Dalal v. State of Haryana, 1993 Supp. (2) SCC 600**, wherein at paragraph 7 of the judgment it has been held as follows:

"....The law in this behalf appears to be well-settled. In the **State of Haryana v. Subash Chander Marwaha & Ors., 1973 (2) SLR 137 (SC)**, this Court held that the mere fact that certain candidates were selected for appointment to vacancies pursuant to an advertisement did not confer any right to be appointed to the post in question to entitle the selectees to a writ of mandamus or any other writ compelling the authority to make the appointment. In that case, an advertisement was issued stating that there were 50 vacancies in the Haryana Civil Service (Judicial Branch). An examination was held by the HPSC and 40 candidates passed the said examination with the required minimum 45% marks. Their names were published in the Government Gazette. The State Government, the appointing authority, made seven appointments out of the said list in the order of merit.

Respondents, who ranked 8, 9 and 13 respectively in that list, did not get an appointment although there were vacancies. The reason for not appointing the respondents was that in the view of the State Government, which was incidentally identical to that of the High Court, candidates getting less than 55% marks in the examination should not be appointed as Subordinate Judge in the interest of maintaining high standards of competence in judicial/service. Respondents 1 to 3 challenged this decision on the ground that the State Government was not entitled to pick and choose only seven out of them for appointment, because to do so Tanta mounted to prescribing a standard which was not contemplated. The State Government on the other hand contended that the rules did not oblige them to fill in all the vacancies and it was open to them to appoint the first seven candidates in the interest of maintaining high standards. It was further contended that there was no question of picking and choosing and since the rules did not preclude it from selecting from the list the candidates for appointment to set a higher standard, the State Government could not be said to have infringed, any legal right of the selectees for appointment. In the background of these facts this Court came to the conclusion that the mere fact that the candidates were chosen for appointment in

response to the advertisement did not entitle them to appointment. To put it differently, no right had vested in the candidates on their names having been entered on the select list and it was open to the Government for good reason not to make the appointments therefrom and fill in the vacancies. In a recent decision in **Shankarsan Dash v. Union of India, 1991 (2) SCT 555 : 1991 (2) SLR 779 (SC)**, the Constitution Bench of this Court reiterated that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do/not acquire any indefeasible right to appointment against the existing vacancies, It was pointed out that ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for that purpose. Albeit, the State must act in good faith and must not exercise its power mala fide or in an arbitrary manner. The Constitution Bench referred with approval the earlier decision of this Court in Subash Chander's case.

Therefore, the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State. Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria♦♦♦♦"

16. Similar views have been expressed in the decisions of the Hon"ble Apex Court in the cases of **S. Renuka v. State of Andhra Pradesh, (2002) 5 SCC 195**, para 8; **Vinodan T. v. University of Calicut, (2002) 4 SCC 726**, para 14; **State of UP v. Om Prakash, (2006) 6 SCC 474**, para 20.

17. Section 7 of the West Bengal College Service Commission Act, 1978 provides that the duty of the Commission would be to select persons for appointment to the post of teacher of a College. Section 8 of the Act provides that the manner of selection shall be as laid down by the regulations. Section 9 stipulates that appointments to the post of Teacher (which as per the definition Section includes a Principal) shall be made on the recommendation of the Commission. None of the aforesaid sections relied upon by Mr. Mukherjee makes it mandatory for a college to appoint a candidate recommended by the Commission for appointment to the post of a Teacher.

Read together, the said sections mean that no person who is not recommended or approved by the Commission shall be appointed as a Teacher or Principal of a College. The final decision whether or not to give appointment to the selected person is in the realm of the College Authorities.

The decision must however be bona fide, free from arbitrariness and in the best interest of the concerned institution.

18. Regulation 9 of the Regulations framed under the 1978 Act which has been extracted above, also cannot be understood as making it mandatory for a College to

give appointment to a person recommended by the Commission.

The said rule only empowers the Commission to recommend the name of a suitable candidate for appointment from the panel and further requires the Commission to recommend the top most name appearing in the panel at the material time. Neither the Commission nor the recommended candidate can insist that the College must appoint such person. The Governing Body of a College may have very good reasons for not accepting the recommendation of the Commission, in which case, the Governing Body should communicate its decision with reasons to the Commission and request for a fresh recommendation. It would be the duty of the Commission in that event to make a fresh recommendation in accordance with Regulation 9(2).

19. As regards the submission of Mr. Mondal, who represented the College Service Commission, that there is no other source of appointment except Section 9 of the 1978 Act, we are in agreement with him to the extent that no appointment can be made de hors or ignoring Section 9. However, it does not follow from the same that the recommendation of the Commission under Section 9 is binding on the concerned College. Such an interpretation of Section 9 is neither warranted nor desirable.

20. In **Jatinder Kumar v. State of Punjab, AIR 1984 SC 1850** relied on by Mr. Dutta, Learned Senior Advocate appearing for the Governing Body, the Hon'ble Supreme Court held that though the selection has to be made by the Commission and the Government can fill up the posts by appointing only those selected by the Commission and not otherwise, yet, the selection by the Commission is only a recommendation and the final authority for appointment is the Government.

21. The question No.1 is accordingly answered. The question No.2 need not be answered because that is a mixed question of fact and law of estoppel.

22. The reference is thus disposed of.

Girish Chandra Gupta, C.J. - I Agree.