

**Civil Appeal**  
**PRESENT: The Hon'ble JUSTICE I.P. MUKERJI**

**Judgment on: 11.03.2010**

**W.P. NO. 21284(W) OF 2009**

**SAGARIKA (ROY) GHOSH**

**Versus**

**STATE OF WEST BENGAL & ORS.**

**POINTS:**

Appointment -----Assistant teacher primary-----District Primary School Council----Petitioner allowed to enter by Interim Order Of Court----Petitioner successful at the examination-----No appointment was given in terms of Interim Order -----Rule 8 of Primary Teachers Recruitment Rules 2001, validity of-----Registration with Employment Exchange -----Employment Exchange, duties of ----Rule 8 of Primary Teachers Recruitment Rules 2001.

**FACTS:**

This is a writ application by an aspirant for the post of Assistant Teacher (Primary) of the South 24 Parganas District Primary School. A written examination for the purpose of such recruitment was proposed to be held in the school on 20th December 2009 and the petitioner was not allowed to write that examination by the school authorities.

She challenged this by this Writ Application as also the constitutional validity of Rule 8 of the Primary Teachers Recruitment Rules of 2001 and that she had a right to sit in that examination and be considered for appointment. An interim order was passed on 9th December, 2009, permitting her to sit for the examination, without creating any equities. She cleared the examination and was qualified to be selected. But, since the interim order said that no appointment was to be given without leave of Court, her appointment was held back.

The writ petitioner was initially registered with the Employment Exchange at Purta Bhawan, Saltlake. She got married in the year 2002 and qualified in the P.T.T. Examination in 2004. In 2006 the registration was transferred to Durgapur Sub regional Employment Exchange

**HELD:**

The recent body of precedents of the Supreme Court of India, shows that wide publicity of any selection process has to be made and that the employment is not restricted to names sponsored by the Employment Exchange. But by the Division Bench judgment of our Court the validity of

Rule 8 has not been questioned, although it was challenged and it would not be proper for a single bench to make any observation about the validity of Rule 8. But, on the basis of the judgments of the Supreme Court after N. Hargopal's case and our High Court decisions following those Supreme Court judgments that Rule 8 is not to be construed as restricting consideration to candidates sponsored by the employment exchange. Even the language of Rule 8 permits such an interpretation.

PARA--8

But there is another route by which the writ petitioner should succeed. She was registered with the employment exchange. Since she was registered with the employment exchange, she does have a right to urge that she had a right of being sponsored by the employment exchange and in not being so sponsored her right to be considered for appointment has been affected.

PARA-- 9

When the Government makes a rule that employment is to be given to the candidates sponsored by the employment exchange. It has also a duty to see that the names of suitable persons who have been registered in the employment exchange are forwarded when such names are requisitioned.

PARA--10

Since the name of the writ petitioner ought to have been forwarded by the employment exchange as she has been registered there for a long time her name can be deemed to have been forwarded by such employment exchange. Therefore, consideration of her candidature by the school authorities was not at all contrary to law.

PARA--10

The selection of the writ petitioner for the post of Assistant Teacher (Primary) is approved and respondent authorities directed to formalise such selection by an official appointment within a period of 4 weeks from the date of communication of this order. The Writ Application is accordingly allowed.

PARA--11

#### **CASES CITED:**

**Tanmoy Ramaya Lahiri & ors. – v –State of West Bengal & ors. (2008)3 WBLR (Cal) 108**

**Union of India & ors. – v – N. Hargopal & ors., (1987) 3 SCC 308.**

**Manick Chandra Das – v – State of West Bengal & ors. (2007)2 CHN 761**

**Excise Superintendent, Malkapatnam, Krishna District, A.P. – v. – K.B.N. Visweshwara Rao & Ors. (1996)6 SCC 216.**

**Sanjit Kumar Sheet – v – The State of West Bengal & Ors (2008)2 Cal LT 461.**

**Kishore K. Pati –v – Distt. Inspector of Schools, Midnapore and others, (2000)9 Supreme Court Cases 405**

**THE COURT:**

1.The writ petitioner is an aspirant for the post of Assistant Teacher (Primary) of the South 24 Parganas District Primary School.

2.A written examination for the purpose of such recruitment was proposed to be held in the school on 20th December 2009. She was not allowed to write that examination by the school authorities. She challenged this by this writ application and at the time of making the challenge took several other grounds like challenging the constitutional validity of Rule 8 of the Recruitment Rules of 2001 and that she had a right to sit in that examination and be considered for appointment. On that basis an interim order was passed on 9th December 2009 permitting her to sit for the examination, without creating any equities. She sat in that examination and quite remarkably has qualified to be selected. But since the interim order said that no appointment was to be given without leave of court her appointment was held back.

3.Her case runs like this. The writ petitioner was initially registered with the Employment Exchange at Purta Bhawan, Saltlake. She qualified in the Madhyamik Examination in 1994 prior to that. She got married in the year 2002 and qualified in the P.T.T. Examination in 2004. In 2006 the registration was transferred to Durgapur Sub regional Employment Exchange. This factum of registration with the Employment Exchange is not denied by the respondent School authorities but they say in their affidavit-in-opposition that the writ petitioner's name may not have been registered in the Employment Exchange from which the names were sent, that is, the Durgapur Employment Exchange.

4.One hurdle is created by the school authorities in the way of the writ petitioner. Reliance is placed on Rule 8 of the Primary Teachers Recruitment Rules 2001 which runs as follows:

**“8. Calling for the names for the Employment Exchange. – (1) The number of vacancies as determined under rule 4, except in case the vacancies mentioned in rule 14 and the vacancies to be filled by inter-council transfer under the provisions of sub-section (k) of section 19 of the Act, shall be intimated by the Council to the concerned Employment Exchange. For the purpose of preparation of panel for eligible candidates, the Employment Exchange shall be requested to send names of candidates “1:10 basis” who have requisite qualifications prescribed under sub-rule (2) of rule 6: Provided that in case of non-availability of sufficient number of candidates belonging to the scheduled castes, the scheduled tribes, other backward classes, exempted category, ex-servicemen and physically handicapped persons in the Employment Exchange of the concerned revenue district, a reference shall be made by the Council to the Special Employment Exchange,**

**exempted category cell or the like at the State level for sending further names of candidates or respective categories.**

**(2) The letter to the employment exchange mentioned in sub-rule (1) shall contain, among other matters. –**

**(a) the required minimum qualifications of candidates; and**

**(b) the reservation quota for candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes, Exempted Category, Ex-servicemen and for physically handicapped candidates, maintaining the existing reservation rules as framed by the competent authority, after deducting 10% from the total vacancies for appointment on compassionate ground, with relaxation of upper age limit as admissible under Government orders; and**

**(c) the number of vacancies to be filled up.**

**(3) vacancies existing on date plus vacancies anticipated to arise against sanctioned strength, in course of next twelve months may be taken up as total vacancies while sending requisition to the Employment up as total vacancies while sending requisition to the Employment Exchange.”**

5. Admittedly, the writ petitioner was not sponsored by the Employment Exchange. School authorities argue that only names sponsored by the Employment Exchange can be considered. They rely on a decision of a Division Bench of this court in **Tanmoy Ramaya Lahiri & ors. – v – State of West Bengal & ors. reported in (2008)3 WBLR (Cal) 108** which had approved of the above rule and said that consideration of candidates sponsored by the Employment Exchange only was not violative of any constitutional or other right. The Division Bench of this high court has in turn relied on a decision of a two judges bench the Supreme Court in **Union of India & ors. – v – N. Hargopal & ors., reported in (1987) 3 SCC 308**. But that is not quite the settled and uniform law in my opinion. In the case of **Manick Chandra Das – v – State of West Bengal & ors. reported in (2007)2 CHN 761** this court held the following:

**“ Following the decisions of the Supreme Court as mentioned hereinabove and in view of the law laid down by the Supreme Court in the case of K.B.N. Visweshwara Rao (supra), we**

**also hold that the appropriate authority of the department or undertaking or establishment shall consider the cases of all the candidates who have applied for filing up any vacant post or posts along with the Employment Exchange sponsored candidates strictly in accordance with law in order to ensure equal opportunity in the matter of employment to all the eligible candidates and any executive order or circular issued by any authority in this regard has to be read and/or followed subject to the aforesaid law laid down by the Hon’ble Supreme Court.”**

6. The Supreme Court judgment relied on in that judgment is of a three judges bench in **Excise Superintendent, Malkapatnam, Krishna District, A.P. – v. – K.B.N. Visweshwara Rao & Ors. reported in (1996)6 SCC 216**. In paragraph 6 after considering N. Hargopal’s case (supra) the Supreme Court said :

**“6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent**

**with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.”**

7. This has been followed by our Division Bench in **Sanjit Kumar Sheet – v – The State of West Bengal & Ors. reported in (2008)2 Cal LT 461**. Further the Supreme Court in **Kishore K. Pati –v – Distt. Inspector of Schools, Midnapore and others, reported in (2000)9 Supreme Court Cases 405** had upheld the selection from names that had not been sponsored by the Employment Exchange.

8. At least the recent body of precedents of the Supreme Court of India, followed in the two Division Bench Judgments of our court (supra) show that wide publicity of any selection process has to be made and that the employment is not restricted to names sponsored by the Employment Exchange. But by the Division Bench judgment of our court in **Tanmoy Ramaya Lahiri & ors. –v – State of West Bengal & ors., (2008)3 WBLR (Cal) 108** the validity of Rule 8 has not been questioned, although it was challenged. Sitting in single bench it would not be proper for me at all to make any observation about the validity of Rule 8. But I do observe, on the basis of the above judgments of the Supreme Court after N. Hargopal’s case and our High Court decisions following those Supreme Court judgments that Rule 8 is not to be construed as restricting consideration to candidates sponsored by the employment exchange. Even the language of Rule 8 permits such an interpretation.

9. But there is another route by which the writ petitioner should succeed. She was registered with the employment exchange. Since she was registered with the employment exchange, she does have a right to urge that she had a right of being sponsored by the employment exchange and in not being so sponsored her right to be considered for appointment has been affected. Nothing has been shown from the affidavit-in-opposition to suggest that the writ petitioner’s name ought not to have been sponsored.

10. When the government makes a rule that employment is to be given to the candidates sponsored by the employment exchange, it has also a duty to see that the names of suitable persons who have been registered in the employment exchange are forwarded when such names are requisitioned. The writ petitioner's name ought to have been forwarded by the employment exchange. Since the name of the writ petitioner ought to have been forwarded by the employment exchange as she has been registered there for a long time her name can be deemed to have been forwarded by such employment exchange. Therefore, consideration of her candidature by the school authorities was not at all contrary to law.

11. For those reasons, I approve the selection of the writ petitioner for the post of Assistant Teacher (Primary) and direct the respondent authorities to formalise such selection by an official appointment within a period of 4 weeks from the date of communication of this order. The writ application is accordingly allowed. CAN is also accordingly allowed.

Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

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

**LATER:**

Learned Counsel for the D.P.S.E. prays for stay of operation of this judgment and order to enable him to prefer an appeal.

I think for the interest of justice, this judgment and order should be tested in appeal and therefore, there will be stay of operation of this judgment and order for a period of three weeks from date.

Photocopy

For the petitioner : Mr. Kamalesh Bhattacharyya  
For the D.P.S.E. : Mr. Kallol Basu,  
Mr. T. M. Siddique