

CONSTITUTIONAL WRIT
Present: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER
Judgment on: 21.05.2010
W.P.NO. 1041(W) OF 2000
WITH
C.A.N No. 11183 of 2001

APURBA KANTI GHOSH & ANR.
VERSUS
STATE OF WEST BENGAL & ORS.

POINTS

Appoinment – Appoinment letters were issued by the chairman of the municipality – Appoinment regularized by municipality – School authority refusing to allow the writ petitioners to join – Notification by the state government under section 66 of West Bengal Primary Education Act, 1973 – Transferring services of the teachers, land and building – Notification relied on by the district primary school council – Such notification if valid –West Bengal Primary Education Act 1973, S 64 ,65& 66.

FACTS

The writ petitioners were initially issued appointment letters on 13th March, 1997, by the Chairman of Bolpur Municipality (hereinafter referred to as the Municipality), appointing them as assistant teachers of Adhar Chandra J.B. School, Bolpur, on an ad hoc basis with a consolidated salary of Rs. 250/- (Rupees two hundred and fifty only) per month. In the appointment letters it was stated that they would be absorbed in due course. An instruction was also given to the writ petitioners to sign additional attendance register before the Chairman of the Municipality. Subsequently, after rendering more than two and half years of service in the said school, the writ petitioners were permanently absorbed by the Municipality, with effect from 14th October, 1999, with same pay and allowances as that of the Government's pay scale for a primary school teacher in the State. The writ petitioners were asked to submit their joining reports through the Head-Teacher of the school. Thereafter, on 12th November, 1999, when the writ petitioners went to the

school and reported to the Head-Teacher along with their joining letters, the Head-Teacher refused to allow the writ petitioners from joining, citing a letter of the Chairman, Ad hoc Committee, Birbhum District Primary School Council (hereinafter referred to as the Council), dated 29th October, 1999. It is this refusal, which prompted the writ petitioners to approach this Court by stating, *inter alia*, that since they were initially allowed to join the school on an ad hoc basis and were subsequently absorbed by way of regularization of their service by the Municipality, the purported action of the Head-Teacher of the concerned school as well as that of the Council was not only illegal, but was an unauthorized interference into the livelihood of the writ petitioners and was also a *mala fide* one.

The subject-matter of challenge is the notification dated 15th April, 1992, issued under section 66 of the West Bengal Primary Education Act, 1973, which has been sought to be relied on by the District Primary School Council, Birbhum, in the facts of the instant case.

The said notification dated 15th April, 1992, in its entirety, is reproduced hereinbelow: -

“Government of West Bengal
Education Department
Primary Branch
Writers’ Buildings, Calcutta.
Dated, Calcutta the 15th April, 1992
352-Edn. (P)
3P – 24/92
Notification

In exercise of the power conferred by Sub-section (1) of Section 66 of the West Bengal Primary Education Act, 1973 (West Bengal Act XLIII of 1973), the Governor is pleased hereby to order that with effect from the 15th day of April, 1992 all primary schools in a Municipality under the scheme sanctioned under the West Bengal Urban Primary Education Act, 1963, since repealed, together with their lands, buildings and other properties, movable or immovable, vested in or under the control of the Commissioners of such municipality immediately before the date mentioned above shall stand transferred to and all teachers and other staff employed in such primary schools and continuing in office immediately before the date mentioned above

shall be deemed to be employed by, the Primary School Council established for the district.

By order of the Governor,
Sd/- H.P.Mukhopadhyay,
Jt. Secy, to the Govt. of
West Bengal.”

The three sections of the West Bengal Primary Education Act, 1973, which were considered by this Court in that case were sections 64, 65 and 66, of which, the relevant being section 65, is reproduced hereinbelow:-

“65. Transfer of Primary Schools under the control of Municipality-

(1) (omitted).

(2) With effect from such date as may be fixed by the State Government by notification –

(a) such primary schools in a municipal area in a district as may be mentioned in the notification in consultation with the Commissioners of such municipal area together with their lands, buildings and other properties, movable or immovable, vested in or under the control of the Commissioners of such Municipal area immediately before such date; shall stand transferred to the Primary School Council established for the district;

(b) the primary schools referred to in clause (a) shall be under the control and management of the Primary School Council established for such district;

(c) teachers of such primary schools who are employed against permanent vacancies and are in continuous service for at least one year immediately before such date shall be deemed to be employees of the Primary School Council established for the district and the terms and conditions of their service shall be such as may be determined by the State Government.”

HELD

So far as action on the part of the executive, while issuing the impugned notification dated 15th April, 1992 was concerned, this Court observed in **The Chairman, Bolpur Municipal Corporation and other –vs- The Chairman, Ad hoc Committee, Bolpur District Primary School Council and others** that the same was issued under a wrong section, being section 66. The schools sought to be taken over by the impugned notification were, admittedly, under control and management of the municipalities. The legislature thought it fit to provide negotiation prior to taking over of the school run by the local self government. The authority concerned should have adopted the mode prescribed under section 65 of the said Act prior to issuance of the said notification. Para 22

Thus, in the absence of any proper notification issued under section 65 of the said West Bengal Primary Education Act, 1973, in the opinion of this Court, the substratum for issuance of the letter of the Chairman, Ad hoc Committee, Birbhum District Primary School Council, dated 29th October, 1999, is lost. The said letter dated 29th October, 1999, to the extent it applies to the writ petitioners, is therefore wholly without jurisdiction and is unsustainable in law and is liable to be set-aside and quashed and is hereby set-aside and quashed. Para 27

For the Petitioners: Mr. Soumen Bose..... Advocate,
Mr. P.K.Sen.....Advocate.

For the Council: Mr. Subir Sanyal..... Advocate,
Ms. Sumita Sen.....Advocate,
Ms. Dalia Bhowmick.....Advocate.

For The Municipality: Mr. Indranil Bhattacharya.....Advocate.

CASES CITED

1,The Chairman, Bolpur Municipal Corporation and other –vs- The Chairman, Ad hoc Committee, Bolpur District Primary School Council and others reported in A.I.R. 2001 Cal 68,

2. M.P. State Agro Industries Development Corpn. Ltd. & Anr. –vs- S.C.Pandey reported in (2006) 2 SCC page 716

3. District Basic Education Officer & Anr. –vs- Dhananjai Kumar Shukla & Anr. reported in (2008) 3 SCC page 481

4. National Fertilizers Ltd. & Ors. –vs- Somvir Singh reported in (2006) 5 SCC page 493

5. Subedar Singh & Ors. –vs- Distt. Judge, Mirzapur & Anr. Reported in (2001) 1 SCC page 37.

6.Secretary, State of Karnataka & Ors. -vs- Umadevi (3) & Ors. reported in (2006) 4 SCC page 1

7.Santosh Kumar Verma & Ors. –vs- State of Bihar through Secretary, Department of Urban Development, Govt. of Bihar, New Secretariat, Patna & Ors. reported in AIR 1997 SC page 975

8..Director of Settlements, A.P. & Ors. –vs- M.R. Apparao & Anr. reported in (2002) 4 SCC page 638

9.State of M.P. & Ors. –vs- Sanjay Kumar Pathak & Ors. reported in (2008) 1 SCC page 456 (paragraphs 20, 24 and 25

BISWANATH SOMADDER, J.:-

THE COURT 1) The writ petitioners were initially issued appointment letters on 13th March, 1997, by the Chairman of Bolpur Municipality (hereinafter referred to as the Municipality), appointing them as assistant teachers of Adhar Chandra J.B. School, Bolpur, on an ad hoc basis with a consolidated salary of Rs. 250/- (Rupees two hundred and fifty only) per month. In the appointment letters it was stated that they would be absorbed in due course. An instruction was also given to the writ petitioners to sign additional attendance register before the Chairman of the Municipality.

2) Subsequently, after rendering more than two and half years of service in the said school, the writ petitioners were permanently absorbed by the Municipality, with effect from 14th October, 1999, with same pay and allowances as that of the Government's pay scale for a primary school teacher in the State. The writ petitioners were asked to submit their joining reports through the Head-Teacher of the school. Thereafter, on 12th November, 1999, when the writ petitioners went to the school and reported to the Head-Teacher along with their joining letters, the Head-Teacher refused to allow the writ petitioners from joining, citing a letter of the Chairman, Ad hoc Committee, Birbhum District Primary School Council (hereinafter referred to as the Council), dated 29th October, 1999. It is this refusal, which prompted the writ petitioners to approach this Court by stating, *inter alia*, that since they were initially allowed to join the school on an ad hoc basis and were subsequently absorbed by way of regularization of their service by the Municipality, the purported action of the Head-Teacher of the concerned school as well as that of the Council was not only illegal, but was an unauthorized interference into the livelihood of the writ petitioners and was also a *mala fide* one.

3) According to the learned senior counsel appearing on behalf of the writ petitioners, prior to 1973, primary education in West Bengal was being imparted according to the provisions of District School Board Act, 1930. Primary schools were also set up by various Municipalities, Corporations and other Institutions. Within the jurisdiction of the Bolpur Municipality, primary schools were established by the Municipality from its own funds, which were generally received by way of donation especially for such purpose in kind, such as gifts of land and building and other infrastructure and also in cash, for establishment of primary schools owned by the Municipality. The schools were recognized by the District School Board and

later on by the respective District Primary Schools under the Primary Education Act, 1973, until they were transferred to the Primary School Council established for the District in accordance with the provisions of sections 64, 65 and 66 of the West Bengal Primary Education Act, 1973. The Bolpur Municipality owned and had under its control eight such primary schools, including the concerned school, namely, Adhar Chandra J.B. School. The school building and its surrounding area, owned by the Bolpur Municipality, were of very high value. The appointment of teachers and staff of the primary schools owned and controlled by the Bolpur Municipality were made by the Municipality.

4)According to the learned senior counsel for the writ petitioners, a notification was issued by the State Government dated 15th April, 1992, whereby the State Government allegedly transferred all primary schools within a 'Municipality', including the eight schools under the control of Bolpur Municipality. He submits that the Bolpur Municipality did not accept the said notification transferring the eight schools. Accordingly, the Municipality followed the procedure for appointment of teachers through an appointing authority of the Municipality, as before. Referring to paragraph 4 of the writ petition, he submits that in the year 1996, the Board of Councillors of Bolpur Municipality, in its meeting dated 12th December, 1996, discussed the issue relating to shortage of teaching staff in different primary schools and it was resolved in that meeting that some primary school teachers were required to be recruited and accordingly the Chairman of the Municipality was authorized to take steps for recruiting primary teachers under its control. He submits that it was on the basis of such resolution that the writ petitioners were given ad hoc appointments as assistant primary school teachers. It has been further contended that right from the time the writ petitioners were appointed as ad hoc teachers, i.e., on 13th March, 1997, till they approached the Head-Teacher of the school with their joining letters, upon regularization of their service on the basis of the office orders issued by the Chairman of the Municipality on 14th October, 1999, they were attending the school for more than two and half years continuously and even after 12th November, 1999, being the date when they were refused by the Head-Teacher to submit their joining reports, their services were never terminated at any stage by the school nor were they allowed to work or receive any emoluments.

5)The learned senior counsel for the writ petitioners submits that in the meanwhile, the Municipality filed a writ petition before this Court in the year 1997, challenging the authority of the Bolpur District Primary School Council, as stated in the notification dated 15th April, 1992, under section 66 of the West Bengal Primary Education Act, 1973, as well as the consequential notification/order passed by the authority on 12th June, 1997. He submits that by a judgment and order dated 08th February, 2001, a learned Single Judge of this Court quashed the notification dated 15th April, 1992, as well as the consequential notification/order dated 12th June, 1997. He further submits that consequent to the said judgment and order rendered in the case of **The Chairman, Bolpur Municipal Corporation and other – vs- The Chairman, Ad hoc Committee, Bolpur District Primary School Council and others** reported in **A.I.R. 2001 Cal 68**, the concerned authority never issued any notification afresh by proper exercise of power under the West Bengal Primary Education Act, 1973, upon following due process of law, as prescribed under the statute.

6)In such circumstances, he submits that the very basis of refusal on the part of the Head-Teacher of the school to allow the writ petitioners to join service, citing the memo of the Chairman, Ad hoc Committee, Birbhum Primary School Council dated 29th October, 1999, is wholly without any legal basis and cannot be sustained in the eyes of law.

7)The learned counsel appearing on behalf of the Municipality adopts the submissions made by the learned senior counsel appearing on behalf of the writ petitioners and supports the stand taken by the writ petitioners. Referring to the affidavit-in-opposition affirmed on 12th June, 2000 by Shyam Sundar Konar he submits that by a resolution of the Board of Councillors of Bolpur Municipality adopted at its meeting held on 12th December, 1996, Chairman of the Municipality was authorised to take appropriate steps to fill up the vacancies for the posts of primary teachers run by the Municipality. By the said resolution the Chairman was also empowered to appoint teachers. The writ petitioners had been duly appointed by the Municipality as assistant teachers of primary schools which were run by the Municipality, on an ad hoc basis, on a consolidated pay of Rs. 250/- per month, from 13th March, 1997, and after the appointments were made, the writ petitioners accepted the same and joined as teachers of the primary school and started taking their classes. The writ petitioners had

also put their signatures on the attendance register of the concerned school. Upon the authorities of the Municipality being satisfied with the performance of the writ petitioners, they were absorbed as regular employees and appointed as permanent assistant teachers from 14th October, 1999, in the post that they had been serving on an ad hoc basis and their pay and allowances were made same as that of the Government's prescribed pay-scale for assistant teachers of primary schools in the State of West Bengal.

8) Referring further to the affidavit-in-opposition affirmed by Shyam Sundar Konar, learned counsel for the Municipality submits that immediately after reopening of the school after puja vacation of 1999, the writ petitioners were not allowed to join as permanent teachers of the concerned school, although they had letters of absorption to that effect, in view of the letter dated 29th October, 1999, signed by the Chairman, Ad hoc Committee, Birbhum District Primary

School Council. He submits that challenging the legality and validity of the proposed taking-over of the primary schools including all the properties both movable and immovable which were being run by Bolpur Municipality and also challenging the notification of the Chairman, Ad hoc Committee, Birbhum District Primary School Council, a writ petition being, W.P. No. 16726(W) of 1997, had been moved before the Hon'ble High Court on behalf of the Bolpur Municipality, which culminated in the judgment and order referred by the learned senior counsel for the writ petitioners.

9) He finally submits that the writ petitioners had been refused and denied of their legitimate right to continue with their job illegally and without any jurisdiction by the Chairman of Birbhum District Primary School Council and this action amounts to forceful dismissal of service of the writ petitioners without affording them any opportunity of hearing.

10) On the other hand, learned counsel appearing on behalf of the District Primary School Council, Birbhum, refers to the affidavit-in-opposition affirmed on 07th August, 2006, by Goutam Ghosh and submits that the Board of Councillors of the Bolpur Municipality had no power or authority or jurisdiction in law to adopt any resolution as regards filling up of the posts of assistant teachers for the primary school-in-question or to appoint any assistant teacher in the primary school consequent to the Government of

West Bengal notification dated 15th April, 1992, published in the Gazette, in exercise of power conferred by sub-section (1) of section 66 of the West Bengal Primary Education Act, 1973, whereby it was ordered that with effect from 15th April, 1992, all primary schools in Municipalities under the scheme sanctioned under the West Bengal Urban Primary Education Act, 1963 (since repealed), together with their land, building and other properties, movable or immovable, vested in or under the control of the Commissioners of such Municipalities, immediately before the date mentioned hereinabove, stood transferred to the Primary School Council established for the District and all teachers and other staff employed in such primary schools, immediately before the date mentioned hereinabove, would be deemed to be employed by the Primary School Council. By virtue of the said notification dated 15th April, 1992, the primary school-in-question was placed under the control and management of the respondent no.6 and thus, Bolpur Municipality did not and could not have any power, jurisdiction or authority to appoint any teacher in the said school.

11) Referring further to the affidavit of Goutam Ghosh affirmed on 07th August, 2006, he submits that prior to April, 1992, the Director of School Education used to grant and send allotment to the District Inspector of Schools (Primary Education) for payment of salaries to the teachers of Municipalities, including Bolpur Municipality, and according to the requirement of the school-in-question, the District Inspector of Schools (Primary Education), Birbhum, used to allot necessary funds to the Municipality to pay salaries to the teachers. Since April, 1992, the Director of School Education used to grant and send necessary funds for the school-in-question and also other schools of the Bolpur Municipality to the respondent no.8 for payment of salaries to the teachers of the schools and thereafter the respondent no.8, as per requirement of the school-in-question used to allot necessary funds by cheque to the Municipality and this arrangement continued until August, 1997. On and from August, 1997, the salaries of the teachers of the school-in-question were being paid by the District Primary School Council, Birbhum, directly to the teachers by cheque through their salary accounts lying with Mayurakshi Gramin Bank. In terms of the aforesaid notification of the Government of West Bengal, the respondent District Primary School Council, vide notification dated 23rd June, 1997, took over the charge of the school-in-question. Bolpur Municipality, being a creature of the statute, its power, functions and obligations are limited and demarcated by the statute itself. In view of the

provisions of the West Bengal Municipal Act, 1993, a Municipality had no obligatory function in the sphere of education within the limits of its area. It has only a limited discretionary power in the sphere of education as laid down under section 64(2) of the West Bengal Municipal Act, 1993. A Municipality had no function pertaining to formal primary education as prescribed by the State Government under the West Bengal Municipal Act of 1993. On the contrary, prior to introduction of the West Bengal Municipal Act of 1993, the legislature, in its wisdom, framed a complete and comprehensive statute, namely, the West Bengal Primary Education Act of 1973, which came into force with effect from 2nd July, 1990, so as to make better provision for the development, expansion, management and control of primary education with a view to making it universally free and compulsory. By virtue of the provisions of the sections 64, 65 and 66 of the West Bengal Primary Education Act of 1973, the legislature sought to bring all primary schools in a district under one umbrella, i.e., the District Primary School Council. Consequently, in view of the notification dated 15th April, 1992, published by the State Government in exercise of power conferred under section 66 of the West Bengal Primary Education Act of 1973, all primary schools together with their lands, buildings and other properties, movable or immovable, stood transferred to the District Primary School Council and they are now entirely under the control and management of the District Primary School Council. It is, thus, evident that the legislature in order to give effect to the scope and intent of the West Bengal Primary Education Act of 1973, while legislating the West Bengal Municipal Act of 1993, had not vested any power, authority and jurisdiction in any Municipality in the arena and in respect of primary education.

12) Learned counsel for the Council further submits that, admittedly, the writ petitioners had been engaged vide appointment letters dated 13th March, 1997, issued by the Chairman of the Municipality who did not have any power, function or authority in the sphere of primary education under the West Bengal Municipal Act, 1993. The appointments were all made illegally, through a back-door procedure, which would be evident from the fact that the Chairman of the Municipality asked the writ petitioners to sign an additional attendance register before him, i.e., not the regular attendance register of the school. He also submits that the initial appointment of the writ petitioners as ad hoc teachers, which was by itself illegal, was further sought to be legalized by the Chairman of the Municipality by absorbing them as assistant primary teachers from 14th October, 1999, when no such power for

absorption lay with the Chairman of the Municipality. He further submits that it is a well-settled principle of law that if any appointment is made contrary to the provisions of a statute, the same would be void and a nullity and no legal right therefrom could be derived by such employee.

13) In this regard, he refers to the following judgments of the Supreme Court:

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1. M.P. State Agro Industries Development Corpn. Ltd. & Anr. -vs- S.C.Pandey reported in (2006) 2 SCC page 716 (paragraphs 18 and 23),

2. District Basic Education Officer & Anr. -vs- Dhananjai Kumar Shukla & Anr. reported in (2008) 3 SCC page 481 (paragraphs 12 to 14),

3. National Fertilizers Ltd. & Ors. -vs- Somvir Singh reported in (2006) 5 SCC page 493 (paragraph 18),

4. Subedar Singh & Ors. -vs- Distt. Judge, Mirzapur & Anr. reported in (2001) 1 SCC page 37.

14) In the instant case, he submits that, admittedly, the alleged appointments of the writ petitioners were made in the year 1997, by which time the West Bengal Primary Education Act, 1973 had already come into effect. By the coming into force of said Act of 1973, primary education was not in the hands of the municipality, but was within the domain and authority of the Primary School Council. According to the learned advocate for the Council, primary teachers could be appointed by the Primary School Council only from the panel prepared in accordance with the Recruitment Rules, 1991, prevailing at the material point of time.

15) He further submits that an appointment is said to be illegal when it is made without following the provisions of the rules, as a result whereof illegality goes to the root of the appointment. In this regard he relies on a judgment of the Supreme Court in the case of **Secretary, State of Karnataka & Ors. -vs- Umadevi (3) & Ors.** reported in **(2006) 4 SCC page 1** (paragraphs 15 and 47) and submits that, admittedly, the appointments were made by Bolpur Municipality without power and

authority, while recruitment for the post of primary teachers could be made by the District Primary School Council only, in accordance with the Recruitment Rules, 1991.

16)He also submits that it is well settled that a writ in the nature of mandamus cannot be issued commanding the authorities to regularize the services made in contravention of law. In this context, he refers the following judgment of the Supreme Court: -

Santosh Kumar Verma & Ors. –vs- State of Bihar through Secretary, Department of Urban Development, Govt. of Bihar, New Secretariat, Patna & Ors. reported in AIR 1997 SC page 975 (paragraph 5).

17)Lastly, he submits that no violation of legal right of the petitioners have been shown before this Court and, therefore, there is no corresponding performance of legal duty by the District Primary School Council. In this context, he relies on the following judgments of the Supreme Court: -

1. Director of Settlements, A.P. & Ors. –vs- M.R. Apparao & Anr. reported in (2002) 4 SCC page 638and

2. State of M.P. & Ors. –vs- Sanjay Kumar Pathak & Ors. reported in (2008) 1 SCC page 456 (paragraphs 20, 24 and 25).

18)After considering the submissions made by the respective parties, I am of the view that the only issue which falls for consideration is whether the writ petitioners have a right to be treated as permanent employees of the concerned school, on the basis of the appointment letters issued by the Chairman of Bolpur Municipality, dated 14th October, 1999.

19)In order to find an answer to this issue, it is perhaps necessary to advert to the observations made by the learned Single Bench of this Court in the case of **The Chairman, Bolpur Municipal Corporation** (supra). The subject-matter of challenge in that case is the same notification dated 15th April, 1992, issued under section 66 of the West Bengal Primary Education Act, 1973, which has been sought to be relied on by the District Primary School Council, Birbhum, in the facts of the instant case.

20)The said notification dated 15th April, 1992, in its entirety, is reproduced hereinbelow: -

“Government of West Bengal
Education Department
Primary Branch
Writers’ Buildings, Calcutta.
Dated, Calcutta the 15th April, 1992
352-Edn. (P)
3P – 24/92

Notification

In exercise of the power conferred by Sub-section (1) of Section 66 of the West Bengal Primary Education Act, 1973 (West Bengal Act XLIII of 1973), the Governor is pleased hereby to order that with effect from the 15th day of April, 1992 all primary schools in a Municipality under the scheme sanctioned under the West Bengal Urban Primary Education Act, 1963, since repealed, together with their lands, buildings and other properties, movable or immovable, vested in or under the control of the Commissioners of such municipality immediately before the date mentioned above shall stand transferred to and all teachers and other staff employed in such primary schools and continuing in office immediately before the date mentioned above shall be deemed to be employed by, the Primary School Council established for the district.

By order of the Governor,
Sd/- H.P.Mukhopadhyay,
Jt. Secy, to the Govt. of
West Bengal.”

The three sections of the West Bengal Primary Education Act, 1973, which were considered by this Court in that case were sections 64, 65 and 66, of which, the relevant being section 65, is reproduced hereinbelow:-

“65. Transfer of Primary Schools under the control of Municipality-

(1) (omitted).

(2) With effect from such date as may be fixed by the State Government by

notification –

(a) such primary schools in a municipal area in a district as may be mentioned in the notification in consultation with the Commissioners of such municipal area together with their lands, buildings and other properties, movable or immovable, vested in or under the control of the Commissioners of such Municipal area immediately before such date; shall stand transferred to the Primary School Council established for the district;

(b) the primary schools referred to in clause (a) shall be under the control and management of the Primary School Council established for such district;

(c) teachers of such primary schools who are employed against permanent vacancies and are in continuous service for at least one year immediately before such date shall be deemed to be employees of the Primary School Council established for the district and the terms and conditions of their service shall be such as may be determined by the State Government.”

21) It has been observed by this Court in **The Chairman, Bolpur Municipal Corporation**, that on a composite reading of the three sections of the West Bengal Primary Education Act, 1973, it appears that the State wanted to bring all primary schools under one single unit so that it could control the system of primary education in the State. Such action on the part of the State is permissible under the Constitution as it is obligatory on the part of the State to provide free and compulsory education, at least at the primary level, to the illiterate mass of the State. This Court further observed that it is true that the said three sections did not contemplate any payment of compensation to the properties of the school administration who are so long running the school prior to the enactment of the said Act. It is also true that the said three sections empower the Government to take control of all the primary schools in the State, whether it is run by the private management or under any local self-government. Legislators, however, thought it fit to set apart the municipal schools by incorporating a separate provision for the same, being section 65, wherein a negotiation is necessary with the

municipal authority before taking over of the properties belonging to the said Municipal schools.

22) However, so far as action on the part of the executive, while issuing the impugned notification dated 15th April, 1992 was concerned, this Court observed in **The Chairman, Bolpur Municipal Corporation** (supra) that the same was issued under a wrong section, being section 66. The schools sought to be taken over by the impugned notification were, admittedly, under control and management of the municipalities. **The legislature thought it fit to provide negotiation prior to taking over of the school run by the local selfgovernment. The authority concerned should have adopted the mode prescribed under section 65 of the said Act prior to issuance of the said notification** (emphasis supplied by this Court).

23) On the basis of the above observations, this Court proceeded to quash and set-aside the notification dated 15th April, 1992 as well as the consequential notification/order dated 12th June, 1997.

24) It was, however, observed that the order of quashing would not preclude the concerned authority to issue notification afresh by proper exercise of power under the West Bengal Primary Education Act, 1973, upon following due process of law prescribed under the said statute.

25) It is an admitted position that, till date, no notification has been issued afresh, consequent to the judgment and order of this Court rendered in **The Chairman, Bolpur Municipal Corporation** (supra). That apart, the authorities concerned are yet to adopt the mode prescribed under section 65 of the West Bengal Primary Education Act, 1973, which has been reproduced hereinabove.

26) The submission made by the learned counsel appearing on behalf of the Council with regard to the well-settled principal of law that if any appointment is made contrary to the provisions of a statute, the same would be void and a nullity and no legal right therefrom could be derived by such employee is not at all germane in the facts of the instant case, in the absence

of issuance of a fresh notification under section 65 of the West Bengal Primary Education Act, 1973, consequent to the judgment of this Court rendered in **The Chairman, Bolpur Municipal Corporation** (supra). The observations made by this Court in that judgment that the authority concerned should have adopted the mode prescribed under section 65 of the West Bengal Primary Education Act, 1973, prior to issuance of the said notification, has also not been heeded to, inasmuch as the concerned authority neither initiated process of consultation nor any form of negotiation with the Bolpur Municipality, at any stage, consequent to the said judgment. The judgments referred to by the learned counsel for the District Primary School Council, Birbhum, have no manner of application whatsoever in the facts of the instant case since this is not a case for regularization of service made in contravention of law, but a case where two primary school teachers have been arbitrarily and wrongfully deprived of joining service as permanent employees of the concerned school, in spite of having valid appointment letters to that effect, issued by the Chairman of Bolpur Municipality on 14th October, 1999, being annexure "E", at pages 64 and 65 of the writ petition.

27) Thus, in the absence of any proper notification issued under section 65 of the said West Bengal Primary Education Act, 1973, in the opinion of this Court, the substratum for issuance of the letter of the Chairman, Ad hoc Committee, Birbhum District Primary School Council, dated 29th October, 1999, is lost. The said letter dated 29th October, 1999, to the extent it applies to the writ petitioners, is therefore wholly without jurisdiction and is unsustainable in law and is liable to be set-aside and quashed and is hereby set-aside and quashed.

28) The consequential action on the part of the Head-Teacher of the concerned school refusing to allow the writ petitioners to join as permanent employees, citing the said letter of the Chairman, Ad hoc Committee, Birbhum District Primary School Council, dated 29th October, 1999, was, therefore, arbitrary, discriminatory and wrongful since there was no legal basis for such refusal, particularly when the valid appointment letters dated 14th October, 1999, were neither withdrawn nor cancelled at any subsequent stage.

29)The writ petitioners shall be deemed to have join service in the concerned school as per their joining letter dated 12th November, 1999, which was not accepted by the Head-Teacher of the school, citing the letter of the Chairman, Ad hoc Committee, Birbhum District Primary School Council dated 29th October, 1999.

30)All consequential benefits of service that have accrued in favour of the writ petitioners, in terms of their appointment letters dated 14th October, 1999, shall be provided to them by the District Primary School Council, Birbhum, within a period of six months from the date of communication of a photostat certified copy of this order.

31)The writ petition along with C.A.N application no. 11183 of 2001 stand allowed accordingly.

(Biswanath Somadder, J.)