

CASE NO.:
Appeal (civil) 4152 of 2002

PETITIONER:
CHAIRMAN, AD-HOC COMMITTEE & ANR

RESPONDENT:
LILA PAL & ORS

DATE OF JUDGMENT: 12/03/2008

BENCH:
H.K. SEMA & MARKANDEY KATJU

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 4152 OF 2002

This appeal is filed by the authority against the order passed by the Division Bench directing creation of additional post to accommodate the respondent No.1.

Briefly stated, the facts are as follows.

Respondent No.1 was appointed on contingent basis. The case of the appellant is that the appointment by the Managing Committee of the Duff Primary School at Chinsurah was against non-existing post. Be that as it may be. We are not concerned with this. Suffice it to say, the respondent was stated to have been appointed on contingent paid basis of Rs.50/-. It appears that repeated request for creation of post has not produced any result and, therefore, the respondent No.1 filed a writ petition before the learned single Judge. The learned single Judge disposed of the writ petition with a direction to the school authority to pursue the matter for sanction of an additional post on the basis of increase roll strength.
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Aggrieved thereby, the authority, the appellant herein, filed an appeal MAT No.3956/1999. The Division Bench disposed of the appeal by impugned order in terms of the following:-

"We, therefore, direct that the creation of the additional post shall be made and completed in all respects within three months hereof positively and the writ petitioner's appointment in the said post shall be completed within six months hereof, within which time the writ petitioner shall commence drawing her regular monthly and other emoluments."

Aggrieved thereby, the authority has preferred this appeal by special leave.

The short question on the basis of which we would allow this appeal is that the creation of a post is within the domain of the executive authority. It is not the function of the Courts to create posts. There is catena of decision of this Court on this point. Avoiding multiplicity, a recent judgment of this Court was delivered in Divisional Manager, Aravali Golf Club & Anr. Vs. Chander Hass & Anr., 2007 (14) Scale 1. This Court clearly pointed out in paragraph 15 of its judgment that the Court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the Court cannot arrogate to
.....3.

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itself this purely executive or legislative function, and direct creation of posts in any organization.

In the facts and circumstances as stated above, both the learned single Judge and the Division Bench were not justified in directing for creation of a post. Both the orders of the learned single Judge and of the Division Bench are set aside. This appeal is allowed. No costs.

After the allowing of this appeal, Mr. Ranjan Mukherjee, learned counsel for respondent No.1, submits that he would like to file a representation before the appropriate authority. It is upto him to do so. We have nothing to say.