

ITEM NO.25+56+57+58

COURT NO.13

SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 13024-13026/2023

(Arising out of impugned final judgment and order dated 19-05-2023 in MAT No. 890/2023 19-05-2023 in CAN No. 1/2023 19-05-2023 in CAN No. 2/2023 passed by the High Court At Calcutta)

TUHIN KUMAR HALDI & ORS.

Petitioner(s)

VERSUS

PRIYANKA NASKAR & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.122343/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

with

SLP (C) No. 12387 of 2023

(for admission and IR and appln. for exemption from filing c/c of the impugned Judgment)

SLP (C) Nos. 13075-13078/2023

(for admission and IR and appln. for exemption from filing c/c of the impugned Judgment)

Diary No. 22391 of 2023

Diary No. 22460/2023

(for admission and IR and appln. for exemption from filing c/c of the impugned Judgment and permission to file SLP and c/delay in refiling/curing the defects and appln for appropriate orders/directions)

Diary No. 25777 of 2023

appln. for exemption from filing c/c of the impugned Judgment and permission to file SLP

Date : 07-07-2023 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) Mr. Kalyan Banerjee, Sr. Adv.
Mr. Uday Gupta, Adv.
Ms. Shivani M. Lal, Adv.
Mr. Rahul Kumar Singh, Adv.
Mr. M. K. Tripathi, Adv.

Ms. Sanam Singh, Adv.
Mr. Rajeev Kumar Gupta, Adv.
Ms. Sundari, Adv.
Mr. Parminder Singh Bhullar, AOR

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Shyam Divan, Sr. Adv.
Mr. Partha S. Deb Burman, Adv.
Ms. Misha Rohatgi, AOR
Mr. Nakul Mohta, Adv.
Mohd. Ovais, Adv.
Ms. Alina Merin Mathew, Adv.

Mr. P S Patwalia, Sr. Adv.
Mrs. Meenakshi Arora, Sr. Adv.
Mr. Joydeep Mazumdar, Adv.
Ms. Shalini Kaul, Adv.

Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Vijay Hansaria, Sr. Adv.
Mr. Gaurav Jain, Adv.
Ms. Abha Jain, Adv.
Mr. Somesh Ghosh, Adv.
Mr. Chittapriya Ghosh, Adv.
Mr. N.K.Jain, Adv.
Mr. Jaivir Singh, Adv.
Mr. Aniteja Sharma, Adv.
Ms. Abha Jain, AOR

For Respondent(s) Mr. Jaideep Gupta, Sr. Adv.
Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.
Ms. Kshitij Singh, Adv.

Ms. Shalini Kaul, AOR
Mr. Joydeep Mazumdar, Adv.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Rauf Rahim, AOR
Mr. Firdous Samim, Adv.
Ms. Gopa Biswas, Adv.
Ms. Mousumi Hazra, Adv.
Ms. Payel Shome, Adv.

Mr. Soumya Dutta, AOR

Mr. Amit Kumar Singh, AOR
Mr. Kumar Jyoti Tiwari, Adv.
Ms. K Enatoli Sema, Adv.
Ms. Chubalemla Chang, Adv.

Mr. Prang Newmai, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Permission to file Special Leave Petition(s) is granted.

Issue notice.

Notice is accepted by the respective respondents appearing on caveat.

By consent of the parties, the instant petitions are heard and disposed of.

These Special Leave Petitions arise out of an order dated 19.05.2022 passed in MAT Nos. 890 of 2023, 874 of 2023, 873 of 2023 and 890 of 2023 passed by the Division Bench of the Calcutta High Court, before whom the Judgment dated 12.05.2023 passed by learned Single Judge in WPA No. 21187 of 2022 was under challenge. The original writ petitioners (Respondents herein) have assailed the recruitment process of Assistant Teachers (Untrained), conducted by Board in furtherance to West Bengal Board of Primary School Teachers Recruitment Rules, 2016 (hereinafter referred to as "2016 Rules"). The directions as prayed before learned Single Judge was against the concerned authorities to disclose the names, number, rank and category of all those candidates recruited till the date of filing of Writ Petition in primary schools in the said recruitment. It was also prayed that the original writ petitioners be equally treated at par with those candidates who have already been recruited by the Board, and they be granted the same benefits as extended to teachers already recruited in terms of aforesaid

Rules. It was further prayed that they be treated at par with non-trained candidates recruited by Board after expiry of relaxation given by MHRD in year 2015 and directions be issued to concerned authorities to issue the merit list maintaining transparency.

It was the contention of original writ petitioners before Writ Court that they were qualified in Teacher Eligibility Test, 2014 (TET, 2014) and despite having participated in the process of selection, they were denied appointment. Thus, claiming parity with various other candidates who were appointed following the recruitment process, the aforesaid reliefs were prayed for.

The learned Single Judge vide order dated 12.05.2023 passed in WPA No. 21187 of 2022 directed the cancellation of appointment of more than 30,000 already recruited candidates and inter-alia passed the following directions reproduced as below -

"21. In such circumstances I allow the writ petition. The appointment of all 36,000 (thirty-six thousand) (more or less) candidates who were untrained at the time of recruitment in 2016 recruitment process conducted by the Board in the post of primary teachers are cancelled for various reasons as have been elaborated above.

22. The Board shall immediately arrange for a recruitment exercise for candidates who were untrained at the time of recruitment (including candidates who have obtained training qualification in the meantime) within a period of 3 (three) months from date only for the candidates who participated in 2016 recruitment process where both interview and aptitude test of all examinees shall be taken and the whole

interview process has to be video graphed carefully and preserved. It will be a recruitment process under the same Rules and legal procedures under which 2016 recruitment process was conducted. No new or any other candidate shall be allowed to take part in such recruitment test.

23. The primary teachers who are employed now in Primary Schools against the recommendation of the Board in respect of 2016 selection process shall be allowed to work in the respective primary schools where they are working now for a period of 4 (four) months from date at the remuneration equal to a Para Teacher of Primary School and if any of such teachers are recommended again by the Board after the selection process as has been directed above, those candidates shall work in the Schools where they are working now and they shall get notional benefit of their seniority with no monetary benefit at all but the salary of primary teachers for the coming 4 (four) months shall not be given to them if they are employed again. The present employed candidates who will not succeed in the above-mentioned selection process, their services shall be terminated.

24. If any candidate who appeared in 2016 recruitment process has crossed the age bar in the meantime or will cross the age bar within 3 (three) months from date they shall be allowed to take part in the recruitment exercise. Crossing the age bar now will not create any impediment for them to participate and get selected in the recruitment process.

25. This whole imbroglio including corruption involved in the matter has taken place due to the former President

of the Board who knew the Rules of recruitment but violated the rules and therefore, if the Government thinks the entire expense for holding the new recruitment exercise can be realized from the estate of the former President of the Board."

Assailing the aforesaid order, learned counsels for the appellant/incumbent employees submitted before the Writ Appellate Court that the directions as issued by the learned Single Judge are in gross violation of the principles of natural justice since the same has been passed without joining the affected persons as a party in person or in representative capacity being a necessary party and without affording opportunity of hearing to them. As per the averments made in the Writ Petition, cogent allegations for establishing fraud in the selection process were not alleged, and inspite of that, the learned Single Judge directed for holding the fresh selection while cancelling the appointment of the more than 30,000 Teachers including the petitioners herein.

The Division Bench of the High Court of Calcutta by the impugned interim order found that the termination of jobs as directed by learned Single Judge prima-facie required judicial intervention. The Division Bench granted interim stay on the termination of jobs till the end of September, 2023 or until further orders, whichever is earlier. In the said interim order, it was observed by the Division Bench that considering the alleged complicity of the candidates in the commission of fraud in the process of selection which as contended, surfaced during the pendency of writ petition, it required deeper scrutiny by the

Court. Therefore, the Court also observed as under:-

"However, the Board shall conduct the selection exercise exactly as directed by the Hon'ble Single Bench within a period of three months, i.e., by and within the end of August, 2023."

The Court has directed to list the case before appropriate Division Bench in the first week of September, 2023. Being aggrieved by the said directions, these Special Leave Petitions have been filed.

The primary contention advanced before this Court is that the process of selection has been set at naught by learned Single Judge without joining the petitioners herein as party to the proceedings and affording them an opportunity. It is further contended that having found force in the said contention, the order of termination was stayed by the Division Bench. However, it is contended that conduct of fresh selection of more than 30,000 Teachers in a time-bound manner has been continued, despite foundation of fraud being not on record in pleadings and more so, without affording any opportunity to the affected persons to defend the case, which is in gross violation of principles of natural justice.

Sh. Jaideep Gupta, learned senior counsel representing the Board, while supporting the contentions of the petitioners herein, urged that holding fresh interviews is a cumbersome and expensive exercise which cannot be possibly done as directed by an interim order.

On the other hand, learned counsel representing original writ petitioners defended the order of the learned Single Judge contending that once the process of selection has been found at fault and the termination of petitioners has been stayed by interim order of High Court, the continuation of fresh selection as directed by Writ Court and Writ Appellate Court does not warrant interference of this Court.

Having heard learned counsel for the parties at length and considering the fact that the order impugned passed by the Division Bench is interim in nature, we refrain ourselves from expressing any opinion on the merits of the case. At present we are *prima facie* impressed with the contention of the petitioners herein that the order passed by learned Single Judge was without joining them as party, and without hearing them even in a representative capacity, though they are working since more than 5 years. The Division Bench vide interim impugned order found weight in the contention but only stayed the termination of services and did not stay the selection process which was directed to be conducted following the cancellation of their appointments. We find reasonable force in the submissions made by the counsels for the petitioners that if the appeal which is sub-judice before Division Bench succeeds, then the whole colossal task of conducting and continuing with the selection process will go absolutely in vain and lead to enormous financial burden on the Board. Therefore, in view of the aforesaid, we set-aside the impugned interim order of Division Bench to the extent of issuance of the direction to conduct the selection afresh. The said order is subject to final

outcome of the orders in the matters pending adjudication before the Writ Appellate Court.

At the cost of repetition, we further make it clear that we have not expressed any opinion on the merits of the case or on the contentions of any of the parties. The parties are at liberty to raise all contentions before the Writ Appellate Court, which shall be duly considered on its own merits.

In view of foregoing discussion, these petitions stand disposed of.

As the controversy relates to selection and appointment of the large number of Assistant Teachers, therefore, we request the High Court to decide the MAT Nos. 890 of 2023, 874 of 2023, 873 of 2023 and 890 of 2023 or, any other case (if any) filed by the aggrieved persons assailing the order of learned Single Judge, as expeditiously as possible.

In view of above, the instant Special Leave Petitions filed by the incumbent employees as well as by the Board are disposed of.

Pending interlocutory application(s), if any, is/are to be treated as disposed of.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(VIRENDER SINGH)
BRANCH OFFICER