

Sl. April 1,  
1. 2022

M.A.T. 474 of 2022

Dr. Santi Prasad Sinha

Vs.

Laxmi Tunga & ors.

Mr. Biswaroop Bhattacharyya,  
Mr. Dipayan Kundu,  
...for the appellant/petitioner.

Mr. Bikash Ranjan Bhattacharyya,  
Mr. Firdous Samim,  
Ms. Gopa Biswas,  
Ms. Gargi Banerjee,  
...for the writ petitioners/respondents.

Mr. Soumendra Nath Mukherjee,  
Mr. Samrat Sen,  
Mr. Anirban Ray,  
Mr. Sandip Dasgupta,  
Mr. Raja Saha,  
Mr. Saaquib Siddique,  
Mr. Aviroop Mitra,  
...for the State.

Dr. Sutanu Kumar Patra,  
Ms. Supriya Dubey,  
...for the West Bengal Central  
School Service Commission.

Ms. Koyeli Bhattacharya,  
...for the West Bengal Board of  
Secondary Education.

This matter is listed in view of the administrative direction passed by the Hon'ble the Chief Justice on March 31, 2022 at 10-45 p.m. by which the applicant/petitioner was permitted to file an appeal and on filing the appeal be listed tomorrow as per roster.

Re: CAN 1 of 2022 (leave to appeal).

The application for leave to prefer an appeal, being CAN 1 of 2022, is allowed as the appellant/petitioner is affected by the order under appeal. The applicant was not a party in the writ petition.

Re: CAN 2 of 2022 (stay)

The stay petition is taken up in presence of the parties. Mr. Biswaroop Bhattacharyya, learned advocate appearing on behalf of the appellant submits that without giving any opportunity to the appellant to prove his innocence, the learned Single Judge has arrived at a finding that the present appellant is one of the kingpins in giving illegal public appointments and based on such finding Central Bureau of Investigation (CBI) was directed to interrogate the appellant. It is submitted that he was not even made a party to the writ proceeding, when the order was passed, and only today in the morning, the learned Single Judge added the present appellant along with four other persons in the writ proceedings. It is further submitted that the CBI was also made a party respondent in the writ proceeding only today.

The learned Advocate General appears and submits that in view of the orders passed by the Hon'ble Division Bench on December 6, 2021 and on November 24, 2021, it was not open to the learned Single Judge to direct C.B.I. enquiry and/or investigation since a committee headed by a Retired Judge of this court is enquiring into the propriety and legality of the appointments, amongst others, of group-D staff and when the said committee is in seisin over the matter, the comity and hierarchy of court and judicial discipline requires that the regular bench should

wait till a decision in this regard is taken by the Hon'ble Division Bench. It is submitted until the order of the Hon'ble Division Bench is set aside or varied the question of appointment of CBI to investigate into such alleged illegal appointment does not arise. It is further submitted that on April 5, 2022, the applicant is suppose to appear before the fact finding committee. In support of his submission that the subject matter of the writ petition also involves group-D employees, whose alleged illegal appointments are at issue therein, the learned Advocate General refers to the following observations of the Regular Bench made on December 6, 2021 in MAT 1254 of 2021 :-

**“By the order impugned dated November 22, 2021, the learned Single Bench directed the Director, Central Bureau of Investigation (CBI) to constitute a committee headed by an Officer not below the rank of Joint Director, Officers not below the rank of Deputy Inspector General to initiate an enquiry because of the conflicting stands taken by the Board as well as the School Service Commission and therefore, an enquiry is required to be conducted which should not be construed as an investigation to identify the miscreants who caused the letters of recommendation in order to secure appointments of the undeserving candidates.**

**The issue relates to appointment of approximately 25,000 teachers and non-teaching staff from 2018 on the basis of the recommendation made by the Central School Service Commission to**

**the West Bengal Board of Secondary Education and the appointment letters were issued by the Board on the basis of such recommendations.**

**The writ-petitions were filed challenging the modalities adopted by the School Service Commission beyond the conceivable adherence of the Rules and the Norms applicable therefor and the recommendations having made after the expiry of the panel by efflux of time. Even the allegation proceeds that persons who were not included in the panel of have been shown fairly low in the serial maintained therein, have been favoured leaving deserving candidates. It is discernible from the impugned order that all the appearing candidates representing the rival parties thereto, echoed that there must be an enquiry to be conducted to unearth the truth and further suggested a Special Enquiry Team under the supervision of a retired Judge to be constituted;. However, the single Bench did not find such suggestion to be practical or viable for such roving enquiry and directed the enquiry to be conducted by the Central Bureau of Investigation.**

**Based upon the perception that the dispute pertains to different organs of the State and the Enquiry to be conducted by another organ of the State, such enquiry was directed to be conducted by an independent agency i.e. the CBI. The writ-petitions namely mat 1254 of 2021, MAT 1255 of**

**2021 and MAT 1256 of 2021 were moved before us on November 24, 2021. The portion of an order by which the single Bench directed the enquiry to be conducted by the CBI was stayed for a period of three weeks. The Bench further directed the Commission as well as the Board to file all the relevant documents with the Registrar General, which were directed by the Single Bench to be handed over to the CBI in sealed cover.”**

The learned Advocate General further draws our attention to an order dated November 24, 2021 passed in MAT 1254 of 2021 in which the co-ordinate bench recorded that it is an admitted position that the writ petitioners neither in their pleadings nor by way of reliefs have prayed for CBI enquiry, however, taking into consideration the nature of the allegations in order to preserve and protect the materials as there could be a possibility of tampering with records direction was passed on the Commission as well as on the Board to submit all relevant documents in a sealed cover before the Regular Division Bench on that date itself and the Registrar General was directed to keep the said documents in its safe custody.

Mr. Bikash Ranjan Bhattacharyya, learned senior advocate appearing on the writ petitioners/respondents, does not dispute that there no relief for CBI investigation has been claimed in the writ petition, however, Mr. Bhattacharyya submits that in the course of hearing of the writ petition, the learned Single Judge came across incriminating materials against the members of the Board and the Commission with regard to illegal appointments and as a Constitutional Court, the learned Single Judge felt it to be proper to

direct the CBI to investigate into the matter to unearth the truth. Mr. Bhattacharyya, in his usual fairness, submits that the writ petitioners have full confidence in the committee constituted by the Regular Bench of this court to find out the manner and procedure followed by the Commission and the Board in giving appointments. However, by reason of discovery and disclosure of further materials, during the hearing of WPA 18585 of 2021 and in respect of connected writ petitioners, the learned Single Judge felt it proper as a Constitutional Court to direct CBI enquiry in view of the serious allegations of nepotism and corruption against the high officials of the Government.

It is submitted on behalf of the appellant that the appellant was interrogated till 2-30 a.m. today and he has not received any further notice from the Central Bureau of Investigation for further interrogation. However, it is apprehended that a first information report may be lodged against the appellant.

In view of the consensus amongst the parties that the committee headed by a retired judge of this court is also looking into the issues of illegal appointments of group-D employees and the said committee has directed the presence of the present appellant on April 5, 2022 we felt that if these two parallel proceedings are allowed to run simultaneously there is likelihood of conflict of findings and also having regard to the fact that the original documents relating to such alleged illegal appointments are presently lying in the custody of the learned Registrar General of this court in terms of the order passed by the Regular Bench, the Central Bureau of Investigation shall not register any first information report against the present appellant nor they will put

appellant for further interrogation, if any, till Monday next, that is, April 4, 2022.

In fact in absence of documents which are presently in the custody of the court CBI may not be a position to effectively interrogate the appellant. We also have taken into consideration that CBI investigation has been stayed by the Regular Bench in respect of Gr. D employees and unless the said order is varied or set aside it is binding on the learned Single Judge.

We pass this interim order as this bench is not the regular bench and it requires deeper consideration of the issues raised in the appeal. The appellant has made out prima facie and arguable case on merits for which the appellant at this stage is entitled to an ad interim relief till Monday, i.e. April 4, 2022 as the refusal to pass such relief at this stage may render the appeal infructuous.

The application for stay is directed to be listed before the regular bench on Monday next.

**( Soumen Sen, J. )**

**( Ajoy Kumar Mukherjee, J. )**