

06.12.2021

Court : 04
Item : 2-3-4-6
Matter : MAT
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MAT 1254 of 2021
with
CAN 1 of 2021
(WBBSE & Anr. Vs. Sandeep Prasad & Ors.)
&
MAT 1255 of 2021
with
CAN 1 of 2021
(WBSSC & Ors. Vs. Sandeep Prasad & Ors.)
&
MAT 1256 of 2021
with
CAN 1 of 2021
(State of West Bengal Vs. Sandeep Prasad & Ors.)
&
MAT 1273 of 2021
with
CAN 1 of 2021
(Asto Roy & Ors. Vs. Sandeep Prasad & Ors.)

Mr. Santanu Kumar Mitra, Advocate
Mr. Subhabrata Das, Advocate
.....for the Appellants (in MAT 1254 of 2021)

Mr. Kishore Datta, Advocate
Dr. Sutanu Kumar Patra, Advocate
Ms. Supriya Dubey, Advocate
Ms. Debalina Chakraborty, Advocate
.....for the Appellants (in MAT 1255 of 2021)

Mr. S.N. Mookherjee, learned Additional Solicitor General
Mr. Anirban Ray, learned Government Pleader
Mr. Samrat Sen, Advocate
Mr. Bhaskar Prasad Vaisya, Advocate
Mr. Jaydip Banerjee, Advocate
Mr. Ayan Chakraborty, Advocate
Mr. D.N. Mukherjee, Advocate
.....for the Appellants (in MAT 1256 of 2021)
.....for the State(in MAT 1254/1255 of 2021)

Mr. Bikash Ranjan Bhattacharya, Senior Advocate
Mr. Sudipta Dasgupta, Advocate
Mr. Bikram Banerjee, Advocate
Mr. Arkadeb Biswas, Advocate
Mr. Arka Nandi, Advocate
Mr. Sutirtha Nayek, Advocate
.....for the Respondents

Mr. Saktinath Mukherjee, Senior Advocate
Mr. Arindam Banerjee, Advocate
Mr. Subhankar Nag, Advocate
Mr. Jasojit Mukherjee, Advocate
.....for the Intervenor

Mr. Subir Sanyal, Advocate
Mr. Somesh Ghosh, Advocate
Mr. Kaushik Chowdhury, Advocate
.....for the added Respondents

The aforesaid bunch of mandamus appeals have been taken up together to avoid the prolixity of repetition as identical orders are assailed therein by the respective parties.

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 or 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.

Our attention is drawn to the report of the Registrar General of this Court wherefrom it appears that the West Bengal Board of Secondary Education filed the documents containing the recommendations made by the School Service Commission as well as the supporting documents which have been kept in safe custody.

However, Mr. Kishore Dutta, learned Advocate, appearing for the Commission submits that it was all along the stand of the Commission that they never issued such recommendations and, therefore, there is no necessity for submitting any documents.

We are unimpressed with the aforesaid submissions for the simple reason that there was no letter of recommendation ever issued by the School Service Commission pertaining to such recruitment. However, the dispute raised upon some of the letters of recommendation alleged to have been issued by the School Service Commission which does not mean that the letter of recommendations having issued, shall not form part of the record. In view of such misconstruction of the order having passed on November 24, 2021, we direct the commission to file all the letters of recommendation which according to

them had been issued, as well as the supporting documents, with the Registrar General by tomorrow.

It is beyond cavil of doubt that in an adversarial litigation, the importance of the pleadings and reliefs are required to be looked into before the Court embark its journey in granting the final relief to the parties. Equally, it is true that in course of hearing if something transpires, the foundation thereof can be traced from the pleading itself, there is no difficulty on the part of the Court to mould the relief.

The constitutional Court proceeds in pursuit of quest for truth and cannot remain a mute spectator when irregularities and/or discrepancies and/or illegalities are surfaced during the hearing. We are conscious of the proposition of law that the Court should not adopt the concept of moulding the relief at the first hearing of the case but if in course of hearing Courts find certain materials which require a direction or decision to be taken for ends of justice, there is no impediment in moulding the relief and passing such direction.

Mr. Saktinath Mukherjee, learned Senior Advocate. appearing for the appellants in MAT 1273 of 2021, vociferously submits that the Court cannot implead a party without considering the controversies involved in the litigation unless the presence of such

party is required for complete and effective adjudication thereof. According to him, his clients have been impleaded without there being any relief claimed against them nor there is any finding returned in the order impleading his clients on a well-settled proposition envisioned under Order I Rule 10(2) of the Code of Civil Procedure.

A person can be added as a party in the proceeding if his presence is necessary for complete and effective adjudication of the dispute or in absence of such person the dispute cannot be adjudicated completely and effectively. The entire writ-petition runs through several pages pointing irregularities and/or illegalities committed by the authorities in appointing persons who do not deserve an order of appointment and if those persons are impleaded as party, we do not think there is any infirmity and/or illegality as any decision which would ultimately prejudice their rights, should not be passed in their absence or without affording any opportunity of hearing. However, if such added respondents still feel that they are neither a proper party nor necessary party, it is open to them to take an appropriate steps as permissible in the law before the single Bench.

Since the entire mandamus appeals are restricted on an enquiry being conducted over the irregularities and illegalities unearthed in course of a

proceeding, we feel that the enquiry is inevitable and should reveal the truth. Equality in opportunity to apply for employment is the hallmark of constitution. Equally the employment to the successful and deserving candidates is one of the constitutional rights. All such constitutional mandates cannot be allowed to be withdrawn, more particularly, in exercise of a cherry-picking of a person appears to be a blue-eyed boy or the person in the helm of affairs.

There has been variation in the stand of the commission as well as the Board and, therefore, the enquiry is required to be made to reveal the truth and also to fix the responsibilities for such misdeeds. Enquiry or investigation by the CBI must be taken recourse as a last resort and the power must be exercised in a rare and exceptional case. There must be a strong evidence of the failure of the administration and partiality is patent from the records. Simply because the controversy raised upon two different departments of the State or the enquiry is to be conducted by another department of the State, the enquiry must be done by an independent agency cannot be the rule nor the ground for directing the investigation by the CBI. Undoubtedly, there has been a discrepancy and/or irregularities found from the rival stands of the Commission as well as the Board which require an extensive enquiry to be undertaken and we feel that if the entire enquiry is

monitored by a retired Judge of the High Court upon constituting a Special Team, it would be subserve the justice.

We, therefore, appoint Mr. Justice Ranjit Kumar Bag, a retired Judge of this Court as Chairperson to monitor the entire process of enquiry under whose supervision and surveillance the enquiry team would act. The Special Team shall consist of Mr. Asutosh Ghosh, Member of West Bengal School Service Commission, Ms. Paromita Roy, Deputy Secretary (Administration), West Bengal Board of Secondary Education and Mr. Arunava Banerjee, a practicing Lawyer of this Court.

Registrar General is directed to hand over the documents submitted by the Board as well as the Commission to the Chairperson of Special Team herein constituted, immediately upon filling of the documents by the Commission in compliance with the above direction.

The report shall be submitted before the single Bench within two months from date. After the submission of the report, the single Bench will deal with the matter and an appropriate order would be passed depending upon the report so submitted.

The State shall bear the remuneration of the Mr. Justice Ranjit Kumar Bag (retired), assessed at

Rs.2,00,000/- (Rupees Two Lakhs only). The remuneration of the Mr. Arunava Banerjee, learned Advocate shall also be paid by the State, assessed at Rs.50,000/- (Fifty Thousand only). The State shall also provide the conveyance as well as other transportation to the Members of the Committee including the Chairperson as and when required.

The order impugned is modified to the extent as indicated hereinabove.

The appeals being **MAT 1254 of 2021, MAT 1255, MAT 1256** and **MAT 1273 of 2021** are accordingly **disposed of**. Connected applications, if there be any, are also disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

