

**unlisted.
10.08.2021.
Ct. No. 11.
F.B.**

**MAT 639 of 2021
with
IA No. CAN 1 of 2021
with
CAN 2 of 2021**

(Via Video Conference)

**West Bengal Madrasah Service Commission & Anr.
-Vs.-
Sri Biswarup Ghosh & Ors.**

**Mr. Prasenjit Mukherjee,
Mr. Nirmalya Kumar Das,
Ms. Madhurima Sarkar
..... For the Appellants.**

**Mr. Subhrangsu Panda
..... For the Respondents.**

Party/Parties is/are represented in the order of
their name/names as printed above in the cause title.

This appeal has been mentioned on grounds of
urgency. It is submitted on behalf of the appellants that
the Hon'ble Single Bench, which delivered the final
judgment and order dated 8th of April, 2021 presently
under challenge in this appeal, has now summoned the
appellants to answer a Rule in a contempt proceeding.

It is submitted that the Rule has been made
returnable tomorrow.

Being mindful of the urgency as submitted by Mr. Mukherjee, Learned Counsel for the appellants, this Court permitted the appellants to move this matter on an urgent basis today before rising of this Court upon notice to the Learned Counsel for the writ petitioner/the respondent no. 1 in this appeal.

Accordingly, with the consent of the parties the appeal and the application are treated as on the day's list and taken up for consideration.

The history of this appeal begins with the appointment of the writ petitioner granted as long back in 2013 for the post of Librarian under the West Bengal Madrasah Service Commission (for short, the Commission)/the present appellants. This writ petition reached a culminating point with the order dated 8th of April, 2021 which is the order under challenge in this appeal. Mr. Mukherjee, Learned Counsel for the appellants, would now submit that the Hon'ble Single Bench erred in law by ignoring the mandatory character of the recruitment rules of the Commission and directed appointment to be given to the writ petitioner after a long hiatus.

Per contra, Mr. Subhrangsu Panda, Learned Counsel appearing for the Respondent No. 1/the writ petitioner, submits that while appointing the writ

petitioner, the appellants/the Commission did not disclose the entire list of available vacancies.

It is submitted that the writ petitioner has been compelled to move Court time and again considering the cat and mouse game *qua* the available vacancies being played by the appellants.

It is therefore submitted by Mr. Panda that since vacancies are shown to still exist of Librarians and no recruitment exercise has been conducted by the Commission since the selection of the writ petitioner till date, the Hon'ble Single Bench committed no error by directing appointment to be given to the writ petitioner against the available vacancies, without treating such appointment to be in the nature of a precedence.

Having heard the parties and considering the materials placed, this Court is persuaded to hold that by allowing the appointment of the writ petitioner against available vacancies without treating such appointment to be in the nature of a precedence, the Hon'ble Single Bench did not act in a manner prejudicial to the recruitment rules of the Commission, more so, when the appointment of the writ petitioner granted in 2013 continues to subsist over the last several years.

The appellants have also been unable to justify their reason for not challenging the order of the Hon'ble Single Bench as passed on 8th April, 2021 for the past nearly four months and, rushing to Court today in view of the Rule issued (*supra*). This Court is also informed from the records of this appeal that the applications for condonation of delay and for grant of *interim* reliefs in this appeal have been affirmed and filed only today, i.e. the 10th of August, 2021.

In the above view of the matter, this Court does not intend to interdict the pending proceeding, if any, before the Hon'ble Single Bench. The reasoning of the Hon'ble Bench is *apropo* the facts involved.

Also, in view of the established nature of the facts involved, affidavits are neither necessary, nor invited. Allegations made shall stand deemed to be denied and disputed.

Since the appeal and its application have been dealt with on merits, **MAT 639 of 2021** with **CAN 2 of 2021** stand **dismissed** and **CAN 1 of 2021** stands accordingly **disposed of**.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Jay Sengupta, J.)

(Subrata Talukdar, J.)