

19 **11.01.
2022**

Ct. No. 04

Ab

MAT 17 of 2022

With

CAN 1 of 2022

CAN 2 of 2022

Bimal Chandra Mandal

Vs.

The State of West Bengal and others.

**Mr. Partha Sarathi Bhattacharya,
Mr. Sougata Mitra,
Mr. Avishek Prosad,
Mr. Santanu Sett.**

... for the appellants.

**Mr. Saibal Acharya,
Ms. Ankita Dey.**

... for the respondent no. 9.

Ms. Kaberi Ghosh Dey.

... for the private respondent.

Re: CAN 1 of 2021.

This is an application for leave to prefer an appeal at the behest of a stranger to the writ petition who felt aggrieved by the order impugned in the instant appeal.

It is no longer *res integra* that a person who is affected by a judicial order passed in a proceeding, where he has not been impleaded, may prefer an appeal upon obtaining a leave of the Appellate Court.

We find that the appellant has filed a writ petition being WP 1530(W) of 2019 seeking in effect the implementation of the order of the Commissioner dated 2nd November 2018 and the order passed by the Writ Court in WPA 11404 of 2019, which may have an

impact on the ancillary or consequential reliefs claimed in the writ petition filed by him.

We, thus, find that the appellant is affected by the order and, therefore, the application for leave to appeal is allowed.

The office is directed to formally register the appeal in the docket of this Court.

The order dated 17th December 2021 is assailed in the instant mandamus appeal wherein a direction was passed upon the teacher in-charge to call a meeting on 10th January 2022, when all the members including the President of the Ad hoc Managing Committee shall be present in order to comply the order dated 2nd November 2018 passed by the Commissioner of School Education, West Bengal.

The order of the Commissioner sees the light of the day on the basis of the order passed by the Division Bench in the mandamus appeal being MAT 1625 of 2017 filed by the private respondent. The Division Bench directed the Commissioner to decide whether the guidelines for recruitment dated 10th July 2002 as well as the memo dated 21st June 2012 and 26th February 2015 shall have any manner of application to decide the controversies between the parties and further directed who amongst the writ petitioner i.e. the private respondent and the other should be appointed as an

Assistant Headmaster/Assistant Headmistress on the basis of the marks obtained for academic qualification and experience as well as in the interview. It was further made clear that the guidelines, which were subsisting at the relevant point of time and have some relevance to the dispute, must be taken note off. It was further directed that the Commissioner shall make an enquiry to find out who is discharging the duties of the Assistant Headmaster/Assistant Headmistress and as a stop gap measure, the same should be allowed to continue until the decision of the Commissioner.

By an order dated 2nd November 2018, the Commissioner directed the school authorities to recast the panel of the Assistant Headmaster in the light of the memo dated 21st June 2012 and 10th July 2002 and sent the same to the District Inspector of Schools (SE) Purulia for further action. None of the parties are aggrieved by such order of the Commissioner rather the appellant filed a writ petition being WP 1530(W) of 2019 seeking issuance of Mandamus upon the respondent authorities to recast the panel on the basis of the Government circulars, as reflected in the order of the Commissioner of School Education and sent it to the District Inspector of Schools for approval. However, a Writ of Prohibition is also sought against the school authorities not to recast the panel in any other name of

the candidate who secured the less marks in the selection, which is held in the year 2014. In fact, the said writ petition is filed by the appellant to implement the order of the Commissioner and to restrict the recasting within the candidates, who were initially found in the panel.

The private respondent also filed a writ petition being WPA 11404 of 2019 seeking the implementation of the order of the Commissioner passed on 2nd November 2018. However, the impugned order reveals that the direction was passed to conduct the meeting in order to comply with the order of the Commissioner and a consequential order that may be passed if the meeting is not held is also reflected therein.

The appellant apprehends that in the said meeting there is every possibility of inclusion of some names, which were not there in the original panel. Such apprehension, in our opinion, is unfounded for the simple reason that no resolution or decision has yet been taken. If anything is done, which clearly violates the mandate of the Commissioner, it is open to all the aggrieved persons to ventilate such grievance and not on a mere assumption or presumption.

As a last resort, Mr. Partha Sarathi Bhattacharya, learned Advocate for the appellant, submits that there are lot of difficulties in calling for such meeting because

of the inability of some members or as they are not available.

We are not entering into such disputed arena at this juncture. It is a duty of the school authorities, more particularly, the teacher in-charge to take appropriate steps in this regard and if any further clarification or direction is required, may approach the Single Bench where the matter is pending.

Since both the writ petitions filed by the appellant and the private respondent aimed at the same goal, we do not find any justification in the submission of Mr. Bhattacharya that the impugned order could not have been passed without taking into consideration the writ petition filed by his client. However, we find that both the writ petitions are almost on identical reliefs. Therefore, it is prudent that both the writ petitions be clubbed together and be taken up at one go.

The office is directed to tag WP 1530(W) of 2019 along with WPA 11404 of 2019.

We find that because of the pendency of the instant appeal, the meeting could not be held on 10th January 2022. On the prayer of the respondent no. 9, which has not been objected to by the appearing Counsels, the next date of meeting is fixed on 19th January 2022, which shall be held strictly in terms of the order dated 17th December 2021.

With these observations, the instant appeal is disposed of.

In view of disposal of the appeal itself, the connected application being CAN 2 of 2022 has become infructuous and the same is also disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)