

**IN THE HIGH COURT AT CALCUTTA
(CIVIL APPELLATE JURISDICTION)
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE SUBRATA TALUKDAR
AND**

THE HON'BLE JUSTICE ANANDA KUMAR MUKHERJEE

**MAT 490 of 2022
DR. SANTI PRASAD SINHA
VS
LAXMI TUNGA AND ORS.**

**IA NO: CAN 1 of 2022, CAN 2 of 2022
WITH
MAT 173 of 2022**

**KEYA KAPRI AND ORS
VS
SANDEEP PARASAD AND ORS
IA NO: CAN 1 of 2022
WITH
MAT 181 OF 2022**

**STATE OF WEST BENGAL
VS
SANDEEP PRASAD**

**IA NO: CAN 1 OF 2022
WITH
MAT 189 OF 2022
STATE OF WEST BENGAL
VS
SANDEEP PRASAD AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 192 OF 2022
STATE OF WEST BENGAL
VS
SABINA YEASMIN AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 199 OF 2022**

**SOUGATA BAROMAN AND ORS
VS**

**SABINA YEASMIN AND ORS
IA NO: CAN 1 OF 2022**

WITH

MAT 200 OF 2022

**TUMPA TARAFDAR AND ORS
VS**

**SABINA YEASMIN AND ORS
IA NO: CAN 1 OF 2022**

WITH

MAT 241 OF 2022

NILMANI BARMAN

VS

**SUVANKAR MONDAL AND ORS
IA NO: CAN 1 OF 2022**

WITH

MAT 251 OF 2022

SK. INSAN ALI

VS

**STATE OF WEST BENGAL AND ORS
IA NO: CAN 1 OF 2022**

WITH

MAT 272 OF 2022

STATE OF WEST BENGAL

VS

**NASRIN KHATUN AND ORS
IA NO: CAN 1 OF 2022**

WITH

MAT 295 OF 2022

**WEST BENGAL CENTRAL SCHOOL
SERVICE COMMISSION AND ORS**

VS

**NASRIN KHATUN AND ORS
IA NO: CAN 1 OF 2022**

WITH

MAT 300 OF 2022

**WEST BENGAL CENTRAL SCHOOL
SERVICE COMMISSION AND ORS**

VS

**SABINA YEASMIN
IA NO: CAN 1 OF 2022**

WITH

MAT 308 OF 2022

STATE OF WEST BENGAL

VS

SETABUDDIN AND ORS

**IA NO: CAN 1 OF 2022
WITH
MAT 317 OF 2022
WEST BENGAL CENTRAL SCHOOL
SERVICE COMMISSION AND ORS
VS**

**SETAB UDDIN
IA NO: CAN 1 OF 2022
WITH
MAT 349 OF 2022
ASTO ROY**

**VS
SANJIB MAITY AND ORS
IA NO: CAN 1 OF 2022**

**WITH
MAT 439 OF 2022
NAZERA KHATUN**

**VS
PLABONI HOSSAIN AND ORS
IA NO: CAN 1 OF 2022**

**WITH
MAT 474 OF 2022
DR SANTI PRASAD SINHA
VS**

**LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022, CAN 2 OF 2022, CAN 3 OF 2022**

**WITH
MAT 481 OF 2022
STATE OF WEST BENGAL
VS**

**LUXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022**

**WITH
MAT 491 OF 2022
ALOK KUMAR SARKAR
VS**

**LAXMI TUNGA AND ORS
WITH
MAT 499 OF 2022
PRABIR KUMAR BANDHOPADHYAY
VS**

**LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022**

**WITH
MAT 500 OF 2022
SUKANTA ACHARJEE
VS**

**LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 502 OF 2022
TAPAS PANJA
VS**

**LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 503 OF 2022
ALOK KUMAR SARKAR
VS**

**LAXMI TUNGA AND ORS
WITH
MAT 505 OF 2022
ALOK KUMAR SARKAR
VS**

**LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 507 OF 2022
TAPAS PANJA
VS**

**LUXMI TUNGA AND ORS
WITH
MAT 508 OF 2022
SUKANTA ACHARJEE
VS**

**LUXMI TUNGA AND ORS
WITH
MAT 509 OF 2022**

**PRABIR KUMAR BANDHOPADHYAY
VS**

**LAXMI TUNGA AND ORS
WITH
MAT 520 OF 2022**

**PRABIR KUMAR BANDHOPADHYAY
VS**

**LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 521 OF 2022
SUKANTA ACHARJEE
VS**

**LAXMI TUNGA
IA NO: CAN 1 OF 2022
WITH**

MAT 522 OF 2022
ALOK KUMAR SARKAR
VS
LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 531 OF 2022
STATE OF WEST BENGAL
VS
ANINDITA BERA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT 532 OF 2022
DR SANTI PRASAD SINHA
VS
ANINDITA BERA AND ORS
IA NO: CAN 1 OF 2022, CAN 2 OF 2022
WITH
MAT 535 OF 2022
ASISH RANA
VS
LAXMI TUNGA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 577 OF 2022
DR. PARTHA CHATTERJEE
VS
MD. ABDUL GANI ANSARI AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 578 OF 2022
SUKANTA ACHARJEE
VS
MD. ABDUL GANI ANSARI AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 579 OF 2022
TAPAS PANJA
VS
MD. ABDUL GANI ANSARI AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 580 OF 2022
PRABIR KUMAR BANDAPADHYAY
VS
MD. ABDUL GANI ANSARI AND ORS
IA NO: CAN 1 OF 2022

WITH
MAT NO: 581 OF 2022
ALOK KUMAR SARKAR
VS
MD. ABDUL GANI ANSARI AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 582 OF 2022
ALOK KUMAR SARKAR
VS
ANINDITA BERA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 583 OF 2022
TAPAS PANJA
VS
ANINDITA BERA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 584 OF 2022
SUKANTA ACHARJEE
VS
ANINDITA BERA AND ORS
IA NO: CAN 1 OF 2022
WITH
MAT NO: 585 OF 2022
PRABIR KUMAR BANDAPADHYAY
VS
ANINDITA BERA AND ORS
IA NO: CAN 1 OF 2022

Mr. Anindya Kumar Mitra, Sr. Adv.

Mr. Victor Chatterjee

.....for the appellant in MAT 509 of 2022, MAT 520 of 2022

Mr. Biswaroop Bhattacharya

Mr. Dipayan Kundu

Ms. Mayuri Ghosh

.....for the Appellant in MAT 490 of 2022, MAT 474 of 2022 and MAT 532 of 2022.

Mr. Soumendra Nath Mookherjee, Ld. A.G.

Mr. Anirban Roy, Ld. G.P.

Mr. Samrat Sen

Mr. Bhaskar Prasad Vaisya

Mr. Supriyo Chattopadhyay

Mr. Sandip Sengupta
Mr. Raja Saha
Mr. Joydip Banerjee
Mr. Saaqib Siddiqui
Mr. Sagnik Chatterjee
Mr. S. Dey
Mr. Avirup Mitra

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Mr. Samrat Sen
Mr. Sandip Dasgupta
Mr. Supriyo Chatterjee
Mr. Raja Saha
Mr. Joydip Banerjee
Mr. Saaqib Siddiqui
Mr. Aviroop Mitra

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Mr. Sandip Dasgupta
Mr. Raja Saha
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Mr. Saaqib Siddiqui
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Mr. Supriyo Chatterjee
Mr. Sandip Dasgupta
Mr. Raja Saha
Mr. Joydip Banerjee
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Mr. Anirban Ray, Ld. G.P.
Mr. Samrat Sen
Mr. Bhaskar Prasad Vaisya
Mr. Sandip Dasgupta
Mr. Raja Saha
Mr. Suman Dey
Mr. Saaqib Siddiqui
Mr. Aviroop Mitra
Mr. Supriya Chattopadhyay
Mr. Sumen Dey
Mr. Saqib Siddiqui

Mr. Sagnik Chatterjee
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Mr. Bhaskar Prasad Vaisya
Mr. Sandip Sengupta
Mr. Raja Saha
Mr. Shamimul Bari
Mr. Saaqib Siddiqui
Mr. Aviroop Mitra

....for the appellant in MAT 308 of 2022

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Mr. Tanmay Kumar Dey

.....for the appellant in MAT 500 of 2022, MAT 508 of 2022, MAT 521 of 2022.

Mr. Raja Saha
Mr. Sanjib Das

...for the appellant in MAT 502 of 2022, MAT 507 of 2022

Mr. Partha Sarathi Bhattacharyya
Mr. Sandip Ghosh
Mr. Raju Bhattacharyya
Mr. Partha Sarkar

.....for the appellant in MAT 251 of 2022

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Mr. Jasojeet Mukherjee

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Mr. Ranjan Bachawat.
Mr. Souman Ghosh
Mr. Victor Chatterjee

.....for the appellant in MAT 499 of 2022, MAT 509 of 2022, MAT 520 of 2022.

Mr. Lakhi Gupta, Sr. Adv
Mr. Subir Sanyal
Mr. Somesh Ghosh

...for the appellant in MAT 349 of 2022, MAT 173 of 2022, MAT 199 of 2022.

Mr. Sarwar Jahan
Mr. Sanjib Das

Mr. Subhankar Nag
....for the appellant in MAT 502 of 2022, MAT 507 of 2022.

Mr. S.S. Arefin
.....for the Appellant in MAT 241 of 2022

Mr. Sarwar Jahan
Mr. Sanjib Das
....for the Appellant in MAT 502 of 2022 and MAT 507 of 2022

Mr. Chittapriya Ghosh
Mr. Somesh Kr. Ghosh
Mr. Komal Singh
... for the appellant in MAT 535 of 2022, MAT 199 of 2022, MAT 349 of 2022, MAT 173 of 2022

Mr. S. P. Lahiri
Md. Habibur Rahman
Ms. Saba Parwen
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Mr. Samrat Sen, Ld. A.A.G.
Mr. Anirban Ray, Ld. G.P.
Mr. Raja Saha
Mr. Nilotpal Chatterjee
Mr. Avishek Prasad
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Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
.....for the WBCSSC

Mr. Kanak Kiran Bandyopadhyay
Mr. Soumitra Sarkar
...for the respondent No. 10 in MAT 308 of 2022, respondent No. 8 in MAT 317 of 2022.

Mr. Biswaroop Bhattacharya
Mr. Dipayan Kundu
Ms. Mayuri Ghosh
....for the respondent No. 11 in MAT 308 of 2022 and Respondent No. 12 in MAT 317 of 2022

Mr. Bikash Ranjan Bhattacharyya
Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Mausumi Hazra
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MAT 272 of 2022, MAT 308 of 2022, MAT 317 of 2022, MAT 295 of 2022, MAT 499 of 2022, MAT 535 of 2022.

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Mr. Sandip Ghosh

Mr. Raju Bhattacharyya

Mr. Partha Sarkar

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Mr. Arindam Chattopadhyay

...for the State in MAT 439 of 2022

Mr. Samrat Sen

Mr. Bhaskar Prasad Vaisya

Mr. Sandip Dasgupta

Mr. Shamimul Bari

Mr. Saaqib Siddiqui

Mr. Aviroop Mitra

.....for the State in MAT 317 of 2022

Mr. Samrat Sen

Mr. Bhaskar Prasad Vaisya

Mr. Sandip Dasgupta

Mr. Saaqib Siddiqui

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.....for the WBBSE

Mr. Bikash Ranjan Bhattacharyya

Ms. Sudipta Dasgupta

Mr. Bikram Banerjee

Mr. Arkadeb Biswas

Mr. Arka Nandi

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Mr. Samrat Sen, Ld. A.A.G.
Mr. Anirban Ray, Ld. G.P.
Mr. Bhaskar Prasad Vaisya
Mr. Supriyo Chattopadhyay
Mr. Sandip Dasgupta
Mr. Raja Saha
Mr. Saaqib Siddiqui
Mr. Joydip Banerjee
Mr. Suman Dey
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Mr. Dhiraj Trivedi, ASGI
Mr. Billwadal Bhattacharyya, Ld. ASGI
Mr. Rajdeep Majumdar
Mr. Samrat Goswami

.....for the CBI

Mr. Chittapriya Ghosh
Mr. Komal Singh

....for the respondent no. 481 in MAT 173 of 2022

Mr. Bhaskar Prasad Vaisya
Mr. Arindam Chattopadhyay

...for the State in MAT 349 of 2022

Mr. Lakshmi Kumar Gupta, Ld. Sr. Adv.
Mr. Chittapriya Ghosh
Mr. Somesh Kumar Ghosh
Mr. Komal Singh

.....for the respondent Nos. 10 to 13 in MAT 481 of 2022

Mr. Arunava Banerjee
....in-person for the Committee

Ms. Moumita Ghosh
...intervenor

Mr. Joyjit Dutta
... Intervenor

Ms. Chama Mookherji
Mr. Gourav Das
.. for the State in MAT 241 of 2022

Mr. Bhaskar Prasad Vaisya
Mr. Sagnik Chatterjee

... for the State in MAT 531 of 2022

**Mr. Dhiraj Trivedi, ASGI
Mr. Billawadal Bhattacharyya, ASGI
Mr. Rajdeep Majumdar
Mr. Samrat Goswami
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MAT 481 of 2022, MAT 181 of 2022, MAT 189 of 2022, MAT 192 of
2022, MAT 349 of 2022**

**Mr. Kamalesh Bhattacharya
Mr. Jakir Hossain
... for the respondent in MAT 439 of 2022**

**Ms. Koyeli Bhattacharyya
... for the WBBSE**

**Mr. A. K. Mitra
Mr. A. Guha Thakurata, Adv.
Mr. S. Nag
Mr. Animesh Paul
..... for the appellant in MAT 577 of 2022**

**Mr. Saptansu Basu
Mr. T.K. Dey
..... for the appellant in MAT 578 of 2022, MAT 500 of
2022, MAT 508 of 2022, MAT 521 of 2022**

**Mr. Sandipan Ganguly
Mr. S. Nag
Mr. Sanjib Das
..... for the appellant MAT 502 of 2022, MAT 507 of
2022, MAT 579 of 2022, MAT 583 of 2022**

**Mr. A.K. Mitra
Mr. R. Bachawat
Mr. V. Chatterjee
..... for the appellant MAT 580 of 2022, MAT 499 of
2022, MAT 509 of 2022, MAT 520 of 2022**

**Mr. S. N. Mukherji
Mr. S. Nag
Mr. J. Mukherjee
..... MAT 581 of 2022, MAT 582 of 2022, MAT 491 of
2022, MAT 503 of 2022, MAT 505 of 2022, MAT 522 of 2022**

**Mr. Joydip Banerjee
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..... For the State**

**Mr. Kanailal Samanta
Mr. Jakir Hossain
..... for the Respondent No. 1 in MAT 439 of 2022**

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Mousumi Hazra
Mr. Aritra Bhattacharyya

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Heard on : **05/04/2022, 11/04/2022, 12/04/2022, 13/04/2022, 13/05/2022**

Judgment on : **18/05/2022**

Subrata Talukdar, J.:-

1) This batch of individual appeals arise out of a clutch of individual writ petitions which are connected to the appointments of Assistant Teachers for Classes IX and X and non-teaching staff for Group C and D Posts as notified by the State School Service Commission (for short SSC). The appellants before this Court are members of a Committee (for short the said Committee) including its Approving Authority and the Advisor, who have organised the appointments by way of recommendations issued by the SSC following the Regional Level Selection Test, 2016 (for short RLST-2016), which the writ petitioners allege to be illegal. The appellants also include candidates who have procured the alleged illegal appointments in all three categories of posts (*supra*).

2) By way of illustration it would be useful to quote the opening pleadings of one such petitioner in WPA 13701 of 2021 (*Muhammad Abdul Gani Ansari Vs. The State of West Bengal and Ors.*), which is also the subject matter of one of the appeals filed before this Court.

The pleadings at Paragraphs 1, 2, 3 and 4 read as follows:-

“1. Your petitioner is a citizen of India and residing at the address given in the cause title of this instant petition.

2. The respondents herein are “State” within the meaning of Article 12 of the Constitution of India and/or “person or authority” under Article 226 of the Constitution of India and are thus amenable to the writ jurisdiction of this Hon’ble Court.

3. That your petitioner is affected by the illegal, arbitrary, whimsical act of the respondent Commission which would as a result cost him to lose an opportunity to get appointment as an Assistant Teacher for Classes (IX to X) for the subject of Mathematics. The respondent commission illegally, arbitrarily and whimsically did not call the petitioner in counselling process and also did not give appointment to the petitioner though there is seat vacant in the petitioner’s category and also the respondent authority give appointment to the below rank holder candidates than the petitioner for which the petitioner lost his opportunity to get recommendation letter.

4. Your petitioner states that Petitioner being an OBC-A candidate has adhered all requisite educational qualifications as well as the required training qualification. The petitioner is an eligible candidate to be appointed as an Assistant Teachers for Classes IX and X.

Photocopies of the Academic and Professional Testimonials of the petitioner and caste certificate are annexed herewith and collectively marked as Annexure ‘P-1’”

Similar pleadings and prayers to set aside the illegal appointments to all the three categories of Posts as stated above are part of the other writ petitions.

3) The Hon’ble Single Bench during the course of hearing of individual writ petitions on several dates was, *inter alia*, pleased to notice several *prima facie* facts which were *startling and surprising*. It would be relevant for this discussion to notice the facts as recorded by the Hon’ble Single Bench through several orders in individual writ petitions:-

"28.02. 2022

WPA 13700 of 2021

Setab Uddin & Ors.

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I have asked Mr. Sarkar, Ex-chairman of the Central School Service Commission, who signed the two recommendation letters issued to Respondent 2 No.6 on 18.12.2019 and 25.02.2020?

Mr. Sarkar has intimated this court that he was in Central School Service Commission as Chairman from 10.01.2019 to 15.01.2020. He has no idea who signed these recommendation letters as, when the first recommendation to the respondent No. 6 dated 18.12.2019 was signed he was on leave due to his mother's death and when the second recommendation dated 25.02.2020 was signed for the same respondent he was not in the Commission at all in any post. He was released from the Commission on 15.01.2020. Therefore, he has submitted that he has no role in such illegal issuance of recommendation letters to the Respondent No.6.

I have asked Mr. Saha who worked as Chairman in-charge during the absence of Mr. Sarkar and some days after he was released from his duty as Chairman, as to who signed these recommendation letters. He said that he is totally ignorant about issuance of such recommendation letters because the signatures thereon are mechanically printed and those are scanned signatures and he never signed those two recommendation letters and he does not have absolutely any idea as to how this was done. In fact, he has submitted, before discussion of the matter with his advocates about this writ application and the last order passed by this court, he did not have any idea about such recommendations. However, in reply to court's question he has disclosed the names of two persons (1) Dr. Santi Prasad Sinha whose residential address is UV 05-

03-C Bengal Ambuja Housing Complex, 1050/1, P. S. -Survey Park, Santoshpur, Kolkata 700075 who worked as the advisor of the West Bengal Central School Service Commission (he is not in the service now) who handled all such recommendations and not Mr. Saha. (2) The Programme Officer of the West Bengal Central School Service Commission Mr. Samarjit Acharya of MIG, K/14, Niva Park, Phase – II, P. S. –Brahmapur, Kolkata 700096.

I direct the petitioner to add these two persons as party respondents in this matter forthwith and to serve copy of the writ application and the reports in the form of an affidavit upon them by hand.”

“03.03.2022

WPA 13700 of 2021

Setab Uddin & Ors.

Vs.

The State of West Bengal & Ors.

A startling revelation in paragraph no. 5 of such affidavit is – “It is also stated that generally recommendation letters are issued in favour of the empanelled waitlisted candidates on the date of counseling after opting the school by the respective candidates, but here in the instant case the respondent no. 6 was not called for counseling in spite of that recommendation letter was issued in favour of the respondent no. 6.”

This paragraph no. 5 of the affidavit, part of which has been quoted above, is affirmed by the deponent as „true to his knowledge“.

3. In page 6 of the writ application a table has been given which makes the allegation of the petitioners clear wherefrom it is found that one Sk. Insan Ali, who is the respondent no. 6 in this writ application, was in the waitlisted rank of W-144 whereas the petitioners nos. 1, 2 and 3 were all above the said

Sk. Insan Ali in the waitlist and the petitioner no. 4 had equal marks with Sk. Insan Ali.

4. In this regard specific pleadings have been made in paragraph 26 of the writ application wherein the petitioners have stated that one Sk. Insan Ali a below rank holder (rank W-144 in OBC-A male/female category) than the petitioners in OBC-A male/female merit list, has got appointment letter and has joined in the Bani Niketan R.M. Vidyalaya (High) despite the petitioners being in higher rank holder in OBC-A male/female, have not received any call letter or 4 intimation letter for counseling and also naturally did not get any appointment letter.

5. Here I must record one objection of the learned advocate for the Commission yesterday, (his other objections will be recorded latter) as to the delay in preferring this application.

6. I have found that the recommendation was done surreptitiously. Today it has come to light that no counselling was held before recommending Sk. Insan Ali in a school. If an authority acts surreptitiously in giving recommendation then the persons who are suffering has to act like a sleuth.

7. We are fortunate, today in our country there is an Act, namely, Right to Information Act. The petitioners on 1st February, 2021 filed one application under Right to Information Act to the school for knowing certain facts and the school gave its reply stating that the said Sk. Insan Ali joined the school on 1st December, 2020 under category OBC-A for classes IX and X.

8. So the petitioners for the first time came to learn specifically that the respondent no. 6, who was a below ranked candidate, was appointed in February, 2021. This writ application has been affirmed in August, 2021 and I cannot blame the petitioners for filing it after six months keeping it in mind that the unemployed youth are facing a mammoth authority namely West Bengal Central School Service Commission.

9. After considering that particular objection of the learned advocate for the Commission, Mr. Dutta, the 5 court's

observation is that there is no delay in filling the application in the facts and circumstances of the case.

11. The petitioners made their submissions initially on that basis and this court (Cor. Saugata Bhattacharyya, J.) directed the Commission to file a report in the form of an affidavit which was filed by them on 3rd November, 2021. This order was passed on 15th September, 2021. On 30th September, 2021 the Hon'ble Court granted further time to the Commission for filing its report. On 21.02.2022 when the matter was being heard and the Commission filed its report in the form of affidavit, the respondent No. 6 produced in court two recommendation letters and two appointment letters along with one envelope of the Commission. After going through the said two recommendation letters, one dated 18th December, 2019 and the other dated 25th February, 2020, I directed the Commission on that day to intimate certain facts which were recorded in paragraph 6 of the order of that date. Those facts have not been intimated to this court till date, which I have noted.

12. On 22nd February, 2022 I was told that at the relevant point of time of issuance of the two recommendation letters one Soumitra Sarkar was the Chairman and one Mr. Ashok Kumar Saha in some intervals acted as the Chairman-in-charge in the absence of the Chairman and I directed them to appear before this court on the next date and they were added as parties.

13. On the next date, i.e., on 28.02.2022, I found from the statement of Mr. Sarkar that when those two recommendation letters were issued to the respondent no. 6, (who was a candidate below the rank of the three petitioners and equal in marks to the fourth petitioner) he was on leave at the time of the first recommendation due to her mother's death and at the time of the second recommendation letter he was released from the Commission. Therefore, he had no involvement in this matter.

14. Nobody has raised any objection in respect of his statement. However, I directed him to file an affidavit in respect

of the statements made by him which he did and the affidavit was filed yesterday (02.03.2022) in court with the similar statements.

15. On 28.02.2022 Mr. Ashok Kumar Saha, who worked as the Chairman-in-charge during the absence of Mr. Sarkar and some days after Mr. Sarkar was released from his duty as Chairman, was asked as to who signed those recommendation letters, he stated that he had been totally ignorant about issuance of such recommendation letters because the signatures on 7 the recommendation letters were mechanically printed and those were scanned signatures and he never signed those two recommendation letters and he did not have absolutely any idea as to how this was done. He further submitted that before discussion of the matter with his advocates about this writ application after receiving a copy of this court's order dated 22nd February, 2022 and while going through the orders passed by this court, he did not have any idea about such recommendations. However, in reply to the court's question he disclosed names of two persons. 1) Dr. Santi Prasad Sinha (who worked as the Advisor of the West Bengal Central School Service Commission and according to Mr. Saha, who handled all such recommendations and not Mr. Saha) and 2) Mr. Samarjit Acharya (The Programme Officer of the Central School Service Commission).

16. Those two persons were also added as parties by this court and I directed those two persons to appear before this court on 2nd March, 2022 at 2 p.m.

17. On 2nd March, 2022 I first asked some questions exercising my power under Section 165 of the Indian Evidence Act to Mr. Samarjit Acharya who replied on oath. Some of the questions asked to him and his reply thereto are quoted below:

"Q.9) Was this particular recommendation letter was printed at the instruction of the Chairman-inCharge or the advisor? Ans. No, it was not under the instruction of the then Chairman, it was done by the instruction of the then Advisor.

Q.10) Can you name the advisor?

Ans. Dr. Santi Prasad Sinha.

Q.13) On whose instruction you printed this second recommendation letter?

Ans. The printout of the second recommendation letter was also done by me as per the instruction of the Advisor, Dr. Santi Prasad Sinha.

Q.18) Why did you act on the instruction of Mr. Santi Prasad Sinha?

Ans. Mylord, I have received that order from the Government and the Chairman told me that I should act accordingly as per the order.

Q.19) Please see this order. What are the names and designations of the members of the committee?

Ans. 1) Sri S. P. Sinha, Advisor to the Central School Service Commission, Convenor

2) Sri. S. Acharya, P.S. to Hon'ble MIC of this department.

3) P. K. Bandyopadhyay, OSD to the Hon'ble MIC of this department.

4) Sri A. K. Sarkar, Deputy Director (GA Section), Directorate of School Education.

5) Sri T. Panja, Senior Law Officer of this department.

Q.20) Who has signed this document?

Ans. The Joint Secretary to the Government of West Bengal.

Q.22) How Mr. Sinha gave you the instruction to print the recommendation letters, orally or in writing? Ans. He used to instruct verbally.

Q.25) Can you remember for how many times over a period Mr. Sinha gave you instruction to print recommendation letters at this instruction?

Ans. I do not remember the exact number of instructions given by Mr. Sinha. But he has started giving me instruction from the end of 2019. "

18. None of the parties prayed for this court's leave to cross examine the two persons who were asked questions by the court.

19. While replying to question no. 18 Mr. Acharya produced one document which was marked by this court as Exhibit-1, which is an order passed by the Joint Secretary of the Government of West Bengal of Secondary Branch of School Education Department of Government of West Bengal. That order is reproduced in the next page:

20. This order issued by the Joint Secretary contains five names including the advisor with whom the Committee was constituted and the Chairman of the Commission was given the post of ex-officio Chairman of the Committee.

21. This order of the School Education Department dated 01.11.2019 is extremely surprising. There is no mentioning under what provision of law such an order was issued by the School Education Department naming five persons as have been given in the said letter as member. Under what provisions of law this order was issued is not understood by this court. Learned Advocate for the state has not made any submissions in this regard. Why suddenly supervision and monitoring of pending recruitment process were required to be taken up by this Committee is not mentioned in the said order. The Commission was a complete body constituted by a statue full of experts and it has its own work force for doing all the jobs done which the Commission did for several recruitment processes wherein an average three lakhs or so candidates participated. Why this time such a Committee was constituted shall always remain a question until some enquiry is made in respect of the role of these members of the Committee. That order of the School Education Department was issued with the concurrence of the competent authority; who was the competent authority is also to be found out.

22. There is a provision under Section 19 of the West Bengal School Service Commission Act, 1997 where the State Government can issue directions. The provision is reproduced herein below:

Section 19:

Directions by State Governments.- In the discharge of its functions the Commission shall be guided by such directions as may be given to it by the State Government from time to time in conformity with the provisions of this Act.

23. In the said order issued by the School Education Department signed by the Joint Secretary dated 01.11.2019, no such directions is found. It was only for constitution of the committee. Therefore, this order was not at all an order under Section 19 of the aforesaid Act. At this juncture a reply of Mr. Acharya becomes very important which he gave on oath before this court yesterday.

In reply to question no.25 Mr. Acharya stated as follows:

Q: 25) Can you remember for how many times over a period Mr. Sinha gave you instruction to print recommendation letters at this instruction? (sic)

Ans: I do not remember the exact number of instructions given by Mr. Sinha but he has started giving me instructions from the end of 2019.

24. It is a matter to be noted that Mr. Sinha became the convenor of the Committee on 01.11.2019 i.e at the end of the 2019.

27. Now I come to some examples from the exception taken by the learned advocate for the petitioners (to the report of the Commission) wherein particulars of a large number of illegal recommendation were given:

(i) In the subject Mathematics (GRAD) wait list rank 275 in Medium Bengali got appointment whereas wait list rank 217 was not even called. (Henceforth WL stands for wait list).

(ii) WL 253 in SC Male/Female category in Mathematics (Grad) got appointment and joined a school whereas higher rank holder being WL 226, WL 214, WL 250 and WL 207 in the same subjects and category was not called for counselling and they got no appointment.

(iii) Rank WL 64 in SC Female category in Subject History (Grad) got appointment 15 letter but rank WL 38, WL 47 and WL 55 in the same category did not get any call.

(iv) Rank WL 138 under Male/Female OBC-B in the subject Geography got recommendation whereas rank above WL 138 under same category did not get any call.

(v) Even one non-listed candidate, namely, Sumita Das got appointment in the subject Geography in Tapan Balika Vidyalaya (H.S.) whereas several waiting listed candidates did not receive any call letter.

(vi) Rank WL 194 in OBC-A Male/Female category and WL 123 in OBC-A Female category in subject Bengali (GRAD) got recommendation letter and joined the school but Rank WL 146 in OBC-A Male/Female and Rank WL 87 in OBC-A Female in the same subject and category got no call for counselling.

(vii) One non-listed candidate, namely, Jnui Das got appointment in one school, namely, Gujarpur Shibganj Bishalaxmi High School whereas several waiting listed candidates did not get any call letter.

(viii) Another non-listed candidate Md. Azad Ali Mirza got recommendation letter from the Commission in the subject Bengali whereas similar subject and category wait listed candidates did not get any call.

(ix) One Md. Golam Rabbani being rank holder WL 174 in OBC-A Male/Female category in subject English (GRAD) got appointment letter though in the same 16 category and subject WL 131 and WL 134 did not get any call for counselling.

(x) One Mou Sarkar being rank holder WL 168 in OBC-B Female category got appointment letter in subject English but higher rank holders in the same subjects and category being rank holder WL 65, WL 90, WL 141 and WL 154 did not receive any call letter for counselling.

(xi) One non-listed candidate, namely, Imam Momin got appointment letter in the subject English in a school whereas several waiting listed candidates did not get any appointment letters.

(xii) Another non-listed candidate Jayasri Sarkar got recommendation letter in the subject English whereas other WL candidates did not get any call letter.

(xiii) One Runa Laila being rank holder WL 58 in OBC-A Female category in subject English got appointment letter but higher rank holders being rank WL 50 and WL 53 in OBC-A Female category in same subject did not get any call letter for counselling.

(xiv) Another non-listed candidate Gurupada Gharai got appointment letter in the subject Life Science (GRAD) whereas several waiting listed candidates in the same subject did not get call letter for counselling.

(xv) Another non-listed candidate Md. Tazuddin Ahamed Shafil Imam got appointment letter in the subject Physical Science (Grad) whereas several waiting listed candidates in the same subject did not get call letter for counselling.

(xvi) Another non-listed candidate Arun Kumar Sinha got appointment letter in the subject Physical Science (Grad) whereas several waiting listed candidates in the same subject did not get call letter for counselling.

(xvii) Another non-listed candidate Dibyendu Samajdar got appointment letter in the subject Physical Science (Grad) whereas several waiting listed candidates did not get call letter for counselling. Such allegations have not been denied by the Commission.

31. As the order of the Government has already been quoted above, I am not repeating the names of the highly placed persons with whom the Committee was constituted. Hence in this matter 19 also, I direct the C.B.I. enquiry, as the C.B.I. is an expert agency which is not under the control of State Government, in a scam where a Committee has been formed with the important officers of the State Government by the School Education Department. Therefore, I direct the Director, Central Bureau of Investigation to constitute a Committee immediately, headed by an officer not below the rank of Joint Director with officers not below the rank of D.I.G. to initiate the enquiry. It is expected that all the persons named in the said order of the Government including the „competent authority“ with whose concurrence the order was issued and any other

person from whom CBI want to gather facts for inquiry of the matter should come under the umbrella of the enquiry. It is not that I do not have any confidence upon the police of this State. But the police is controlled by the State and in effect they are chained by orders ect. from the different quarters. Otherwise, I have the belief that the Kolkata Police or the West Bengal Police is fully capable to enquire into the matter.

32. For this reason, as C.B.I. is an agency outside the control of this State, I am directing the C.B.I. to hold this enquiry which has happened in this State wherein a Committee constituted by the 20 State of highly placed officials was acting and the tip of „corruption-ice-berg“ is found.

34. C.B.I. shall also enquire whether there is any money trail in respect of such appointment. Admittedly, it appears from the aforesaid report of the Commission and answers given by one of its officers indicating the corruption at the instance of the convenor of the Committee that the appointed person's rank was below the first three petitioners and equal to the marks of the fourth petitioner.

35. This morning one startling fact has been placed before this court when Mr. Saha, who acted as Chairman-in-Charge and is the Assistant Secretary of the Commission for some time has placed one affirmed statement that the particular respondent no.6 was not even called for counselling. Without any counselling, recommendation letter was issued in favour of the respondent no.6 which has been recorded in the order passed today at the very inception of this matter before I started dictating this order.

36. This court directs the C.B.I. to take steps immediately in respect of the five named persons in the order of the Government of West Bengal dated 01.11.2019 and others and further start enquiring the matter as extreme illegality is found which has irresistibly brought me to the question of corruption. Thus the C.B.I. has two functions:-

i) take steps to know in respect of the five persons in the order of the Government of West Bengal dated 01.11.2019 and

others felt necessary by CBI immediately and to file an interim report by fifteen days from date of service of a copy of the order before this court and

ii) start enquiring the matter forthwith and to file an interim report as to the enquiry by one month from the date of starting enquiry. The report is to be filed before this court.”

- 4)** In another writ petition, being WPA 13701 of 2021, the Hon'ble Single Bench was pleased to further record as follows:-

“07.03. 2022

WPA 13701 of 2021

Md. Abdul Gani Ansari

Vs.

The State of W. B. & Ors.

The District Inspector of Schools, Murshidabad has filed one report in the form of affidavit affirmed on 7th March, 2022.

The Deputy Director of School Education (Grand-in-Aid) has filed one affidavit affirmed on 4th March, 2022 wherein he has stated that the then Deputy Director of School Education (Grand-in-Aid), West Bengal, vide Memo No. 1338-GA dated 11.07.2018 forwarded those six vacancies, which is a relevant question in this writ application, to the School Service Commission on 12.07.2018.

Learned advocate for the State has submitted that there is some mistake in this affidavit and so he 2 wants to file one clarificatory affidavit by day after tomorrow.

Learned advocate for the School Service Commission has submitted that he will also come up with the further report in the form of affidavit day after tomorrow i.e. on 9th March, 2022. Such extension of time is granted to the Commission and if such affidavit is not filed by 9th March, 2022, Commission will not be granted any further opportunity to file such affidavit and necessary presumption will be drawn against it.

Here it is also found from the affidavit filed by the District Inspector of Schools that all recommendation letters were issued by the West Bengal School Service Commission on 14.01.2020 and it appears that these recommendation letters were signed by the then Chairman of the Commission Mr. Soumitra Sarkar.

It has been submitted by Mr. Bhattacharyya, learned senior advocate for the petitioner that the then Chairman Mr. Soumitra Sarkar was in his office till 15th January, 2020.

Mr. Abhratosh Majumder, learned advocate appearing for the Respondent Nos. 8, 10 and 11 has submitted that they are appointed elsewhere and not in any school and the allegation of the petitioner that they were appointed in schools is incorrect. Mr. Majumder has submitted that he will file an affidavit stating that his abovementioned clients are not working in any school and working elsewhere.”

“25.03.2022

WPA 13701 of 2021

Md. Abdul Gani Ansari

Vs.

The State of West Bengal & Ors.

The parties are directed to exchange affidavits amongst themselves by 28th March, 2022.

I direct to my Court Officer to arrange all the exhibits.

Mr. S.P. Sinha who were the advisor of the School Service Commission for long time and also the convenor of the Five Member Committee constituted by the Education Department is directed to file one affidavit of assets as this court has found that there are serious illegalities in giving recommendations to ineligible candidates and the tip of the corruption-iceberg in issuing illegal recommendations is seen which is getting gradually bigger. From the answers given to this court by Mr. Sinha and Mr. Acharya I am satisfied that some other aspects

of the affairs of the persons involved are required to be seen. When illegal appointments have been proved this writ court being a court of equity will take all steps required to go to the root of the matter and will not stop on some technical grounds: if it is done, this court in exercising its equitable jurisdiction will fail which can never be done as this writ court in all such matters has miles to go before it sleeps.

The affidavit of assets has to be filed on 30th March, 2022, when this matter will appear under the heading "To be mentioned".

"31.03.2022

WPA 18585 of 2021

Laxmi Tunga

Vs.

The State of West Bengal & Ors.

The petitioners have given a list of 98 persons for appointment in Group D posts. All of their appointment letters issued by the West Bengal Board of Secondary Education have been annexed.

The Board in paragraph 13 of their affidavit affirmed on 22nd February, 2022, has said that on the basis of the recommendations received from the School Service Commission, both through the hardcopy and softcopy in phases between the period December, 2019 and February, 2020, the appointment letters were issued by them.

On the other hand the Commission in paragraph 9 of its report filed in the form of an affidavit affirmed on 22nd February, 2022, has stated that the Chairman of the concerned Regional School Service Commission by his memo dated 18th February, 2022 informed the Central School Service Commission that 96 recommendation letters, as mentioned in the said memo of the Chairman of the Regional School Service Commission which appears to have been issued between 23rd September, 2019

and 20th December, 2019, have not been issued by the Commission.

Therefore, the Commission has said they did not recommend those candidates. But the Board has said that they have recommended them on the basis of the recommendations received by them from the Commission.

Some relevant facts are required to be mentioned here. In some other matters this court called the Advisor to the Commission Mr. S. P. Sinha and Mr. Samarjit Acharya, the Programme Officer of the Commission and asked them some questions wherefrom it appeared that on the basis of some recommendation from outside the office of the Commission at the instance of Mr. Sinha, the recommendation letters were printed by the Programme Officer wherein the signatures of the Chairman of the Commission were mechanically printed. The Chairman was kept in the dark. Said Mr. S. P. Sinha was also convenor of a five member committee constituted by the School Education Department with high officials of Education department.

Before this court a large number of matters have come in the meantime as to such illegal appointments and now the records of the statements made by the said Mr. Sinha and Mr. Acharya are before this court, along with some exhibits.

In such circumstances a thorough probe is required to bust the racket of giving illegal appointments. I have found from other similar matters that the said Dr. Santi Prasad Sinha as one of the kingpins of this corruption of giving illegal public appointment. Hence, I direct the regional head of the Central Bureau of Investigation to call Mr. S. P. Sinha in course of the day and start questioning him.

The CBI is directed to initiate the said interrogation in course of the day - I mean by 12 midnight today.

With this action CBI investigation will start. This matter will appear tomorrow for further hearing.”

- 5) By a further order dated 1st of April 2022 in WPA 18585 of 2021 connected to the charge of illegal appointments to Group – D posts the Hon'ble Single Bench held as follows:-

"01.04.2022

WPA 18585 of 2021

Laxmi Tunga & Ors.

Vs.

The State of West Bengal & Ors.

5. School Service Commission has filed a second report affirmed on 31.03.2022 wherein they have stated in paragraph 6:

"i) the candidates mentioned in Pages 72 and 73 of the said application were included in wait list but not recommended by the commission

Copies of the application forms filed by the candidates mentioned in page 73 of the writ application are annexed herewith and marked as "R-1" (collectively) wherefrom the 3 category and the caste of the said 8 candidates will be evident.

ii) Out of the 90 candidates as mentioned in pages 85 and 86 of the said application, 85 candidates were neither waitlisted nor recommended.

With regard to the remaining 5 candidates namely Bapan Das, Tarak Nath Heit, Nemai Khalua, Pritish Maity and Raju Das, they were in the waitlist but not recommended by the Commission.

A copy of list containing details of the above 90 candidates as mentioned in pages 85 and 86 of the writ application is annexed herewith and marked as "R-2". "

6. The persons against whom allegations have been made and in respect of whom the Commission has stated in their affidavit that they were never recommended by the Commission and in respect of whom it has been alleged that they are working in different schools as Group D staff, the salary of all such

persons shall not be paid any further. They shall not be treated as candidates recommended by the Commission. They shall not be allowed to enter into the schools as Group D staff of the said schools. Further orders in respect of their illegal appointment and other aspects would be passed later and now I direct the concerned District Inspectors of Schools (S.E.) to take immediate steps for complying with the order passed by this court.

7. In one similar matter of illegal recommendation and appointment the answers given by Mr. S. P. Sinha and Mr. Samarjit Acharya to the questions of this court has been recorded and I direct my court officer to hand over the copies of the questions and answers given by them, which I took under Section 165 of the Indian Evidence Act, to the learned advocate of the CBI in the course of the day. Learned advocate for the CBI will also be handed over the Exhibits made in that proceeding being WPA 13701 of 2021 (Md. Abdul Gani Ansari – Vs.- State of West Bengal & Ors.). In the said proceeding it came to the knowledge of this court that a high-powered committee was constituted by the Education Department of the State of West Bengal constituted by the following five members:

- i) Shri S. P. Sinha, Advisor to the West Bengal Central School Service Commission - the Convenor*
- ii) Shri S. Acharya, Personal Secretary to Hon“ble Minister in Charge of the Department*
- iii) Shri P. K. Bandyopadhyay, OSD to the Hon“ble MIC of Education Department*
- iv) Shri A. K. Sarkar, Deputy Director (GA Section), Directorate of School Education Department*
- v) Shri T. Panja, Senior Law Officer of the department.*

I direct the petitioners to add all these persons of that committee as party-respondents in this matter immediately.

8. I direct the Principal Secretary of the School Education Department to supply the addresses of the four persons, except Mr. S. P. Sinha, forthwith to the learned advocate for the petitioners and also to the learned advocate of CBI.

9. I direct the CBI to take steps forthwith to call the above persons for asking questions in respect of this illegal appointment scam in public employment and they are to be called in the course of the day. When they will be questioned, will be decided by the CBI. I am not giving any guideline to that effect, but they are to be called in course of the day and they are directed to attend the office of the CBI as soon as they will be called by the CBI. This order on those persons is mandatory and any non-compliance with this order will be viewed very seriously by this court against the persons who will fail to attend the office of the CBI as soon as they are called.

17. I direct the CBI to register a regular case in this respect so that the matter can be proceeded with on the basis of the said case. Yesterday the steps were taken by the CBI pursuant to the order passed by this court.

18. Learned advocate for the CBI has stated that after registering a case it will be a CBI investigation and not an enquiry.”

- 6) From the contents of the orders reproduced above it is *prima facie* clear that serious irregularities were noticed and recorded by the Hon’ble Single Bench in the appointments to the three categories recommended by the SSC and executed by the West Bengal Board of Secondary Education. It was also *prima facie* noticed and recorded by the Hon’ble Single Bench that at the root of the illegal recommendations were the activities of the five member so-called *Super Committee* appointed by the order of the School Education Department dated 1st November, 2019 and approved by then Minister-in-Charge under the advisorship of one S.P. Sinha. The several individual instances of illegal appointments issued on the recommendation of the said *Super Committee* have been detailed in the orders of the Hon’ble Single Bench (*supra*) and such details could

not be rebutted by Ld. Counsel appearing for the SSC and also for some of the appointed candidates.

It would not be irrelevant to point out at this juncture to the roundabout manner in which Ld. Senior Counsel for some of the appointees namely, the respondent Nos. 8, 10 and 11 in WPA 13701 of 2021 took the stand, upon enquiries made by the Hon'ble Single Bench, that his clients have not been appointed to any school but are working elsewhere.

When confronted with a letter of the District Inspector of Schools, Murshidabad dated the 18th of February, 2021 stating, *inter alia*, that the candidates including the said respondents Nos. 8, 10 and 11 received their appointment letters from the President of the West Bengal Board of Secondary Education (for short the Board) on 20th March 2020, Learned Senior Advocate for the said respondents 8, 10 and 11 sought time to file affidavits.

- 7)** Unable to stop the course of investigation initiated by the Hon'ble Single Bench on noticing and recording large scale illegal recommendations and appointments pursuant thereto, both the State of West Bengal and the SSC arrived before the Hon'ble Division Bench by way of separate appeals. The Hon'ble Division Bench *vide* its order dated 11th March 2022 in MAT 308 of 2022 with MAT 317 of 2022 , *inter alia* , held as follows:-

"11.03.2022

MAT 308 of 2022

with

I.A No. CAN 1 of 2022

State of West Bengal

Vs.

Setab Uddin & Ors.

WITH

MAT 317 of 2022

With

I.A No. CAN 1 of 2022

West Bengal Central School Service Commission & Ors.

Vs.

Setab Uddin & Ors.

This appeal has come up at the instance of the State of West Bengal.

The Learned Advocate General appears on behalf of the State and submits that without giving any opportunity to the State to file an affidavit opposing the prayer for appointment of CBI the learned single judge has directed C.B.I to enquire into the alleged malpractices. It is submitted that the State is always in favour of an impartial enquiry and if required by SIT under the supervision of High Court as was done in respect of Group C and Group D employees.

It is further submitted that although the learned single judge has expressed full faith into the state machinery, C.B.I enquiry was directed on the assumption that since the persons named are holding responsible positions in the government no impartial enquiry by the state machinery would be possible.

Dr. Sutanu Kumar Patra, learned counsel appearing on behalf of the School Service Commission, has submitted that no opportunity was given to the School Service Commission to rebut the allegations made against the officials of the School Service Commission.

Mr. Phridoz Shamim, learned counsel appearing for the respondent nos. 1 to 4/petitioners, however, opposed the prayer of the learned Advocate General and submits that learned single judge upon consideration of the materials available on record directed C.B.I enquiry as that was the only recourse open to the court in the given facts and circumstances to unearth the truth.

At the outset, we must say that the prima facie case has been made out against the School Service Commission. The said authority has dealt with the matter complaints in a most unsatisfactory manner. The Learned single judge has referred to few instances of the serious lapse and irregularities, which could be tip of the iceberg. The School Service Commission cannot escape its liability and the likely consequences to follow for such serious acts of omission and commission. The involvement of the officials of School Service Commission also could not be ruled out. Even today, Dr. Patra is unable to demonstrate that the instances of malpractices duly noted by the learned single judge in paragraph 27 of the order dated 3rd March, 2022 is incorrect. One would have expected the School Service Commission to lodge FIR and initiate proceedings against the persons responsible for such alleged malpractices. There are enough materials disclosed before the learned Single Judge to justify such an action. The School Service Commission ought not to have waited for the writ petitioners to approach this Court to demonstrate such large-scale malpractices.

The learned Advocate General has assured this court that appropriate measures would be taken against the persons found responsible for such malpractices and for that prepare a S.I.T under the supervision of a retired high court Judge can be appointed to unearth the truth. This stand appears to be fair.

However, having regard to the fact that this is not the regular bench and the regular bench would be available on and from 14th March, 2022 and also having regard to the fact that the Regular Bench appears to have appointed a committee presided over by a retired Judge of this Court to investigate in matters involving similar alleged malpractices, following the judicial decorum we stay the order directing 4 C.B.I enquiry till 15th March, 2022. All other directions however, shall remain unaffected.”

Subsequently on 15 March, 2022 the regular Hon’ble Division Bench held as follows:-

“15.03 2022

MAT 308 of 2022

With

CAN 1 of 2022

The State of West Bengal

Vs.

Setab Uddin and others.

The earlier Bench at the time of moving the stay application found the existence of a prima facie case against the School Service Commission and the manner in which the matters are dealt with appears to be unsatisfactory. Even before the Division Bench, the School Service Commission could not demonstrate the genuine attempts having made after noticing the malpractice nor any criminal law was activated by registering an First Information Report and initiating a proceeding against the persons responsible therefor.

There is no quarrel to the proposition that the Court while adjudicating and/or determining the disputes embarks in pursuit of finding of the truth and the persons, who are indulged in malpractice should not walk merrily from the corridors of the Court. The corruption, if brooded at every strata of the society, has a large impact on the development of the country and, therefore, has to be handled with iron hand.

Though the learned single Judge has found many 3 instances of malpractice, which are vividly narrated in the impugned order but we do not find any findings having recorded, which may justify at least prima facie for investigation to be done by the Central Bureau of Investigation.

By the order dated 11th March 2022 the earlier Bench has stayed the operation of the order by which enquiry was directed to be conducted by the Central Bureau of Investigation and this Court also finds that matter needs to be heard at length, such interim order already granted is required to be extended.

Let the interim order granted earlier on 11th March 2022 be extended for a period of two weeks from date.

Let the appeal and the connected application be listed on 17th March 2022.”

- 8)** Thereafter by an order dated 29th March, 2022 in MAT 447 of 2022 (Dr. Santiprasad Sinha Vs. Md. Abdul Gani Ansari and Ors.), the Hon’ble Division Bench was pleased to hold as follows:-

“29.03. 2022

MAT 447 of 2022

With

IA No. CAN 1 of 2022

Dr. Santi Prasad Sinha

Vs.

Md. Abdul Gani Ansari and others.

The impugned order would reveal that the Court while invoking the provision under Section 165 of the Evidence Act noticed certain incriminating materials, which created an impression that there has been illegal recommendation in favour of the candidates, who secured lesser marks than the other deserving candidates and the appointments have been made on the basis thereof. The Single Bench further found that the appellant, who was an Advisor of the School Service Commission and the Convenor of the Five-Member Committee constituted by the Education Department, is required to disclose the affidavit of assets.

Though the order is interlocutory in nature and passed in furtherance of the proceeding but the Court must be careful and cautious when the direction is passed to disclose the assets in the form of affidavit so that it may not be disclosed or divulged to the litigating parties. Securing an affidavit of assets is for specified purposes and dependent upon the consequences and circumstances perceived in course of the proceeding but should

not be used as pleading, which the parties have exchanged in course of the said proceeding.

Certain observations have been made in the impugned order against the appellant, which should not be construed as final but tentative in nature and, therefore, shall not stand in the way at the time of final disposal of the proceeding.

Though a prima facie finding has been made that illegal appointments have been surfaced in course of the proceeding and, therefore, the technicalities should not be projected as a hurdle or obstacle in pursuit of securing the justice. The finding is made on the basis of the perceived notion, which is always tentative in nature and for carriage of the proceeding and, therefore, there cannot be any apprehension in the mind of the litigants that such finding has a larger impact at the time of final hearing of the proceeding.

Taking into account the thought process behind the direction passed upon the appellant to file affidavit of assets, we do not find any element warranting interference at this stage. However, we make it clear that such affidavit of assets shall remain in a sealed cover and shall not be divulged or circulated to the litigating parties or the Counsels and shall be appropriately dealt with at the time of final decision to be taken on the issues involved therein.

The time for filing of affidavit of assets is extended by five days from date.

On the basis of the above findings, the appeal and the connected application are disposed of."

- 9)** The directions and observations of the Hon'ble Single Bench as discussed by the Hon'ble Division Bench *vide* its order dated 29th March, 2022 (*supra*), were also the subject matter of observations by the Hon'ble Single Bench *vide* its order dated 30th March, 2022 which reads as follows:-

"30.03.2022

WPA 13701 of 2021

Md. Abdul Gani Ansari

Vs.

State of West Bengal & Ors.

I) My observations made in the order dated 25.03.2022 has been declared by the said appeal bench as tentative. How this declaration is made and why, is not known. There is no reason. Thus, this court's observation has been diluted.

II) Regarding my finding as to illegal appointments it is held by the said Division Bench - I do not know why - that it was a „perceived notion“, when the illegal appointments are hard facts that have come before me why such diluting word „notion“ has been used I do not know.

III) The said appeal court has also taken into account the „thought process“ behind the direction passed upon the appellant to file affidavit of assets. I do not know how the „thought process“ of this Judge can be known? Is this a comment on adjudication or something else, I do not know. 3

IV) The appeal court held that „we do not find any element warranting interference at this stage“ but after holding that there is “no element warranting interference”, the appeal court interfered in the order and held:

The affidavit of assets shall remain in a sealed cover and shall not be divulged or circulated to the litigating parties or their counsel. That shall be appropriately dealt with at the time of final decision to be taken on the issues involved therein. I do not know what this court will do with a sealed cover in this

proceeding when the hand of this appeal court has been tied by the above observation. I have been prevented from taking any consequential step on going through the said affidavit of assets. It is also not understood by me that how at the time of final decision the sealed cover would be appropriately dealt with as for dealing with the said sealed cover supposedly containing the affidavit of assets other steps were required to be taken for adjudication by this Single Bench but I have been prevented by the Division Bench"s order. I find that the Division Bench has fixed a course of action to be followed by this simple judge. There is absolutely no reason why I have been prevented in such a manner. In a sense the hands of the Single Bench has 4 been tied though it has been stated by the appeal court that it does not find any element warranting interference with the said order at that stage. This is - I am sorry to say - a highest degree of double standard expressed by the appeal court for the reasons best known to it. But to maintain judicial discipline I have to accept such order. I also do not understand who would be benefited by tieing up the hands of the Single Judge when it has been made clear in the order dated 25.03.2022 that „this court has found that there are serious illegalities in giving recommendations to ineligible candidates and the tip of the corruption-iceberg in issuing illegal recommendations is seen which is getting gradually bigger“.

However, when my hands are tied from taking further steps, after receiving the affidavit of assets I will not be able to proceed with the same. I do not understand what a court of

law will do with a sealed envelope containing therein some papers which could be affidavit of assets.

Therefore, this matter is required to be adjourned for some days.

It has been submitted by the learned advocate of Mr. S.P. Sinha that the affidavit of assets in a sealed cover will be filed on 5th April, 2022. 5

I adjourn this matter till 5th April, 2022 when it will appear under the heading „To Be Mentioned“.

It is at this stage that this bunch of appeals stood Assigned before this Bench. Since several arguments were placed by Learned Counsel for the appellants, this Court, in the interests of all, has proposed to deal with them by way of a consolidated judgement, in the meantime staying all proceedings before the Hon'ble Single Bench as well as the investigation by the Central Bureau of Investigation (CBI) for a period of five weeks from the date of the Order, i.e. five weeks on and from the 13th of April 2022. The appeals were directed to appear at the first sitting of the Court on the 13th of May, 2022, on which date supplementary arguments were heard on behalf of the appearing parties.

- 10)** This Court *vide* its Order dated 13th April, 2022 was also pleased to notice the Report of the Committee headed by a retired Hon'ble Judge of this Court (for short referred to as the Bag Committee). The Report was submitted in connection with Group-D appointments, i.e. one out of the three categories of appointments which are being challenged as illegal in the writ petitions. Considering that the proceedings before

the Hon'ble Single Bench were stayed for a period of five weeks as well as the investigation by the CBI, the Bag Committee was requested to complete its enquiry into Group – C appointments in the interregnum and submit its report within four weeks, which it did on the next date fixed, i.e. on the 13th of May, 2022.

- 11)** It would be relevant at this juncture to mention that the Bag Committee was constituted by the Hon'ble Division Bench *vide* its order dated 6th December 2021. Before the respective arguments of the parties are considered it would be also relevant at this juncture to place the following important excerpts from the Final Enquiry Report of the Bag Committee connected to appointments in Group – D posts in Government sponsored/ aided schools in West Bengal.

The excerpts read as follows:-

1. ***Backdrop of the Enquiry:*** *the West Bengal Central School Service Commission (hereinafter referred to as “the Central Commission”) published advertisement on August 8, 2016 for selection of candidates to fill up Group ‘D’ posts in Government aided/ sponsored schools in West Bengal (except Hill Region) by conducting 3rd Regional Level Selection Test for recruitment of non-teaching staff (in short, “3rd RLST-2016 for Group ‘D’ posts”). The written examination was conducted on February 19, 2017. 1130009 candidates participated in the written examination which was conducted by providing OMR sheets to the candidates in different centres of West Bengal. The personality test of the candidates who qualified in the written test was also conducted and district wise as well as category wise panel of 3, 924 candidates and 9,847 wait listed candidates was prepared and published in the website of the Central Commission on November 6, 2017.*
- 1.1 *A writ petition was filed [WP No. 3377 (W) of 2019] in the Hon'ble High Court at Calcutta in connection with publication of the panel in the website, as the candidate who participated in the selection process could only see his own result in the panel by inserting his Roll Number and date of birth, but he was not in a position to know his own rank vis-à-vis the rank of other candidates from the panel. The publication of panel in the website of the Central Commission was not in accordance with*

the provisions of Rule 14(15) of the West Bengal School Service Commission (Selection of Persons for Appointment to the post of non-Teaching Staff) Rules, 2009 (hereinafter referred to as “the School Service Commission Rules, 2009”). His Lordship Hon’ble Justice Moushumi Bhattacharya disposed of the said writ petition No. WP 3377 (W) of 2019 on March 28, 2019 by directing the Central Commission to publish the entire panel in terms of Rule 14 (13) and (15) of the School Service Commission Rules, 2009 within a period of one week from the date of the order. Since the Central Commission did not comply with the direction of the Hon’ble High Court, a contempt application being CPAN No. 511 of 2019 was moved and ultimately the Central Commission published the entire panel in the website on June 20, 2019 after about one month of expiry of the validity of the panel. The Chairman of the Central Commission issued one Notification on September 2, 2019 declaring expiry of the validity of the panel for selection of Group ‘D’ posts with effect from May 4, 2019.

- 1.2 With the above factual matrix, four (04) unsuccessful candidates including Sandeep Prasad (hereinafter referred to as “the writ petitioners”) filed writ petition (WPA No. 12266 of 2021) before the Hon’ble High Court praying, inter alia, for direction upon the Chairman of the Central Commission and the Chairpersons of five (05) Regional School Service Commissions (hereinafter referred to as “the Regional Commissions”) to fill up the residual 108 vacancies of Group ‘D’ posts by counseling and appointing the writ petitioners on the ground that four (04) candidates who were placed below the writ petitioners in the rank of the panel, have already got appointment in Group ‘D’ posts. By filing supplementary affidavit, the writ petitioners brought to the notice of the Hon’ble High Court the names of 523 candidates who got appointment in Group ‘D’ posts by the President of West Bengal Board of Secondary Education (hereinafter referred to as “the Board”) on the basis of recommendations made by the Chairpersons of the Regional Commissions after expiry of the panel on May 4, 2019. In course of hearing of the said writ petition (WPA No. 12266 of 2021) the Central Commission and all the Regional Commissions took the stand that the Chairpersons of the Regional Commissions did not make any recommendation for appointment in Group ‘D’ posts in the schools after expiry of the panel on May 4, 2019. On the other hand, the Board filed an affidavit disclosing the original recommendation letters under the signature of the Chairpersons of the Regional Commissions after expiry of the panel on May 4, 2019 on the basis of which appointment letters were issued by the President of the Board to all those

candidates after expiry of the panel. The appointments of more than 500 candidates in Group 'D' posts on the basis of recommendations after expiry of the panel on May 4, 2019, coupled with contradictory stand taken by the Board and the Central Commission as well as the Regional Commissions, led His Lordship Hon'ble Justice Abhijit Gangopadhyay to observe in the Order dated November 22, 2021 that "corruption writ large in the whole process of this public employment" and directed CBI to conduct an enquiry into the extreme illegality in making recommendation and appointment to the undeserving candidates in Group 'D' posts.

- 1.3 The order dated November 22, 2021 passed by His Lordship Hon'ble Justice Abhijit Gangopadhyay in WPA No. 12266 of 2021 was challenged before the Hon'ble Judges of the Division Bench by preferring four (04) separate appeals by the State of West Bengal, Central Commission as well as the Regional Commissions, the Board and some of the candidates who got appointment in Group 'D' posts dehors the provisions of the School Service Commission Rules, 2009 (MAT No. 1254 of 2021 to MAT No. 1256 of 2021 and MAT No. 1273 of 2021). The order dated November 22, 2021 by which Hon'ble Judge of the Single Bench directed the Central Bureau of Investigation (CBI) to conduct an enquiry to identify the miscreants who issued letters of recommendation in order to secure appointments of undeserving candidates in Group 'D' post, was not found favour with the Hon'ble Judges of the Division Bench in the High Court. On December 6, 2021, His Lordship Hon'ble Justice Harish Tandon and His Lordship Hon'ble Justice Rabindranath Samanta disposed of all the writ appeals by taking the decision to conduct an enquiry to reveal the truth in connection with illegal and/or irregular appointments made in Group 'D' posts by constituting Special Team to be monitored by a retired Judge of the High Court. The Hon'ble Judges of the Division Bench modified the direction given by the Hon'ble Single Judge of the High Court to secure equal opportunity to the successful and deserving candidates for appointment in Group 'D' post by revealing the truth and by fixing up the responsibility for the misdeeds of giving recommendation and appointment in Group 'D' post in an illegal manner.
- 1.4 Since the Enquiry Committee could not submit the report on completion of enquiry within time frame given by the Hon'ble judges of the Division Bench of the High Court, the Committee submitted an application before the Hon'ble Judges of the Division Bench, praying for extension of four months time for submission of the report. During Bench, on February 09, 2022 the Hon'ble Judge of the Single Bench made some adverse remarks against the Enquiry Committee and directed the

Committee to submit interim report and to disclose the minutes of the meeting conducted by the Committee by February 14, 2022. On February 10, 2022, an application was filed before the Hon'ble Judge of the Single Bench by the Enquiry Committee through *Ld. Registrar General of the High Court, Calcutta*, praying for recalling adverse remarks made by the Hon'ble Judge of the Single Bench on February 9, 2022 and apprised the Hon'ble Judge of the fact of pendency of application for extension of time before the Hon'ble Judges of the Division Bench. The Committee also prayed for dealing with the concerned writ petition after submission of the report of the Committee as per mandate of the Hon'ble Judges of the Division Bench of the High Court. In the mean time, on February 14, 2022 the Hon'ble Judges of the Division Bench extended the time by four months from the date of the order to complete the enquiry and expunged the adverse remarks made against the Committee by the Hon'ble Single Judge on February 9, 2022. However, on February 15, 2022 the Hon'ble Judge of the Single Bench again passed adverse remarks against the Enquiry Committee through *Ld. Registrar General* on February 10, 2022 and dissolved the Committee constituted by the Hon'ble Judges of the Division Bench of the High Court. Subsequently, on February 15, 2022 the Hon'ble Judges of the Division Bench stayed operation of the order dated February 9, 2022 and operation of the order dated February 15, 2022 passed by Hon'ble Judge of the Single Bench in WPA 12266 of 2021 and also stayed hearing of the said writ petition pending before the Hon'ble Single Judge in connection with MAT 181 of 2022 read with CAN 1 of 2022, MAT 173 of 2022 read with CAN 1 of 2022 and MAT 189 of 2022 read with CAN 1 of 2022. With the above background facts, the Enquiry Committee proceeded with the enquiry as mandated by the Hon'ble Judges of the Division Bench of the High Court by passing order on December 6, 2021.

2. **Constitution of the Enquiry Committee:** By order dated December 6, 2021 passed in MAT 1254 of 2021, MAT 1255 of 2021, MAT 1256 of 2021 and MAT 1273 of 2021 and connected applications, His Lordship Hon'ble Justice Harish Tandon and His Lordship Hon'ble Justice Rabindranath Samanta constituted a Committee consisting of (i) Prof. Ashutosh Ghosh, Member of the Board of West Bengal Central School Service Commission, (ii) Ms. Paromita Roy, Deputy Secretary (Administration), West Bengal Board of Secondary Education and (iii) Mr. Arunava Banerjee, practising Advocate of the High Court at Calcutta. The Hon'ble Judges of the Division Bench also appointed Justice Ranjit Kumar Bag (Retd.), a Former Judge of the High Court as Chairperson to

monitor and supervise the entire process of enquiry. The Registrar General was directed to hand over the documents submitted by the Board as well as the documents submitted by the Central Commission and the Regional Commissions before the Enquiry Committee. The time frame for conducting the enquiry and submission of the report by the Enquiry Committee was extended for a period of four months from the dated of the order passed on February 14, 2022 i.e. upto June 6, 2022 on the basis of the prayer of the Chairman and Members of the Enquiry Committee.

3. **Scope and Ambit of the Enquiry:** The Hon'ble Judge of the Single Bench of the High Court gave direction to the CBI to conduct an enquiry to trace out the invisible hands involved in preparing and sending recommendation letters to the President of the Board for appointment of undeserving candidates in Group 'D' post as the Hon'ble Judge was of the view that corruption writ large in the whole process of public employment and also suspected money trail in issuance of recommendation letters and appointment letters in favour of the undeserving candidates in Group 'D' post. The said order of Hon'ble Judge of the Single Bench was modified by the Hon'ble Judges of the Division Bench by making observation that "there has been variation in the stand of the Commission and the Board and, therefore, the enquiry is required to be made to reveal the truth and also to fix up the responsibility for such misdeeds." The Registrar General of the High Court at Calcutta was directed to hand over all the documents submitted by the Board and the Central Commission as well as the Regional Commissions before the Chairman of the Enquiry Committee within specific period of time. Accordingly, the scope of the present enquiry is to discover the full facts in making recommendations by the Chairpersons of the Regional Commissions and the Chairman of the Central Commission and the role played by the Chairman and staff members of the Central Commission as well as the Chairpersons and staff members of the Regional Commissions and the President and staff members of the Board and other individuals in making recommendations and issuing appointment letters to the undeserving candidates in Group 'D' posts and to fix up the responsibility of the individuals in the entire process of selection, recommendation and appointment of undeserving candidates in Group 'D' posts of the schools in illegal and unauthorized manner.
4. **Collection of information by calling for reports and documents and by recording statements of individuals:** We have collected information and reports in prescribed format from the Board, the Central Commission, the Regional Commissions, Agencies engaged by the Central Commission

and recorded statements of all persons who played different roles in selection, recommendation and appointment of candidates in Group 'D' posts. Each statement of the official who knows English, is recorded by is in English and the concerned official has signed on the statement by giving "declaration" that he has given the statement voluntarily and consciously. The statement of staff members of the Central Commission, the Regional Commissions, the Board and some candidates who have been selected at random is also recorded in English after apprising each of them of the contents of both question and answer in Bengali and thereafter each of them has signed on the statement by giving "declaration" that the statement is made voluntarily and consciously. The reports collected in hard copy and soft copy in the form of CD or pen drive or by e-mail have been analysed for preparation of reports from our end in the particular format prepared by us for proper understanding of the details of the candidates, the name of the school and the Regions. The documents which were collected, have been inspected by us in presence of the persons who prepared and maintained the said documents and the photocopies of relevant portion of those documents have been kept as sample to support and justify veracity of the statements in connection with a particular issue dealt with by us during the enquiry. We would like to describe each of the statements, documents and reports collected in course of enquiry by annexing the same to the report along with Table of Contents of the Annexures for smooth search of the information relied on by us in this enquiry.

6.6.4. By virtue of the Order dated November 1, 2019 issued by the Joint Secretary to the Government of West Bengal, Dr. Santi Prasad Sinha was emboldened to control and monitor the power and function of the Central Commission which, we have already pointed out is a statutory body empowered to exercise the power and authority under the provisions of the School Service Commission Act, 1997 and discharge the duty and obligations under the provisions of the School Service Commission Rules, 2009. We would also like to point out that Dr. Santi Prasad Sinha played pivotal rule in recommendation and appointment of Group 'D' posts after expiry of the panel on May 4, 2019 without having any authority either under the School Service Commission Act, 1997 or under the School Service Commission Rules, 2009. The act of issuance of Order dated November 1, 2019 by the Joint Secretary to the Government of West Bengal for constitution of a Committee with the approval of the Hon'ble MIC of School Education Department to supervise and monitor the pending recruitment

process of the Central Commission unerringly points out that the Government of West Bengal exercised the power and authority to supervise and monitor the functions of statutory body like Central Commission and thereby the Government of West Bengal has acted in excess of jurisdiction conferred on it by law. The constitution of the said Committee by Order dated November 1, 2019 by the joint Secretary to the Government of West Bengal is illegal and invalid in the eye of law as the said Committee constituted by the executive order cannot prevail over the power and authority to be exercised by the Central Commission under the provisions of the School Service Commission Act, 1997 and the duties and obligations to be discharged by the Central Commission under the provisions of the School Service Commission Rules, 2009.

6.7. Result of illegal procedure adopted by the Central Commission, the Regional Commissions and the Board.

In view of the illegal procedure adopted by the Central Commission, the Regional Commissions and the Board, 609 unsuccessful candidates got false recommendation letters from the office of the Central Commission which were prepared by using fictitious memo no. of the Regional Commissions and by affixing scanned signatures of the Chairpersons of the Regional Commissions by keeping them in the dark after expiry of the panel on May 4, 2019. The said 609 unsuccessful candidates who obtained false recommendations from the Central Commission also received appointment letters based on the false recommendations from the new building of the Central Commission situated near Anadalok Hospital at Salt Lake City. We have annexed the names of 609 candidates, their father's name, district, region, name of the school, memo no. and date of recommendation and date of issuing appointment by the President of Board by preparing a format which is annexed to the report and marked with Annexure R1. We have made an analysis of the information collected from the Central Commission and the Board and found that names of 318 candidates who got false recommendations even when their names did not appear either in the panel or in the waiting list. The names of 318 candidates their father's name, full address, district, name of the school, category of vacancy, memo no. and date of recommendation letter and the date of appointment letter issued by the Board, who got false recommendations and appointment in Group 'D' posts even when their names did not appear either in the panel or in the waiting list is annexed to the report and marked with Annexure R2. On analysis of information collected from the Central Commission and the

Board with regard to the candidates who got appointment on the basis of recommendations made after expiry of the panel on May 4, 2019, we have found 178 candidates who got false recommendations and appointment in Group 'D' posts of the schools situated within one Regional Commission, while the false recommendation is made under scanned signature of Chairperson of another Regional Commission. The list of 178 such candidates by giving the details of the names, region from which recommendation is made and the region where the school is situated is annexed to the report and marked with Annexure R3.

7. Fixing of responsibilities of the individuals.

In view of our above findings, given under heading 6, we would like to fix the liability of the individuals under two broad categories viz.:

- (i) Civil Liability for which administrative action can be taken against the individuals by the Disciplinary Authority or Pension Sanctioning Authority and
- (ii) Criminal liability for which First Information Report (FIR) can be registered and the individuals can be prosecuted by following the procedure of law.

7.1 Administrative action for dereliction of duty. We have already observed that Dr. Subires Bhattacharya, the then Chairman of the Central Commission took the decision of scanning and storing the image of original signatures of the Chairpersons of the Regional Commissions in the application server of the Central Commission. He also took the decision of generating the memo no. of the Regional Commissions through system after collection of logic of the memo and first memo no. from the office of the Regional Commissions, so that recommendation letters for Group 'D' candidates can be generated and prepared in the office of the Central Commission by using serial order of the memo no. of the Regional Commissions and scanned signatures of the Chairpersons of the Regional Commissions without any decision in the Board meeting and without giving any written instruction to the Chairpersons of the Regional Commissions. Dr. Sharmila Mitra, Chairperson of the Southern Regional Commission, Dr. Mahuya Biswas, the then Chairperson of the Eastern Regional

Commission, Mr. Subhajit Chattopadhyay, the then Chairman of the South-Eastern Regional Commission and Sk. Sirajuddin,

Chairman of Northern Regional Commission and also Chairman of Western Regional Commission gave their signatures to be scanned and stored in the application server of the Central Commission for preparation of recommendation letters for Group 'D' posts in the office of the Central Commission without any decision in the Board meeting and without any written instruction from the Chairman of the Central Commission. What is surprising is that all of them took the above decision in violation of the resolution of the Board meeting No. 506 of the Central Commission on January 3, 2018, where decision was taken to use regional signature on the recommendation letters by the Chairpersons of the Regional Commissions. They also gave instruction to their respective staff members for opening a new separate Issue Register and supply the first memo no. of the said Register to the office of the Central Commission, so that the Central Commission can mechanically generate the memo no. of the Regional Commissions from the system by maintaining the serial order of the said memo no. the memo no. of the recommendation letters prepared in the office of the Central Commission on the dates of counseling of the candidates were subsequently collected and entries of those memo nos. were made in this separate Issue Register to give show of colour as if the recommendation letters have been issued from the Regional Commissions. The deviation from the above procedure is made by the South-Eastern Regional Commission, where the first memo no. of the recommendation letter was started from memo no. 1 in the office of the Central Commission and serial order of the said memo no. was generated from the system for preparation of recommendation letter and the print out of memo no. of the recommendation letters prepared during first phase of counseling of the candidates were subsequently collected and kept separately in abound volume in the office of the Regional Commission. The memo no. of the subsequent recommendation letters were supplied in advance from the office of the Regional Commission to the office of the Central Commission and the general Issue Register was kept vacant for making entries of memo nos. of the recommendation letters for Group 'D' posts after collection of the same from the office of the Central Commission on the respective dates of counseling during second and third phase. The admitted position is that the recommendation letters for Group 'D' posts during fourth phase of counseling on 31.12.2018 and on a few subsequent dates in case of absence

of some candidates on that date were forwarded to the Board directly from the office of the Central Commission. In view of the above procedure adopted by both the then Chairman of the Central Commission and the Chairpersons of the Regional Commissions, we have already observed that the Chairpersons of the Regional Commissions abdicated their duties and responsibilities enshrined in Rule 16(v) and Rule 18 (1) and (2) of the School Service Commission Rules, 2009 and the then Chairman of the Central Commission usurped the power and authority of the Regional Commissions by conducting the act of counseling of the candidates and by generating and preparing recommendation letters of the candidates for Group 'D' posts during the period of validity of the panel in violation of the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009. We would like to hold the above Chairman of the then Central Commission and the above Chairpersons of the Regional Commissions responsible and liable for dereliction of duty and for violating the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009. We do not want to hold the staff members of either Central Commission or the staff members of the Regional Commission for violation of the provisions of the School Service Commission Rules, 2009 during the period of validity of the panel, as they are duty bound to follow the instruction of their higher authority in the hierarchy of the administration, unless the instruction of the higher authority amounts to commission of an offence. Accordingly, we are of the view that Dr. Subires Bhattacharya, the then Chairman of the Central Commission, Dr. Mahuya Biswas, the then Chairperson of the Eastern Regional Commission, Dr. Sharmila Mitra, Chairperson of the Southern Regional Commission, Mr. Subhajit Chattopadhyay, the then Chairman of the South-Eastern Regional Commission and Sk. Sirajuddin, the Chairman of both Northern and Western Regional Commission may be held liable for violating of the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 and disciplinary action may be taken against all of them by the Disciplinary Authority or the Pension Sanctioning Authority in case they retired from service in accordance with the provisions of the Rules by which they are governed.

7.2. Prosecution for committing offences under Indian Penal Code. We have already observed how Samarjit Acharya, present Programme Officer of the Central Commission generated and prepared recommendation letters after expiry of panel by using fictitious memo no. of the Regional Commissions and scanned signature of Chairpersons of the Regional

Commissioners keeping them in the dark in favour of the candidates whose names were supplied by Dr. Santi Prasad Sinha, the then Advisor of the Central Commission and by placing them in the vacancy of the schools, supplied by Dr. Santi Prasad Sinha. Thus, Samarjit Acharya and Dr. Santi Prasad Sinha prepared false recommendation letters to cause damage to 609 candidates of Group 'D' posts and thereby both of them would be liable for committing forgery with common intention after expiry of the panel on May 4, 2019. Both Dr. Santi Prasad Sinha and Samarjit Acharya deceived 609 candidates of Group 'D' posts by fraudulently inducing them to accept false recommendation letters and appointment letters by causing damage to their mind and reputation and thereby both of them are liable for committing not only cheating, but also forgery for the purpose of cheating with common intention. Prima facie, it appears to us that both of them are liable for committing offences punishable under Sections 465/417/468/34 of the Indian Penal Code.

7.2.1. We have already pointed out from the materials collected during enquiry that Prof. Saumitra Sarkar collected vacancies for Group 'D' posts as Chairman of the Central Commission by issuing letter dated 30.08.2019 in violation of Rule 8 of the School Service Commission Rules, 2009. Those vacancies have been filled up by preparing false recommendation letters. All those false recommendations have been made in favour of the candidates who alleged to have submitted applications for re-evaluation of OMR sheets in the garb of filing applications under RTI Act. We have observed in our findings how the proposal for increasing of marks and upgradation of rank of the candidates in the panel on the pretext of consideration of the application under RTI Act was approved after expiry of the panel on May 4, 2019 by Mr. Ashok Kumar Saha, the then Secretary of the Central Commission, Prof. Saumitra Sarkar, the then Chairman of the Central Commission and Dr. Santi Prasad Sinha, the then Advisor of the Central Commission. We have also observed how Dr. Santi Prasad Sinha handed over bunch of hard copy of such false recommendation letters and date in soft copy of such false recommendations to Dr. Kalyanmoy Ganguly, the President of the Board in his chamber and how Dr. Kalyanmoy Ganguly gave instruction to Rajesh Layek, the Technical Officer of the Board bypassing the normal chain of hierarchy and the procedure of making entries of those recommendation letters in the Receiving Register maintained by Dhruba Chakraborty, P.A. to the President in President's Unit and how Rajesh Layek has generated and prepared appointment letters by using scanned signature of the

President and supplied those appointment letters along with all necessary copies to Dr. Kalyanmoy Ganguly. The appointment letters prepared on the basis of false recommendations made after expiry of the panel on May 4, 2019 were not notified in the website of the Board for verification of the testimonials of the candidates and collection of appointment letters by the candidates on the notified date as per the procedure followed by the Board in case of all other appointment letters. It has also been established from the materials collected by the Enquiry Committee that false recommendation letters were prepared in favour of 318 candidates whose names did not appear either in the panel or in the waiting list. The admitted position is that these candidates did not take part in the Personality Test in terms of Rule 14(13) of the School Service Commission Rules, 2009. The further admitted position is that counselling of the candidates was not done in violation of Rule 18 of the School Service Commission Rules, 2009 for preparation of false recommendation letters of 609 candidates for Group 'D' posts after expiry of the panel on May 4, 2019. It is well established from the materials collected by the Enquiry Committee that the appointment letters based on false recommendations after expiry of the panel on May 4, 2019 were distributed among the candidates not from the premises of the Board but from the premises of the new building of the Central Commission situated near Anandalok Hospital, Salt Lake.

7.2.2. Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha and Dr. Santi Prasad Sinha agreed with each other for collection of vacancies for Group 'D' posts in the schools after expiry of the panel on May 4, 2019 in violation of the provisions of Rule 8 of the School Service Commission Rules, 2009 and used those vacancies for preparation of false recommendation letters in the names of 609 candidates in order to cheat them by giving false appointment on the basis of false recommendation letters with active participation of Dr. Kalyanmoy Ganguly and as such prima facie materials are available against Dr. Santi Prasad Sinha, the then Advisor of the Central Commission, Prof. Saumitra Sarkar, the then Chairman of the Central Commission, Mr. Ashok Kumar Saha, the then Secretary of the Central Commission and Dr. Kalyanmoy Ganguly, President of the Board for making them liable for criminal conspiracy punishable under Section 120B of Indian Penal Code. The Members of the Enquiry Committee are of view that FIR may be registered against Samarjit Acharya and Dr. Santi Prasad Sinha for committing offences punishable under Section 465/417/468/34 of the Indian Penal Code and against Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha, Dr. Santi Prasad

Sinha and Dr. Kalyanmoy Ganguly for offences punishable under Section 120B of Indian Penal Code.

7.2.3. All 609 candidates who got false recommendations after expiry of the panel on May 4, 2019 and ultimately got false appointment letters in Group 'D' posts were well aware that they did not qualify in the selection test for getting appointment in Group 'D' posts. The procedure alleged to have been adopted by these candidates for increase of their marks and upgradation of rank in the panel after its expiry after May 4, 2019 in the garb of filing application under RTI Act is illegal. These candidates have suppressed the actual facts how they got recommendations from the Central Commission and why they collected appointment letters from the new building of the Central Commission situated near Anandalok Hospital at Salt Lake without collecting the same from the office of the Board. Since these candidates have full Knowledge that they were not qualified in the selection test to get the appointment in Group 'D' posts and since they obtained false recommendation letters and thereby collected false appointment letters for Group 'D' posts of the schools, these candidates cannot claim any right to get appointment in Group 'D' post of the school arising from 3rd RLST-2016.

8. Summary of findings of the Enquiry Committee.

On consideration of our findings, described in detail under heading 6 and fixing of responsibility of the individuals described under heading 7, we would like to summarise our findings as follows:

- (i) The Central Commission changed the rank of the candidates in the panel before uploading the panel in the website of the Central Commission on June 20, 2019 in spite of direction of the High Court at Calcutta to upload to entire existing panel already published on November 6, 2017.*
- (ii) The constitution of the Committee approved by the Hon'ble MIC of School Education Department (Dr. Partha Chatterjee) notified in the form of an Order of the Joint Secretary to the Government of West Bengal on November 1, 2019 to supervise, monitor and guide the Central Commission in connection with pending recruitment process cannot be construed as direction of the State Government in terms of Section 19 of the School Service Commission Act, 1997 and as such the said Order cannot have any validity in the eye of law.*
- (iii) Dr. Sharmila Mitra, Chairperson of Southern Regional Commission, Dr. Mahuya Biswas, Former Chairperson of the Eastern Regional Commission, Mr. Subhajit Chattopadhyay,*

Former Chairman of the South-Eastern Regional Commission and Sk. Sirajuddin, Chairman of Northern Regional Commission and Chairman of Western Regional Commission abdicated their duties and responsibilities in counseling the candidates and recommending the names of the candidates of Group 'D' posts in terms of the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 during the period of validity of the panel.

- (iv) Dr. Subires Bhattacharya, Former Chairman of the Central Commission usurped the power and authority of the Regional Commissions by counseling the candidates and making recommendation of names of the candidates for Group 'D' posts by manipulating infrastructure and evolving illegal procedure in violation of the provisions of Rule 16(v) and 18(1) and (2) of the School Service Commission Rules, 2009.*
- (v) Dr. Subires Bhattacharya, Dr. Sharmila Mitra, Dr. Mahuya Biswas, Mr. Subhajit Chattopadhyay and Sk. Sirajuddin are prima facie liable for disciplinary action on the charge of gross dereliction of duty for violating the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 and as such disciplinary action can be taken against them by the Disciplinary Authority or the Pension Sanctioning Authority in case of retirement of any of the above officials in terms of the provisions of the Rules by which they are governed.*
- (vi) Samarjit Acharya, Programme Officer of the Central Commission and Dr. Santi Prasad Sinha, Former Advisor of the Central Commission are prima facie liable for committing offences punishable under Section 465/417/468/34 of Indian Penal Code.*
- (vii) Prof. Saumitra Sarkar, Former Chairman of the Central Commission, Mr. Ashok Kumar Saha, Former Assistant Secretary, Former Secretary and Former Chairman of the Central Commission, Dr. Santi Prasad Sinha, Former Advisor of the Central Commission and Dr. Kalyanmoy Ganguly, President of the Board are prima facie liable for committing offences punishable under Section 120B of Indian Penal Code.*
- (viii) FIR can be registered against Samarjit Acharya and Dr. Santi Prasad Sinha on the allegation of committing offences punishable under Section 465/417/468/34 of Indian Penal Code and against Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha, Dr. Santi Prasad Sinha and Dr. Kalyanmoy Ganguly on the allegation of committing offences punishable under Section 120B of Indian Penal Code.*

12) In terms of the order of this Court dated 13th of April, 2022, the Bag Committee submitted its Second Enquiry Report on 13th May, 2022

connected to the alleged illegal appointments in Group-C Posts. The Report, *inter alia*, reads as follows:-

“4.6.3. *We have tried to understand the source of authority for issuing the Order dated November 1, 2019 by the Joint Secretary to the Government of West Bengal. Since this order of November 1, 2019 was issued by the Joint Secretary to the Government of West Bengal, School Education Department with the approval of the competent authority, the question arose who is the competent authority for giving approval to the proposal of constitution of a Committee by an executive order to control, monitor and guide the function of statutory body like the Central Commission. Mr. Manish Jain, Principal Secretary to the Government of West Bengal, School Education Department has produced before the Enquiry Committee a copy of Rules of Business, issued by the Governor of West Bengal under Article 166(3) of the Constitution of India and copy of note sheet dated November 1, 2019 (Annexure E-4) to explain who is the competent authority to approve the proposal of constitution of a Committee issued in the form of an Order on November 1, 2019 by the Joint Secretary to the Government of West Bengal. Mr. Jain has stated before the Enquiry Committee (Annexure 5-5) that he is not the competent authority for giving approval of the proposal of constitution of the Committee which was issued in the form of an Order on November 1, 2019 of the Joint Secretary to the Government of West Bengal in terms of the Rules of Business by which the School Education Department is governed. Rule 19 of the Rules of Business provide that each Hon’ble MIC of the department will issue Standing Orders describing the matters to be brought to the personal notice of the Hon’ble Minister, so that decision can be taken by the Secretary of the Department in connection with the matters not covered by such Standing Orders. It is relevant to quote the provisions of Rule 19 of the Rules of Business framed by the Governor of West Bengal under Article 166(3) of the Constitution of India, which are as follows:*

“19(1). Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister-in-Charge who may, by means of Standing Orders signed by him, give such directions as he thinks fit for the disposal of the cases in the Department.

(2). Each Minister shall, by means of Standing Orders signed by him, arrange with the Secretary-in-Charge of the Department what matters or classes of matters are to be brought to his personal notice. Such Standing Orders shall provide that residual cases not covered by such orders may be disposed of by the Secretary –in-Charge of the Department unless in his opinion any such case is of such importance that it should be placed before the Minister for his orders:

Provided that until such Standing Orders are made by a Minister, the Standing Orders which were made under the Rules of Business existing immediately before the commencement of these Rules and which are in force in the Department in charge of such Minister immediately before such commencement shall, so far as may be, be deemed to be the Standing Orders for that Department made under this rules.

(3) Copies of such Standing Orders shall be placed before the Chief Minister before issue highlighting points of departure, if any, from the Standing Orders in force.

(4) After issue, copies of the Standing Orders shall be sent to the Chief Minister and the Governor. ”

Mr. Jain has categorically stated in response to question no.6 that Hon’ble MIC of School Education Department has not issued Standing Orders laid down in Rule 19 of Rules of Business and as such note sheet is sent to the Hon’ble MIC for approval of every important decision of the Department. He has pointed out from the copy of the note sheet dated November 1, 2019 (Annexure D-4) that the proposal of issuing Order dated November 1, 2019 by constitution of a Committee to supervise

and monitor the pending recruitment process of the Central Commission was sent to the Hon'ble MIC (Dr. Partha Chatterjee) for approval and the Hon'ble MIC has not only approved the proposal of constitution of the Committee, but also mentioned that the Chairman of the Central Commission will be the Ex-Officio Chairman of such Committee in the note sheet on November 1, 2019. It is relevant to point out that Mr. Jain has stated that the recruitment process for Group 'C' and Group 'D' posts in the school was closed at the time of constitution of the Committee on November 1, 2019, but Dr. Santi Prasad Sinha who was the convenor of the said Committee, has categorically stated before the Enquiry Committee in response to question no.14 recorded on February 28, 22 that the recruitment process with regard to 3rd RLST – 2016 was pending when the Supervisory Committee was constituted on November 1, 2019. The statement of Mr. Jain, the provisions of Rule 19 of the Rules of Business and the copy of note sheet dated November 1, 2019 have established that the constitution of the Committee notified under Order dated November 1, 2019 of the Joint Secretary to the government of West Bengal was done with the approval of the then Hon'ble MIC of School Education Department, Dr. Partha Chatterjee, who happens to be the competent authority in terms of Rules of Business issued by the Governor of West Bengal under Article 166(3) of the Constitution of India.

4.6.4. We have already observed that Mr. Tapas Panja, Senior Law Officer of the School Education Department has stated before the Enquiry Committee that his opinion was not obtained at the time of constitution of the Supervisory Committee on November 1, 2019 though Mr. Manish Jain has tried to justify the constitution of a Supervisory Committee under Section 19 of the School Service Commission Act, 1997, as advised by the Law Branch of the School Education Department. In view of contradictory statement between Mr. Manish Jain and Mr. Tapas Panja and in absence of availability of any written opinion of Mr. Tapas Panja, we are of the view that the opinion of Mr. Tapas

Panja was not obtained at the time of Constitution of the Supervisory Committee on November 1, 2019. On consideration of the provisions of Section 19 of the School Service Commission Act, 1997, we find that the State Government can give direction from time to time to the Central Commission in conformity with the provisions of the Act, by which the Commission will be guided in discharge of its function. In our considered view, the constitution of a Committee by order dated November 1, 2019 to supervise, monitor and guide the functions of the Central Commission in connection with pending recruitment process by the persons who are not part of the Central Commission and by making Dr. Santi Prasad Sinha as the Convenor of the said Committee, who is neither part of the School Education Department, nor holding any sanctioned post of the Central Commission, cannot be construed as direction of the State Government in conformity with the provisions of the School Service Commission Act, 1997, only because the Chairman of the Central Commission was made the Chairman of the Supervisor Committee. It is relevant to point out that the persons who are the members of the Supervisory Committee are connected with School Education Department and closely connected with Hon'ble MIC, Dr. Partha Chatterjee. In view of our above observations, we would like to specifically hold that the constitution of the Supervisory Committee with the approval of the then Hon'ble MIC of School Education Department, Government of West Bengal by issuing of order dated November 1, 2019 of the Joint Secretar of the School Education Department, cannot be construed as direction of the State Government in conformity with the provisions of the School Service Commission Act, 1997 and as such, such a Supervisory Committee cannot be constituted under Section 19 of the School Service Commission Act, 1997.

4.6.5. *By an order dated November 1, 2019, issued by the government of West Bengal, Dr. Santi Prasad Sinha was emboldened to control and monitor the power and function of the Central Commission which, we have already pointed out, is a*

provisions of the School Service Commission Act, 197 and discharge the duties and functions under the provisions of School Service Commission Rules, 2009. We would like to reiterate that Dr. Santi Prasad Sinha played pivotal role in recommendation of names of unsuccessful candidates of both Group 'C' posts and Group 'D' posts both before expiry of the panel and after expiry of the panel without having any authority either under the provisions of School Service Commission Act, 1997, or under the provisions of School Service Commission Rules, 2009. The act for issuance of order dated November 1, 2019 by the Joint Secretary to the Government of West Bengal, School Education Department for constitution of the Supervisory Committee with the approval of Hon'ble MIC, Dr. Partha Chatterjee to supervise, monitor and guide the pending recruitment process of the Central Commission unerringly points out that the Government of West Bengal acted in excess of jurisdiction conferred on it by law. The constitution of the Supervisory Committee by order dated November 1, 2019 of the Joint Secretary to the Government of West Bengal must be treated as illegal and invalid in the eye of law as the said Committee constituted by an executive order cannot supervise, monitor and guide the statutory body like the central commission, which is empowered to exercise the power and authority under the provisions of the School Service Commission Act, 197 and to perform the duties and functions under the provisions of the School Service Commission Rules, 2009.

4.7. Result of illegal procedure adopted by the Central Commission, the Regional Commissions and the Board. In view of the illegal procedure adopted by the Central Commission, the Regional commissions and the Board, 381 unsuccessful candidates got recommendations for Group 'C' posts after expiry of the panel on May 18, 2019, though these candidates did not qualify for being considered within the zone of consideration of appointment of Group 'C' posts of the schools. By taking advantage of illegal procedure followed in the office of the Central Commission for preparation of recommendation letters for

Group 'C' posts, the recommendation letters were prepared in favour of 381 unsuccessful candidates by generating fictitious memo no. Of the Regional Commissions from the system of the computer of the Central Commission and by affixing scanned signatures of the Chairpersons of the Regional Commissions by keeping them in the dark after expiry of the panel on May 18, 2019. The vacancies for giving recommendation to 381 unsuccessful candidates were collected after expiry of the panel partly by Prof. Saumitra Sarkar, the then Chairman of the Central Commission and partly by Dr. Santi Prasad Sinha, the then Advisor of the Central Commission. The said 381 unsuccessful candidates obtained fake recommendation letters from the office of the Central Commission and also received appointment letters based on the false recommendation letters from the new building of the Central Commission situated near Anandalok Hospital at Salt Lake City. We have prepared specific format and filled up the same by giving the names of 381 candidates, their father's name district, region, name of the school where posting is made, memo no. And date of recommendation and date of issuing appointment letter by the President or Board, which is annexed to the report and marked with Annexure R1. By making an analysis of the information collected from the Central Commission and the Board, we have found the names of 222 candidates who got fake recommendation letters, even when their names did not appear either in the panel or in the waiting list. The names of 222 such unsuccessful candidates, their fathers name, full postal address, district, name of the school where posting is given, category of vacancy, memo no. And date of recommendation letter and the date of appointment letter issued by the Board, are described by us in a specific format, which is annexed to the report and marked with Annexure R2. On analysis of information collected from the Central Commission and the Board with regard to 381 unsuccessful candidates who got recommendations in Group 'C' posts after expiry of the panel on May 18, 2019, we have identified 160 unsuccessful candidates who got fake

recommendations in Group 'C' posts and subsequent appointments in Group 'C' posts of the schools situated within jurisdiction of one Regional commission while the fake recommendation was given under scanned signature of Chairperson of another Regional Commission. Since the recommendation letters have been prepared by the vacancies existed and since these recommendation letters have been issued in favour of the unsuccessful candidates who lived within the territorial jurisdiction of another Regional Commission, we have found mismatch of the Region of 160 unsuccessful candidates. The list of 160 such unsuccessful candidates who got fake recommendations and subsequent appointment letters beyond the territorial jurisdiction of their Regional Commissions, have been prepared by us in the specific format by giving the details of their names, district, region from which recommendation is made and the region where the posting is given along with the name of the school and the same is annexed to the report and marked with Annexure R3.

5. Fixing of responsibilities of the individuals.

In view of our above findings, given under heading 4, we would like to fix the liability of the individuals under two broad categories viz.:

- (i) Civil Liability for which administrative action can be taken against the individuals by the Disciplinary Authority or the Pension Sanctioning Authority in case of retirement of the concerned individuals from the service and
- (ii) Criminal liability for which First Information Report (FIR) can be registered and the individuals can be prosecuted by following the procedure of law.

4.1 **Administrative action for dereliction of duty.** We have already observed that Dr. Subires Bhattacharya, the then Chairman of the Central Commission gave direction to Ms. Parna Bose, Programme Officer of the Central Commission to prepare and upload and panel of Group 'C' posts in the website of the

Central Commission on December, 20 2017 in such a manner, so that the individual candidate could know his/her own rank in the panel by putting his/her Roll No. And Date of Birth without knowing his/her rank vis-a-vis the rank of other candidates in the panel. He did not supply the copy of the panel of Group 'C' posts to the Chairpersons of the Regional Commissions and to the office of the District Magistrate for publication of the panel in the office of the Regional Commissions and in the office of the District Magistrate. Accordingly, Dr. Subires Bhattacharya violated the provisions of Rule 13(13) and (15) of the School Service Commission Rules, 2009, In view of lack of transparency in preparation and uploading of the panel in the website of the Central Commission and keeping the said panel a guarded secret from the Chairpersons of the Regional Commissions, it was possible on the part of Mr. Ashok Kumar Saha, the then Secretary of the Central Commission, Prof. Saumitra Sarkar, the then Chairman of the Central Commission and Dr. Santi Prasad Sinha, the then Advisor of the Central Commission to recommend the names of unsuccessful candidates in Group 'C' post before expiry of the panel and after expiry of the panel in the garb of increase of marks of those candidates by way of re-evaluation of OMR sheets on the basis of their applications under RTI Act. We have already observed how D Santi Prasad Sinha, Mr. Ashok Kumar Saha and Prof. Saumitra Sarkar compelled Ms. Parna Bose, Programme Officer of the Central Commission and Mr. Samarjit Acharya, the then Floor Supervisor (ITES) and present Programme Officer of the Central Commission to fabricate the note sheets of the Central Commission on 14.05.2019, 18.06.2019 and June 20, 2019 (Annexure D-2), which were approved by all them to give colour of increase of marks of the candidates due to re-evaluation of OMR sheets on consideration of applications under RTI Act. We cannot persuade ourselves to hold Ms. Parna Bose or Mr. Samarjit Acharya liable for fabricating false note sheet of the Central Commission, as they had to comply with the direction of the higher authority, unless the direction amounts to an offence punishable under law. Mr. Ashok

Kumar Saha, Prof. Suamitra Sarkar and Dr. Santi Prasad Sinha agreed jointly for fabricating the false note sheet of the Central Commission for giving recommendation in favour of unsuccessful candidates of Group 'C' posts in the garb of increase of their marks and upgradation of their rank in the panel due to re-evaluation of OMR sheets on consideration of their applications under RTI Act. So, Prof. Saumitra Sarkar, Dr. Santi Prasad Sinha and Mr. Ashok Kumar Saha must be held liable for disciplinary action for changing the rank of the candidates in the existing panel published on December 20, 2017 before publication of the entire panel after about one month of expiry of validity of the panel, though no one has raised finger on this aspect during the period of validity of the panel of Group 'C' post.

5.1.1. *We have already observed that Dr. Subires Bhattacharya who was the Chairman of the Central Commission during first part of the year 2018 and was Chairman of the Southern Regional Commission during first part of the year 2018, Dr. Sharmila Mitra, who was the Chairperson of the Central Commission during second part of the year 2018 and was Chairperson of the Southern Regional Commission during second part of the year 2018, Dr. Chaitali Bhattacharya, who was the Chairperson of South-Eastern Regional Commission during first part of the year 2018, Mr. Subhajit Chattopadhyay, who was Chairman of the South Eastern Regional Commission during second part of the year 2018. Dr. Mahuya Biswas, who was the Chairperson of the Eastern Regional Commission during the year 2018 and Dr. Sk. Sirajuddin, who was the Chairman of the Northern Regional Commission and Western Regional Commission during the year 2018 adopted the procedure of generating memo no. Of the Regional Commission from the system of the computer of the Central Commission by collecting logic of the memo and first memo no. from the office of the each Regional Commission in advance. They also took the collective decision of providing their signatures to the office of the Central Commission for being scanned and stored in the application*

server of the Central Commission, so that recommendation letters of Group 'C' posts can be prepared from the office of the Central Commission by using scanned signatures of Chairpersons of the Regional Commissions and by generating memo no. of the Regional Commissions by maintaining the serial order of the memo no. collected from the Region in advance through system of the computer in the office of the Central Commission. The above Chairpersons of the Regional Commissions also allowed their staff members to collect the recommendations letters from the office of the Central Commission on the dates of counselling of the candidates for Group 'C' posts during 1st, 2nd and 3rd phase of counselling and to make entries of the said memo nos. In the newly opened Separate issue Register (Dak Despatch Register), except South-Eastern Regional Commission where memo nos. Of recommendation letters were subsequently entered in the Common issue Register (Dak Despatch Register) by keeping the appropriate space in the said issue Register blank for making entries of memo no. Of the recommendation letters received subsequently from the office of the Central Commission. The recommendation letters prepared in the office of the Central Commission by using original signature during 1st phase of counselling and by using scanned signatures of the Chairpersons of the Regional Commission during 2nd, 3rd and 4th phase of counselling and by generating memo no. Of the Regional Commissions from the system of the computer in the office of the Central Commission were despatched from the office of the Central Commission to the office of President of the Board and other authorities during 4th phase of counselling, while the recommendation letters prepared during 1st, 2nd and 3rd phase of counselling in the office of the Central Commission were despatched from the office of the Regional Commission during the period of validity of the panel. The above procedure of preparation of recommendation of letters by using scanned signatures of Chairpersons of the Regional Commissions and by generating memo no. Of the Regional Commission from the system of the computer in the office of the Central Commission was done by

the then Chairman/ Chairperson of the Central Commission with tacit consent of the Chairman/ Chairpersons of the Regional Commissions and the chairman/chairperson of the Central Commission without any decision in the Meeting of Board of the Central Commission. Rather the Chairman/ Chairpersons of the Central Commission and the Chairpersons of the Regional Commissions violated the minutes of the Meeting No.506 dated 03.01.2018 (Annexure D-30) if the Board of the Regional Commissions will sign on the recommendation letters personally and the copy of the entire panel of Group 'C' posts will be circulated among the Chairpersons of the Regional Commissions. We have already observed that Dr. Sharmila Mitra, Dr. Chaitaly Bhattacharya, Mr. Subhajit Chattopadhyay, Dr. Mahuya Biswas and Dr. Sk. Sirajuddin abdicated their duties and responsibilities of conducting counselling of the candidates and preparing recommendation letters for Group 'C' posts of the candidates during the period of validity of the panel in terms of the amended provisions of the Section 7 of the School Service Commission Act, 197 and the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009. Similarly, Dr. Subires Bhattacharya and Dr. Sharmila Mitra conducted the act of counselling of the candidates of Group 'C' posts and prepared recommendation letters in favour of the candidates for Group 'C' posts by usurping the power and authority of the Regional Commissions in violation of the amended provisions of Section 7 of the School Service Commission Act, 1997 and the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009. Accordingly, Dr. Subires Bhattacharya, Dr. Sharmila Mitra, Dr. Chaitali Bhattacharya, Mr. Subhajit Chattopadhyay, Dr. Mahuya Biswas and Dr. Sk. Sirajuddin are liable for disciplinary action on the ground of gross dereliction of duty and for violation of the amended provisions of amended Section 7 of the School Service Commission Act, 1997 and the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009. The Disciplinary Authority of the Pension Sanctioning Authority in case of retirement of the

officials from the service can take appropriate disciplinary action against the above officials in terms of the provisions of the Rules by which they are governed.

5.2. Prosecution for committing offences under Indian Penal Code. *We have already observed that Prof. Saumitra Sarkar, the then Chairman of the Central Commission collected vacancies for Group 'C' and Group 'D' posts after expiry of the panel by sending letter dated August 30, 2019 to the Chairpersons of the Regional Commissions in violation of the provisions of Rule 8 of the School Service Commission Rules, 2009. Similarly, Dr. Santi Prasad Sinha also collected vacancies of Group 'C' posts from the DI of Schools in an unauthorised manner after expiry of the panel in violation of the provisions of Rule 8 of the School Service Commission Rules, 2009, as the vacancies collected in response to letter dated August 30, 2019 of Prof. Saumitra Sarkar, were not sufficient for giving recommendations to 381 candidates in Group 'C' posts. In view of evolving procedure of generating memo no. Of the Regional Commissions from the system of the computer in the office of the Central Commission and for availability of scanned signatures of Chairpersons of the Regional Commissions in the application server of the Central Commission, the huge number of vacancies collected in an unauthorised manner by Prof. Saumitra Sarkar and Dr. Santi Prasad Sinha after expiry of the panel were utilised by giving recommendations of unsuccessful candidates in those vacancies by issuing fictitious memo no. of the Regional Commissions and by using scanned signatures of Chairpersons of the Regional Commissions by keeping them in the dark. Mr. Samarjit Acharya, the present Programme Officer of the Central Commission prepared 381 recommendation letters in favour of unsuccessful candidates whose names were supplied by Dr. Santi Prasad Sinha and by placing them in the Group 'C' vacancies of the school supplied by Dr. Santi Prasad Sinha. Both Dr. Santi Prasad Sinha and Mr. Samarjit Acharya deceived 381 candidates of Group 'C' posts by fraudulently inducing them to*

accept fake recommendation letters and appointment letters and thereby causing damage to their mind and reputation and as such both of them are liable for committing not only cheating, but also forgery for the purpose of cheating with common intention. Prima facie, it appears to us that both of them are liable for committing offences punishable under Sections 465/417/468/34 of the India Penal Code.

5.2.1. *We have already pointed out from the materials collected during enquiry that huge number of vacancies of Group 'C' posts collected in unauthorised manner by Prof. Saumitra Sarkar and Dr. Santi Prasad Sinha after expiry of the panel were filled up by preparing fake recommendation letters in favour of 381 unsuccessful candidates of Group 'C' posts. Most of the candidates of Group 'C' posts whose statements are recorded by us during this enquiry have stated that their marks were increased and rank in the panel was upgraded due to re-evaluation of OMR sheets on consideration of their applications under RTI Act. We have already observed that the note sheets dated 14.05.2019, 16.06.2019, 8.06.2019 and 26.08.2019 (Annexure D-12) of the Central Commission for the purpose of increase of marks and upgradation of rank in the panel on consideration of the applications under RTI Act were fabricated under instruction of Dr. Santi Prasad Sinha, Prof. Saumitra Sarkar and Mr. Ashok Kumar Saha in order to give justification for giving recommendation to unsuccessful candidates of Group 'C' posts and all of them approved the said note sheets. It is already pointed that second part of the note sheet where proposal was given by Mr. Ashok Kumar Saha on August 26, 2019 (Annexure D-12) that panel for Group 'C' and Group 'D' posts may not be extended after its expiry in terms of Rule 17 of the School Service Commission Rules, 2009, but the process of giving recommendation to the candidates who have been deprived of the opportunity should continue in the Central Commission and this note sheet was approved by Dr. Santi Prasad Sinha and Prof. Saumitra Sarkar. Accordingly, we are of the view that Prof.*

Saumitra Sarkar, Mr. Ashok Kumar Saha and Dr. Santi Prasad Sinha agreed jointly for collection of vacancies of Group 'C' posts after expiry of the panel in violation of the provisions of the Rule 8 of the School Service Commission Rules, 2009 and for giving recommendations to 381 unsuccessful candidates of Group 'C' posts after expiry of the panel in the garb of consideration of the applications of those unsuccessful candidates under the provisions of RTI Act. Accordingly, Prof. Saumitra Sarkar and Mr. Ashok Kumar Saha are liable for committing offence of criminal conspiracy for the purpose of giving recommendations to unsuccessful candidates after expiry of the panel of Group 'C' post. Thus, Prof. Saumitra Sarkar and Mr. Ashok Kumar Saha may be held liable along with Dr. Santi Prasad Sinha for committing offence punishable under Section 120B of the Indian Penal Code.

5.2.2. *We have observed in our findings how Dr. Santi Prasad Sinha handed over bunch of hard copy of fake recommendation letters to Dr. Kalyanmoy Ganguly, the President of the Board on four to five occasions after expiry of the panel. We have already observed how Dr. Kalyanmoy Ganguly gave instruction to Mr. Rajesh Layek, the Technical Officer of the Board for preparation of appointment letters on the basis of those fake recommendation letters by passing the normal chain of hierarchy and without sending those recommendation letters to the Appointment Section of Board through his PA, Mr. Dhruba Chakraborty and as such Mr. Dhruba Chakraborty did not get the opportunity to make entries of those recommendation letters in the issue Register maintained by him in President's Unit in the Office of the Board. We have already pointed out how Mr. Rajesh Layek collected data in soft copy for recommendations either by CD or pen drive or by mail for generating and preparing appointment letters by using scanned signature of the President and by generating memo no. from the system in the computer as per direction of Dr. Kalyanmoy Ganguly and handed over the appointment letters either directly to Dr. Kalyanmoy Ganguly or handed over the*

same to the officials of the Central Commission in the new office building of the Central Commission situated near Anandalok Hospital, Salt Lake City as per instruction of Dr. Kalyanmoy Ganguly. It is relevant to point out that the venue of new building of Central Commission was not notified in the website of the Board for distribution of Appointment letters of Group 'C' and Group 'D' posts due to closure of the entire office building of the Board for keeping confidential papers of Examination. No explanation is forthcoming before us why Dr. Kalyanmoy Ganguly did not follow the normal procedure of generation of appointment letters on the basis of recommendation of the School Service Commission and distribution of those appointment letters after notifying the names of the candidates in the website of the Central Commission for verification of testimonials and for collection of appointment letter on the notified date from the office of the Board or any other notified venue. The fact of collection of bunch of recommendation letters by Dr. Kalyanmoy Ganguly directly from Dr. Santi Prasad Sinha in his chamber and direction to Rajesh Layek for preparation of the appointment letters on the basis of those fake recommendation letters and handing over the said appointment letters to Dr. Santi Prasad Sinha by passing the normal chain of hierarch in the administration of the Board and bypassing the normal procedure of notifying the names of the candidates in the website of the Board for verification of testimonials and collection of appointment letters on the notified date indicate that Dr. Kalyanmoy Ganguly was hand in glove with Dr. Santi Prasad Sinha in making appointment letters on the basis of fake recommendations supplied by Dr. Santi Prasad Sinha. Accordingly, Dr. Kalyanmoy Ganguly, President of the Board may also be held liable for criminal conspiracy punishable under Section 120B of India Penal Code.

5.2.3. 381 candidates who got fake recommendations after expiry of the panel on May18, 2019 and ultimately got appointment letters in Group 'C' posts were well aware that they did not qualify in the selection test for being considered within the

zone of consideration during the period of validity of the panel of Group 'C' posts. The admitted position is that none of the 381 unsuccessful candidates for Group 'C' posts participated in the counselling of the candidates, but they got recommendation without being called for counselling and as such they got recommendation in violation of the provisions of Rule 18 of the School Service Commission rules, 2009. The further admitted positions that out of 381 unsuccessful candidates of Group 'C' posts, 222 candidates did not take part in the personality test as they did not qualify in the written test and as such their names did not appear either in the panel or in the waiting list of Group 'C' posts. It is well established from the materials collected by the Enquiry committee that the appointment letters issued on the basis of the fake recommendation letters after expiry of the panel were distributed among unsuccessful candidates of Group 'C' posts from the premises of the new building of the Central Commission situated near Anandalok Hospital at Salt Lake without notifying the date and venue of distribution of appointment letters in the website of the Board and without notifying the names of the candidates for verification of testimonials in the website of the Board. On consideration of the statements of seven (07) candidates at random out of 381 candidates who got fake recommendations after expiry of the panel, we have found these candidates have tried to suppress the actual fact as to how they got recommendation letter and how they got appointment letters from the new office building of the Central Commission situated near Anandalok Hospital at Salt Lake. Since all these candidates have full knowledge that they did not qualify for being considered within the zone of consideration for getting recommendation and appointment in Group 'C' posts of the school within the period of validity of the panel, these candidates cannot claim any right to get appointment in Group 'C' posts in the school arising from 3rd RLST-2016.

6. Summary of findings of the Enquiry Committee.

On consideration of our findings, described in detail under heading 5 and fixing of responsibility of the individuals described under heading 6, we would like to summarise our findings as follows:

- (i) The Central Commission did not maintain transparency at the time of publication of the panel of Group 'C' posts on December 20, 2017, as the candidates could not access the panel to know his/her rank vis-a-vis the rank of other candidates in the panel and the copy of the panel was not circulated among the Regional Commissions and the offices of the District Magistrates of the concerned district.*
- (ii) The Central Commission changed the rank of the candidates in the existing panel before uploading the entire panel in the website of the Central Commission on June 20, 2019 in spite of direction of the High Court at Calcutta to upload the entire existing panel already published on November 6, 2017.*
- (iii) The constitution of the Committee approved by the Hon'ble MIC of School Education Department (Dr. Partha Chatterjee) notified in the form of an Order of the Joint Secretary to the Government of West Bengal on November 1, 2019 to supervise, monitor and guide the Central Commission in connection with pending recruitment process cannot be construed as direction of the State Government in terms of Section 19 of the School Service Commission Act, 1997 and as such the said Order cannot have any validity in the eye of law.*
- (iv) Dr. Sharmila Mitra, Chairperson of Southern Regional Commission, Dr. Mahuya Biswas, Former Chairperson of the Eastern Regional Commission Dr. Chaitali Bhattacharya, Former chairperson of South-Eastern Regional commission, Mr. Subhajit Chattopadhyay, Former Chairman of the South-Eastern Regional Commission and Dr. Sk. Sirajuddin, Chairman of Northern Regional Commission and Chairman of Western Regional Commission abdicated their duties and responsibilities in counselling of the candidates and recommending the names of the candidates of Group 'C' posts in terms of the provisions of*

amended Section 7 of the School Service Commission Act, 1997 and Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 during the period of validity of the panel.

- (v) Dr. Subires Bhattacharya, Former Chairman of the Central Commission during the first half of the year 2018 and Dr. Sharmila Mitra, Former Chairperson of the Central Commission During the second part of the year 2018 usurped the power and authority of the Regional Commissions by counselling the candidates and making recommendation of names of the candidates for Group 'C' posts by manipulating infrastructure and evolving illegal procedure in violation of the provisions of amended Section 7 of the School Service Commission Act, 1997 and Rule 16(v) and 18(1) and (2) of the School Service Commission Rules, 2009.*
- (vi) Dr. Subires Bhattacharya, Dr. Sharmila Mitra, Dr. Mahuya Biswas, Dr. Chaitali Bhattacharya, Mr. Subhajit Chattopadhyay and Dr. Sk. Sirajuddin are prima facie liable for disciplinary action on the charge of gross dereliction of duty for violating the provisions of amended Section 7 of the School Service Commission Act, 19997 and the provisions of Rule 16(v) and Rule 18(1) and (2) of the School Service Commission Rules, 2009 and as such disciplinary action can be taken against them by the Disciplinary Authority or the Pension Sanctioning Authority in case of retirement of any of the above officials in terms of the provisions of the Rules by which they are governed.*
- (vii) Mr. Samarjit Acharya, Programme Officer of the Central Commission and Dr. Santi Prasad Sinha, Former Advisor or the Central Commission are prima facie liable for committing offences punishable under Section 465/417/468/34 of Indian Penal Code.*
- (viii) Prof. Saumitra Sarkar, Former chairman of the Central Commission, Mr. Ashok Kumar Saha, Former Assistant Secretary, Former Secretary and Former Chairman of the Central Commission, Dr. Santi Prasad Sinha, Former Advisor of the Central Commission and Dr. Kalyanmoy ganguly, President of the*

Board are, prima facie, liable for committing offences punishable under Section 120B of Indian Penal Code.

(ix) *FIR can be registered against Samarjit Acharya and Dr. Santi Prasad sinha on the allegation of committing offences punishable under Section 465/417/468/34 of India Penal Code and against Prof. Saumitra Sarkar, Mr. Ashok Kumar Saha, Dr. Santi Prasad Sinha and Dr. Kalyanmoy Ganguly on the allegation of committing offences punishable under Section 120B of India Penal Code.”*

13) In the backdrop of the above facts which, to the mind of this Court, are without doubt *prima facie* overwhelming in pointing out to the illegalities committed in the process of appointments to the three categories, it would be now relevant to this discussion to take note of the submissions made on behalf of the appellants in this bunch of appeals.

14) The submissions primarily flag the following issues. First, the principles of *Natural Justice* have been a casualty before the Hon’ble Single Bench. Second, the Hon’ble Single Bench has disclosed a pre-disposition against the appellants almost bordering on a real likelihood of bias. Third, the principle of Comity of Courts appears to have been disregarded by the Hon’ble Single Bench. Fourth, the individuals connected to the process of appointments and particularly the members of the so-called *Super Committee* appointed by the School Education Department on the 1st of November 2019 have been condemned unheard and without pleadings in the writ petitions. As a result of the CBI investigation promptly ordered against them, such members have been stigmatised and lost their reputation in society. Fifth, the private respondents in the writ petitions as well as others whose names have featured before the Hon’ble Single Bench

as the beneficiaries of the appointments recommended by SSC, cannot be now terminated and there cannot be any direction stopping their salaries and/or refund of their salaries for the period during which they have already discharged their services in the Schools where they were appointed.

- 15) Addressing the point of *Natural Justice* first along with the fourth issue raised, that of the appellants being condemned unheard and, on the basis of materials which were not part of pleadings, this Court is called upon to first notice the law relevant to such argument.
- 16) Law is settled on the point that *Natural Justice* is not a straightjacket formula. Consequently, the procedure required to be followed for being *Natural Justice* compliant would depend on the particular circumstances of a case. While assessing the same it would be important to ask the fundamental question as to whether fairness-in-action demands that an opportunity to be heard should be given to the person affected. In *Mohinder Singh Gill Vs. Chief Election Commissioner* (1978 1 SCC 405) at page 446, the Hon'ble Justice Krishna Iyer observed as follows:-

"74. Our constitutional order pays more than lip-service to the rule of reasonable administrative process. Our people are not yet conscious of their right; our administrative apparatus has a hard-of-hearing heritage. Therefore a creative play of fairplay, irksome to some but good in the long run, must be accepted as part of our administrative law. Lord Hailsham, L.C. in Pearlberg presaged: The doctrine of natural justice has come in for increasing consideration in recent years, and the Courts generally, (and the House of Lords in particular), have advanced its frontiers considerably. But at the same time they have taken an increasingly sophisticate view of what is required in individual case.

And in India this case is neither the inaugural nor the valedictory of natural justice.”

- 17)** However, the principles of *Natural Justice* are irretrievably tied to the salutary rule that *Natural Justice* exists not only to secure justice but to also prevent miscarriage of justice. In other words, *Natural Justice* should not be defined in a doctrinaire manner or method and compliance with its principles shall depend on the facts and circumstances of each case. Observations in *Swadeshi Cotton Mills Vs. Union of India*, 1981) 1 SCC 664 by Chinappa Reddi J. in his dissenting judgement are of relevance to the discussion and stand quoted below:-

“106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Dr. Bina Pani, Kraipak, Mohinder Singh Gill, Maneka Gandhi. They are now considered so fundamental as to be ‘implicit in the concept of ordered liberty’ and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken imply compliance with the principles of natural justice. The implication natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In cases of urgency, particularly where the public interest is involved, pre-emptive action may be a strategic necessity. There may then be

no question of observing natural justice. Even in cases of pre-emptive action, if the statute so provides or if the courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Where natural justice is implied, the extent of the implication and the nature of the hearing must vary with the statute, the subject and the situation. Seeming judicial ambivalence on the question of the applicability of the principles of natural justice is generally traceable to the readiness of judges to apply the principles of natural justice where no question of the public interest is involved, particularly where rights and interests other than property rights and vested interests are involved and the reluctance of judges to apply the principles of natural justice where there is suspicion of public mischief and only property rights and vested interests are involved.

111. The likelihood of production being jeopardized or the stoppage of production in a key industrial undertaking is matter of grave concern affecting the public interest. Parliament has taken so serious a view of the matter that it has authorised the Central Government to take over the management of the industrial undertaking if immediate action may prevent jeopardy to production or restore production where it has already stopped. The necessity for immediate action by the Central Government, contemplated by Parliament, is definitely indicative of the exclusion of natural justice. It is not as if the owner of the industrial undertaking is left with no remedy. He may move the Central Government under Section 18-F to cancel the order made under Section 18-AA. True some mischief affecting the management and top executives may have already been done. On the other hand, greater mischief affecting the public economy and the lives of many a thousand worker may have been averted. While on the one hand mere property rights are involved, on the other vital public interest is affected. This again, in the light of the need for immediate action contemplated by Parliament, is a clear pointer to the exclusion of natural justice. It was submitted by the learned counsel that Section 18-F did not provide any remedy but merely provided for cancellation of an

order of takeover on the fulfilment of the purpose of the order of take-over or for any other reason which rendered further continuance in force of the order unnecessary because of the happening of subsequent events. According to the learned counsel the basic assumption of Section 18-F was the validity of the order under Section 18-A or Section 18-AA. All that Section 18-F did was to prescribe conditions for the exercise of the general power which every authority had under Section 21 of the General Clauses Act to cancel its own earlier order. It was said that if Section 18-F could be said to impliedly exclude natural justice there is then no reason not to hold that Section 21 of the General Clauses Act similarly excluded natural justice in every case. I am unable to agree with these submissions of the learned counsel. Neither Section 18-F of the Industries (Development and Regulation) Act nor Section 21 of the General Clauses Act, by itself, excludes natural justice. The exclusion of natural justice, where such exclusion is not express, has to be implied by reference to the subject, the statute and the statutory situation. Where an express provision in the statute itself provides for a post-decisional hearing the other provisions of the statute will have to be read in the light of such provision and the provision for post-decisional hearing may then clinch the issue where pre-decisional natural justice appears to be excluded on the other terms of the statute. That a post-decisional hearing may also be had by the terms of Section 21 of the General Clauses Act may not necessarily help in the interpretation of the provisions of the statute concerned. On the other hand even the general provision contained in Section 21 of the General Clauses Act may be sufficient to so interpret the terms of a given statute as to exclude natural justice. As I said it depends on the subject, statute and the statutory situation.”

Also of relevance are the observations in *S.L. Kapoor Vs. Jagmohan*, 1980) 4 SCC 379 at page 395 to the following effect:-

24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's *Natural Justice* (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has been emphasised in many cases

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C. J.'s judgment in R.v. Home Secretary, ex. P. Hosenball, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice".

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland Donaldson, J., said that the court in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not only be done but be seen to be done. In R. v. Thames Magistrates' Court, ex. P. Polemis, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court

rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: 'Well, even if the case had been properly conducted, the result would have been the same'. That is mixing up doing justice with seeing that justice is done (per Lord Widgery C.J. at page 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

- 18)** This Court is therefore of the considered opinion that the arguments on irredeemable violation of *Natural Justice* cannot come to the aid of the appellants at this stage having regard to the present state of facts and circumstances. The argument that the appellants have to be heard now before referring the matter to the CBI for investigation is not an inflexible requirement. The Hon'ble Single Bench is in the process of gathering further facts connected to the charge of illegal

appointments granted on a mass scale which has prompted the entire exercise to be described as a public scam.

- 19)** In investigating the scam, no single person can absolutely claim to have a prior opportunity to be heard. As opined in *Nagendra Nath Bora Vs. Commissioner of Hills Division (AIR 1958 SC 398)*, *Natural justice* is an adaptable principle which can be adjusted and harmonized and tailored according to the exigency of the situation. To the mind of this Court, the exigency of the present situation correctly necessitate that the Hon'ble Single Bench should be in possession of the full facts and, based on the flow of facts, appropriate windows of hearing can be opened by the Hon'ble Single Bench to any of the parties genuinely prejudiced.
- 20)** In *Karnataka Public Service Commission and Ors. Vs. B.M. Vijaya Sankara and Ors. With Another, 1992 (2) SCC 206*, at Paragraphs 3, 4 and 5 it was held as follows:-

"3. Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a bonafide mistake. But that is not material. What was attempted to be achieved by the instruction was to minimise any possibility or chance of any abuse. Larger public interest demands of observance of instruction rather than its breach.

4. Was natural justice violated ? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or

public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bonafide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment.

5. Competitive examinations are required to be conducted by the Commission for public service in strict secrecy to get the best brain. Public interest requires no compromise on it. Any violation of it should be visited strictly. Absence of any expectation of hearing in matters which do not affect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidates which would have been more unfair and unjust are rare but well recognised exceptions to the rule of natural justice. It cannot be equated with where a student is found copying in the examination or an inference arises against him for copying due to similarity in answers of number of other candidates or he is charged with misconduct or misbehavior. Direction not to write roll number was clear and explicit. It was printed on the first page of every answer book. Once it was violated the issue of bonafide and honest mistake did not arise. Its consequences, even, if not provided did not make any difference in law. The action could not be characterised as arbitrary. It was not denial of equal opportunity. The reverse may be true. The tribunal appears to have been swayed by principles applied by this Court where an examinee is found copying or using unfair means in the examination. But in doing so the tribunal ignored a vital distinction that there may be cases where the right of hearing may be excluded by the very nature of the power or absence of any expectation that the hearing shall be afforded. Rule of hearing has been construed strictly in academic disciplines. It should be construed more strictly in such cases where an examinee is competing for Civil Service post. The very nature of the competition requires that it should be fair, above board and must infuse confidence. If this is ignored then, as stated earlier, it is not only against public interest but it also erodes the social sense of equality. The tribunal in issuing directions approached the matter technically and has attempted to make out much where it would have been better part of discretion to refuse to interfere. The tribunal completely misdirected itself in this regard. In our opinion its order cannot be maintained.”

- 21)** In *Kumaon Mandan Vikas Nigam Ltd. Vs. Girja Shankar Pant and Ors.*, 2001 (1) SCC 182, the Hon'ble Apex Court held that Natural Justice is not a straightjacket formula in the following words:-

“Although over the years there has been a steady refinement as regards the doctrine of natural justice but no attempt has been made and, in fact, cannot be made, to define the doctrine in a specific manner or method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action.”

- 22)** It is *prima facie* apparent from the facts on record that a public scam in recruiting Assistant Teachers for Classes IX and X, Group – C and Group – D Posts has taken place under the aegis of SSC. The persons involved in the public scam are high ranking officials in the SSC and the School Education Department. The so called *Super Committee* set-up by the then Minister-in-Charge of the School Education Department and headed by its Advisor played a key role in the public scam. Such has appeared in detail from the materials available to the Hon'ble Single Bench during the course of hearing of several writ petitions as well as the detailed findings of the Bag Committee appointed by the Hon'ble Division Bench in respect of Group – C and Group – D posts.
- 23)** Although it has been strenuously argued by the appellants that they have not been heard by the Hon'ble Single Bench as earlier discussed, the right of hearing claimed is not absolute. The right of hearing

claimed by the appellants cannot override the interests of investigating the public scam. In the view of this Court the Hon'ble Single Bench is well within the defined limits of its powers by first embarking on an exercise intended to collect all facts and locate individual responsibilities against such facts. Such exercise can neither be described as a pre-disposition of the Hon'ble Court nor a rupture of the principle of Comity of Courts.

- 24)** The opinion of Lord Reid in *Wiseman Vs. Borneman*, 1969 (3) ALL ER 275 makes for instructive reading and therefore is quoted below:-

“LORD REID: My Lords, I agree with your Lordships that this appeal should be dismissed and I shall only add a few observations. Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard and fast rules. For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation.

In the great majority of cases which come before this tribunal all the relevant facts are known to the taxpayer and he has a full opportunity to set out in his statutory declaration all the facts which he thinks are relevant and also all arguments on which he relies. The only advantage to him having a right to see and reply to the counter-statement of the commissioners would then be that he could reply to their arguments. If the tribunal were entitled to pronounce a final judgment against the taxpayer justice would certainly require that he should have a right to see and reply to this statement, but all the tribunal can do is to find that there is a prima facie case against him.

It is, I think, not entirely irrelevant to have in mind that it is very unusual for there to be a judicial determination of the question whether there is a prima facie case. Every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a prima facie case but no one supposes that justice requires that he should first seek the comments of the accused or the defendant on the material before him. So there is nothing inherently unjust in reaching such a decision in the absence of the other party.

Even where the decision is to be reached by a body acting judicially there must be a balance between the need for expedition and the need to give full opportunity to the defendant to see the material against him. I do not think that a case has been made out that it is unfair to proceed as the statute directs. But I do not read the statute as preventing the tribunal from seeking further comment from the taxpayer if in any unusual case they think that they could carry out their task more effectively in that way. If they do that then they must allow the commissioners to reply if so advised because any decision against the commissioners is a final decision."

25) This Court finds from the orders of both the Hon'ble Single Bench and the Hon'ble Division Benches as quoted above that the facts connecting to large scale appointments on the basis of the recommendations made by the so-called *Super Committee* could not be disputed by any of the appellants. The factum of such illegal appointments to Group-C and Group-D posts have been also called out by the Bag Committee. In fact, the Committee has made recommendations carrying both civil and criminal punitive consequences upon members of the SSC, the Board as well as the members of the so-called *Super Committee*, which are now required to be placed before the Hon'ble Single Bench.

26) The idea that when a Court of law is confronted with a situation involving malpractice on a mass scale is under no obligation to grant opportunity of considering individual representations stood discussed in *Bihar School Examination Board Vs. Subhash Chandra Sinha and Others*, 1970) 1 SCC 648 at page 652 in the following words:-

"13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not

necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.

15. We are satisfied that no principle of natural justice was violated in this case. The Board through its Chairman and later itself reached the right conclusion that the examination at this Centre had been vitiated by practising unfair means on a mass scale and the Board had every right to cancel the examination and order that a fresh examination be held. There was no need to give the examinees an opportunity of contesting this conclusion because the evidence in the case was perfectly plain and transparent. We therefore set aside the order of the High Court and ordered dismissal of the writ petition but made no order as to costs.”

- 27)** *In Harinath Vs. Rajendra Medical College (1973 1) SCC 805*, the Hon’ble Apex Court, *inter alia*, held that once the Report of the Enquiry Committee which had examined the evidence of a complaint of a nude march in the girls hostel against the petitioners was made available and the integrity of the Committee could not be impeached, nothing more could be done by way of affording the petitioners’ *Natural Justice* having regard to the facts and circumstances of the case.
- 28)** Accordingly, this Court is of the view that the Hon’ble Single Bench is well within its defined limits of exercise of jurisdiction to choose and/or exercise its discretion in extending the right of hearing to the appellants at the appropriate stage and time. The appellants shall

then be permitted to agitate their individual standpoints before the Hon'ble Single Bench. The appellants have no vested right to demand that they should be heard now. On the basis of the facts so far available before the Hon'ble Courts it is *prima facie* evident that the appellants are individually and collectively culpable for their role in the public scam. In such view of the matter, the Hon'ble Single Bench has the right of choice to extend the right of hearing without compromising on the public good requiring prompt investigation.

- 29)** Closely tied to the principles of *Natural Justice* alleged by the appellants to have been violated, is the question of prejudice. As discussed hereinabove, the Orders of the Hon'ble Single Bench cannot be said to have prejudicially affected the appellants at the present stage when the Bench is in the process of collecting hard evidence. In the considered view of this Court, merely on the ground of prejudice being caused because a Hon'ble Single Bench is on a focussed fact finding exercise, the rigours associated with such exercise must be allowed to prevail at the present stage over individual inconvenience for the ends of justice. In this connection it would be useful to reiterate three out of the nine situations when *Natural Justice* must yield as listed by *Prof. De Smith* in his book on *Judicial Review of Administrative Action (5th Edition)* which read as follows:-

“1.

2.

3.

4. *Where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action.*

5. *Where for other reasons it is impracticable to give prior notice or opportunity to be heard.*

6.

7.

8. *Where the defect of Natural Justice has made no difference to the result; where to require fairness or Natural Justice would be futile; where no prejudice has been caused to the applicant.*

9.”

This Court therefore finds no infirmity in the action of the Hon’ble Single Bench, which is in conformity with the above referred three situations. Furthermore, having regard to the fifth issue at Paragraph 14 (*supra*) connected to the grievance of appellant appointees who are the beneficiaries of the alleged illegal appointment process and claim to have been unfairly treated by the direction of the Hon’ble Single Bench to stop their salaries, on a parity of circumstances this Court finds the observations in *State of Madhya Pradesh Vs. Mahesh Kumar 1997* 6 SCC 95 to be illuminating in as much as candidates who were the beneficiaries of grace marks have no vested right to be heard when such grace marks are withdrawn by the authority.

In *Union of India Vs. W.N. Chaddha 1993 (Supplementary) Vol. 4 SCC 260* at Paragraph 77 it was held that the rule of *audi alteram partem* or, in other words, an opportunity of hearing cannot be insisted upon in situations such as hearing an accused before issuing Letters Rogatory.

In a situation where clerks were appointed under the Kendriya Vidyalaya Sangathan on the basis of invalid orders issued by an Assistant Commissioner of KVs after the service of the said Assistant Commissioner was terminated, it was held *In Re: Kendriya Vidyalaya*

Sangathan vs. Ajay Kr. Das, 2002) 4 SCC 503 at Paragraph 5 as follows:-

“5. The narration of the facts made above, make it clear that the respondents were appointed by the said Dr K.C. Rakesh, Assistant Commissioner, Guwahati when his services had been terminated and his continuation in service itself was under a cloud and in an inquiry serious lapses had been noticed in the matter of recruitment. It is clear that if after the termination of services of the said Dr K.C. Rakesh, the orders of appointment are issued, such orders are not valid. If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise. Even though, the respondents may not have been a party to the proceedings before the High Court, it is clear that if the appointing authority itself did not have power to make appointment by reason of termination of his services, it is futile to contend that the respondents should have been served with notices in that regard. Dr K.C. Rakesh issued appointment orders on his services having been put an end to on 11-12-1997 by issuance of orders of appointment dated 13-12-1997/15/12/1997. On the pretext that the order of termination of his services had not been served upon him, it cannot be contended that the appointments of the respondents would be valid.”

- 30)** This Court is therefore of the considered view at this stage that the prejudicial effect of the orders of the Hon’ble Single Bench *qua* the appellants requiring immediate application of the *audi alteram partem* principle stands disproved. The balance of convenience and the larger public good lies in allowing the Hon’ble Single Bench to complete the factual enquiry so far undertaken through Courts, CBI and the Bag Committee, all of which inexorably lead to a single possible and permissible conclusion. Applying the Useless Formality

Theory, this Court clarifies that extending the benefit of *audi alteram partem* to those charged with delinquent conduct even at a subsequent stage when the Hon'ble Single Bench is satisfied that it is now necessary to do so having regard to the factual evidence accumulated before it, would not defeat the principles of *Natural Justice*.

- 31)** In *M.C. Mehta Vs. Union of India*, 1999) 6 SCC 237 at Paragraphs 22, 23 and 24 it is stated as follows:-

“22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases, there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See *Malloch v. Aberdeen Corporation* [1971] 1 W.L.R. 1578 (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University* [1971] 1 W.L.R. 87, *Cinnamond v. British Airport Authority* [1980] 1 W.L.R. 582 and other cases where such a view has been held. The latest addition to this view is *R v. Eating Magistrates' Court ex p Fannaran* 1996 8 Admn LR 351 (358) (see DeSmith, Suppl., page 89) 1998 where Straughton, LJ, held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in *Lloyd v. McMohan* [1987] A.C. 625 (862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand court in *McCarthy v. Grant* 1959 NZLR 1014, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood - not certainty - of prejudice'. On the other hand, Garner's Administrative Law,

8th Edition, 1996, pages 271-272, says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin* [1960] A.C. 40], Megarry, J., in *John v. Rees* [1970] Ch. 345, stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J., has said that the 'useless formality theory' is a dangerous one and, however' inconvenient, natural justice must be followed. His Lordship observed that convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality' theory in *R v. Chief Constable of the Thames Valley Police Force ex p Cotton* 1990 IRLR 344, by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary ?' 1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much (of) earlier in 'Natural justice, Substance or Shadow' by Prof. D. H. Clark of Canada (see 1975 PL, pages 27-63) contending that *Malloch* [1971] 1 W.L.R. 1578] and *Glynn* [1971] 1 W.L.R. 87] were wrongly decided. Foulkes (Administrative Law, 8th Edition, 1996, pages 323), Craig Administrative Law, 3rd Edition, page 596, and others say that the court cannot prejudge what is to be decided by the decision making authority. De Smith, 8th Edition, 1994, paras 10.031 to 10.036, says courts have not yet committed themselves to any one view though discretion is always with the court. Wade Administrative Law, 5th Edition, 1994, pages 526-530, say that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood'

of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S. K. Sharma 1996 (3) SCC 364, Rajendra Singh v. State of M. P. 1996 (5) SCC 460, that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.

24. In our view, on the admitted and indisputable facts set out above, namely, the recall of our earlier order of the court, it becomes mandatory for the court to restore the status quo ante prevailing on the date of its first order. Restitution is a must. Further, Bharat Petroleum having got back its plot at the Ridge, it cannot lay further claim to the one at San Martin Marg which was given to it only in lieu of the Ridge plot. Similarly, HPCL has to get back its plot in San Martin Marg [plot] inasmuch as, otherwise, it will have none and Bharat Petroleum will have two. Bharat Petroleum cannot retain the advantage which it got from an order of this court which has since been withdrawn. Thus, what is permissible and what is possible is a single view and the case on hand comes squarely within the

exception laid down by Chinnappa Reddy, J., in S. L. Kapoor v. Jagmohan."

In *Canara Bank Vs. Debashis Das*, 2003) 4 SCC 557 at Paragraphs 22 and 23, the view expressed In *Re: M.C. Mehta* (supra) was reiterated in the following words:-

"22. What is known as 'useless formality theory' has received consideration of this Court in M.C. Mehta v. Union of India. It was observed as under: (SCC pp. 245-47, paras 22-23)

*"22. Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed (See *Malloch v. Aberdeen Corpn.*: (1971)2 All ER 1278, HL) (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*: (1971) 2 All ER 89; *Cinnamon v. British Airports Authority*: (1980) 2 All ER 368, CA) and other cases where such a view has been held. The latest addition to this view is *R v. Ealing Magistrates' Court, ex p. Fannaran* (1996 (8) Admn. LR 351, 358) (See de Smith, Suppl. P.89 (1998) where Staughton, L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in *Lloyd v. McMohan* (1987 (1) All ER 1118, CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy v. Grant* (1959 NZLR 1014) however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real*

likelihood-not certainty- of prejudice'. On the other hand, *Garner Administrative Law* (8th Edn. 1996. pp.271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin* (1964 AC 40: (1963) 2 All ER 66, HL), *Megarry, J. in John v. Rees* (1969 (2) All ER 274) stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in *R. v. Chief Constable of the Thames Valley Police Forces, ex p. Cotton* (1990 IRLR 344) by giving six reasons (see also his article 'Should Public Law Remedies be Discretionary?' 1991 PL. p.64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL.pp.27-63) contending that *Malloch* (supra) and *Glynn* (supra) were wrongly decided. Foulkes (*Administrative Law*, 8th Edn. 1996, p.323), Craig (*Administrative Law*, 3rd Edn. P.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn. 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (*Administrative Law*, 5th Edn. 1994, pp.526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to

prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma, Rajendra Singh v. State of M.P. (1996 (5) SCC 460) that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality theory' and leave the matter for decision in an appropriate case, inasmuch as the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy, J."

23. As was observed by this Court we need not go into 'useless formality theory' in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise said jurisdiction (see Gadde Venkateswara Rao v. Govt. of A.P. and Ors. (AIR 1966 SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post- decisional hearing

can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu v. Union of India)."

Marshall on Natural Justice illuminatingly writes as follows:-

"11. Waiver of these Rules

"It would be both unnatural and unjust to convert natural justice into a shackle which cannot be shaken off even by a party for whose benefit it is invoked. If such be the law, many persons will be subjected to great delay, expense and intolerable inconvenience if they must suffer willy-nilly, the inexorable processes of natural justice."

- 32)** Learned Senior Counsel appearing for the SSC has submitted primarily on two points: a) Pre-disposition of the Hon'ble Single Bench to act in a particular way; and b) Such pre-disposition resulting in a real likelihood of bias.

Relying on 2011) 14 SCC 770, *State of Punjab Vs. Davinder Pal Singh Bhuller and others* at Paragraphs 24, 25, 26 and 75, it is submitted that a Judge must move within the framework of relevant legal rules and the covenanted modes of thought. A Judge must be dispassionate and submerge private feeling on every aspect of a case. It is pointed out that the Judge must conduct the case in a manner so that he is not seen to be the arbiter of his own case. It is therefore submitted that the manner and pace at the which the Hon'ble Single Bench is proceeding against the appellants presuming their guilt at every step, has raised a reasonable apprehension of bias against the Hon'ble Single Bench.

It is submitted that without granting the affected parties a reasonable opportunity of being heard, an investigation by the CBI cannot be normally granted.

- 33)** The predisposition alleged to be formed by the Hon'ble Single Bench which has been expanded by arguments of Learned Senior Counsel to include within its fold the prospect of the Hon'ble Single Bench recusing itself from the case, forms the basis of the next judgement relied upon by Mr. Dutta reported in 2016) 1 SCC 808 *Supreme, Supreme Court Advocate on records Association and another Vs. Union of India (Recusal Matter)*. It is submitted that what is of universal application is the simple question as to whether the adjudication by the Judge concerned would cause a reasonable doubt in the mind of a reasonably informed litigant and fair minded public on correct facts, as to the impartiality of the Judge or the likelihood of bias on the part of the Judge.

Learned Senior Counsel submits on the strength of the decision reported in 2002) 5 SCC 521, *Secretary, Mining Irrigation and Rural Engineering Services, UP and others Vs. Sahngoo Ram Arya and another* that while it cannot be disputed that the High Court has power under Article 226 to direct an enquiry by the CBI, the said power can be exercised only in cases where there are sufficient materials to come to a *prima facie* conclusion that there is a reasonable need for such enquiry. The power to order a CBI enquiry cannot be considered as a matter of routine or merely on the basis of a party making some allegations and, for this proposition, Learned Senior Counsel relies on the authority of 2008) 2 SCC 409, *Sakiri Vasu vs. State of UP and others*.

- 34)** The answers to the arguments placed by Learned Senior Counsel for the SSC (*supra*) lie, to the mind of this Court, in the facts and circumstances emanating from the *prima facie* materials already noticed and recorded by the Hon'ble Single Bench, the Hon'ble Division Benches as well as the Bag Committee, which have uniformly pointed out to large scale malpractices. Therefore, to the further mind of this Court, the Hon'ble Single Bench stands justified in its endeavour to be in possession of all relevant facts and such exercise ought not to be interdicted or pre-empted on the specious ground that, in interdicting or pre-empting such exercise, miscarriage of justice will automatically follow. A robust and rapid collection of facts will aid the delivery of justice in the context of the present situation which is pointing towards a scam in public appointments. Individual claims to be heard as raised by the present appellants must yield to the larger public good to be granted at a stage deemed appropriate by the Court.
- 35)** This Court must also hold that the perceived pre-disposition of the Hon'ble Single Bench argued by Learned Senior Counsel for the SSC raising the spectre of bias, is *akin* to a mirage. It is really not the pre-disposition of the Court but, a pre-disposition of facts. The *dice of facts* as it stands today is so overwhelmingly loaded against the appellants in the scam involving public jobs concerning the SSC, that *with facts, facts everywhere and not a drop* in favour of SSC, a mirage of misperception has resulted where the Court and not the Facts appear to be the Devil.
- 36)** In other words, the Hon'ble Single Bench cannot be stopped from enquiring further for the reason that such enquiry and the facts

yielded by such enquiry lead to only one conclusion. To the above extent, the apprehension raised by SSC reveals an inadequacy to deal with the truth. It is no less surprising considering that the SSC is a statutory body intended to act for public good, it has allowed its powers to be supplanted and subverted by a so-called *Super Committee* for giving effect to large scale illegal appointments of Assistant Teachers in Classes IX and X, Group – C and Group - D Posts. No less surprising is the fact that the SSC has even gone to the extent of filing an appeal to defend the action taken by the appellants and has been joined by the State, more precisely represented by its School Education Department, in filing an analogous appeal.

- 37)** Further to the discussion above, this Court must notice that in cases of crimes and/or malpractice involving the public at large, public authorities must recognise that certain powers are to be exercised in public interest by the holders of such powers. Accordingly, the Hon'ble Apex Court was pleased to direct monitoring of investigation by the CBI and other Government agencies by the Court itself underscoring the principle of a Continuing Mandamus. In this connection *Paragraphs 7, 8 and 9 of Vineet Narain and others Vs. Union of India and Ors, 1998 1) SCC 226*, read as follows:-

“7. We have taken the view that, given the political personalities of the propel to be investigated in the "Jain diaries" case and the time already lost in commencing the investigation it was advantageous not to hear the matter through and issue a writ of mandamus, leaving it to the authorities to comply with it, but to keep the matter pending while the investigations were being carried on, ensuring that this was done by monitoring them from time to time and

issuing orders in this behalf. Our reasoned order are dated. 18.4.1995, 16.1.1996 [1996 (2) Scale (SP) 42], 30.1.1996 [1996 (2) SCC 199], 22.2.1996 [1996 (2) Scale (SP) 84], 1.3.1996 [1997 (4) SCC 778], 13.3.1996 [1996 (4) Scale (SP) 3], 1.5.1996 [1996 (4) Scale (SP) 56], 26.7.1996 (6) Scale (SP) 24], 9.7.1997 [1997 (5) Scale 254]. Orders in similar matters, being the orders dated 12.2.1996 [1996 (3) Scale (SP) 35], 2.14.1996, 26.4.1996 [1996 (4) Scale (SP) 71], 26.7.1996 [1996 (6) Scale (SP) 23] and 7.10.1996 [1996 (6) SCC 354] in Writ Petition (Civil) No. 640 of 1995 - Anukul Chandra Pradhan vs. Union of India and Others- and orders dated 24.2.1997 and 18.3.1997 in Writ Petition (Civil) No. 38 of 1997 - Dr. Subramaniam Swamy vs. Director, CBI & Ors., are also relevant.

8. The sum and substance of these orders is that the CBI and other Governmental agencies had not carried out their public duty to investigate the offences disclosed; that none stands above the law so that an alleged offence by him is not required to be investigated; that we would monitor the investigations, in the sense that we would do what we permissibly could to see that the sense that we would do what we permissibly could to see that the investigations progressed while yet ensuring that we did not direct or channel those investigations or in any other manner prejudice the right of those who might be accused to a full and fair trial. We made it clear that the task of the monitoring court would and the moment a charge-sheet was filed in respect of a particular investigation and that the ordinary processes of the law would then take over. Having regard to the direction in which the investigations were leading, we found it necessary to direct the CBI not to report the progress of the investigations to the person occupying the highest office in the political executive this was done to eliminate any impression of bias or lack of fairness or objectivity and to maintain the credibility of the investigations.

In short, the procedure adopted was of "continuing mandamus".

9. Even after this matter was brought to the court complaining of the inertia of CBI and the other agencies to investigate into the offices because of the alleged involvement of several persons holding high offices in the executive, for quite some time the disinclination of the agencies to precede with the investigation was apparent. The accusation, if true, revealed a nexus between high ranking politicians and bureaucrats who were alleged to have been funded by a source linked with the source funding the terrorists. In view of the funding also through foreign currency, some undesirable foreign elements appeared to be connected. This revealed a grave situation posing a serious threat even to the unity and integrity of the nation. The serious threat posed to the Indian polity could not be underscored. The obvious need for an expeditious and thorough probe which had already been delayed for several years could not but be countenanced. The continuing inertia of the agencies to even commence a proper investigation could not be tolerated any longer. In view of the persistence of that situation, it becomes necessary as the proceedings progressed to make some orders which would activate the CBI and the other agencies to at least commence a fruitful investigation. Merely issuance of a mandamus directing the agencies to perform their task would be futile and, therefore, it was decided to issue directions from time to time and keep the matter pending requiring the agencies to report the progress of investigation so that monitoring by the court could ensure continuance of the investigation. It was, therefore, decided to direct the CBI and other agencies to complete the investigation expeditiously, keeping the court informed from time to time of the progress of the investigation so that the court retained siesin of the matter till the investigation was completed and the

charge-sheets were filed in the competent court for being dealt with, thereafter, in accordance with law.”

- 38)** To the further mind of this Court upon such incriminating facts coming to its notice and copiously recording the same *vide* its orders dated 28.2.2022, 3.3.2022 and 7.3.2022 (*supra*) and also in other subsequent Orders, which stand reinforced by the findings of the Bag Committee, it is justified that the approach of the Hon’ble Single Bench be read *pari materia* with the law laid down in Paragraphs 7,8 and 9 of *In Re: Vineet Narain (supra)*.
- 39)** Learned Advocate General appearing for the State of West Bengal reiterates the points taken by SSC that the Hon’ble Single Bench has assumed an *inquisitorial jurisdiction* in place and stead of an *adversial jurisdiction*. It is clarified that although the State is not adopting the arguments of either bias or pre-disposition on the part of the Hon’ble Single Bench, yet it is surprising that although in none of the writ petitions an enquiry by the CBI has been prayed for, yet a CBI enquiry has been granted.
- 40)** Learned Advocate General submits that while dealing with the Orders of the Hon’ble Division Bench, the Hon’ble Single Bench has acted in contravention of the principle of Comity of Courts. Although the state of affairs as disclosed from the materials so far available before the Hon’ble Single Bench is described to be *unhappy* by the Learned Advocate General, it is submitted that the State is always willing to have the matter investigated through a Special Investigation Team (for short, SIT). The argument is repeated that the Hon’ble Single Bench

ought to have been satisfied that there are enough materials on record before setting the criminal law into motion.

- 41)** In support of his submissions, Learned Advocate General relies on the authority of *Meerut Development authority vs. Association of Management Studies and Another*, 2009 6) SCC 171 at Paragraphs 68 and 69. It is submitted that the said decision is an authority calling out the danger arising out of Judges converting Judicial Review proceedings into an *inquisitorial investigation*, whereby it is not the decision maker but the Judge who conducts the proceedings.

The principles related to an enquiry directed to be conducted by the CBI noticed in *Minor Irrigation and in Davinder Pal Singh Bhullar (supra)* are reiterated.

- 42)** Relying on Paragraphs 16 and 17 of *The State of West Bengal and others vs. Sampat Lal* 1985) 1 SCC 317, it is submitted that the argument in favour of investigation by a Special Officer or CBI can be accepted only when the Hon'ble Court is satisfied that the regular statutory agency or the normal police set-up of the State is unable to deliver results. It is therefore submitted that the Hon'ble Single Bench ought to have first satisfied itself that the normal police set-up is in a position to carry out an investigation into the malpractice alleged or, in the alternative, the State should have been allowed to form a SIT.

For the proposition that the CBI should be directed to investigate only in exceptional circumstances, Learned Advocate General relies on the authorities of *Common Cause, A Registered Society Vs. Union of India*, 1999)6 SCC 667 and *State of West Bengal and others vs. Committee*

For Protection of Democratic Rights 2010) 10 SCC 571 at Paragraphs 174, 175 and 176.

- 43)** *Apropos* the submissions of the Learned Advocate General, this Court finds that by the detailed order dated 3.3.2022 the Hon'ble Single Bench clearly provided reasons for appointing the CBI to enquire into the matter. The reason for such appointment was that since the malpractice alleged related to high officials within the State Government as well as public figures within the State political apparatus, notwithstanding the efficiency of the State police, it is desirable to have the issue investigated by an agency which is independent of State control. The Hon'ble Single Bench hence found that the CBI is such an independent agency which is capable of functioning beyond State control and also holding the requisite forensic expertise to carry out an investigation of this nature.

This Court finds the above stated stand of the Hon'ble Single Bench to be sufficiently nuanced and hence acceptable.

This Court also finds that the investigation being ultimately monitored by the Hon'ble Single Bench, including additional materials found by the Bag Committee which supplement such findings and hence add to the insights of the Hon'ble Single Bench at the stage of passing further directions.

- 44)** This Court is also of the view that the steps taken so far by the Hon'ble Courts do not appear to have violated the principle of Comity of Courts. Although by referring to Orders of the Hon'ble Division Bench dated 29th March, 2022 and of the Hon'ble Single Bench on the 30th of March, 2022 in Mat 447 of 2022 with IA No. CAN 1 of 2022

and WPA 13701 of 2021 respectively, it has been argued that the two orders would show that the principle of Comity of Courts has been violated, on the contrary, to the mind of this Court, both the Hon'ble Benches have fundamentally focussed their attention on a single purpose, i.e. to facilitate the investigation into the public scam.

- 45)** Evidence of the single purpose (*supra*) can be gathered from the fact that while the Hon'ble Division Bench appointed the Bag Committee to conduct a detailed enquiry, the Hon'ble Single Bench directed the CBI to carry out the investigation. It requires no repetition that the collection of facts both by the Bag Committee and the CBI supplement each other, to be ultimately placed for adjudication.
- 46)** In the context of investigation it would be also relevant to point out that the facts showing appointment of unsuccessful candidates raises the shadow of a money trail in the public scam. The Hon'ble Single Bench would be well within its rights to direct investigation of such money trail by any independent agency of its choice.
- 47)** This Court also does not find that the Hon'ble Single Bench erred in appointing the CBI to investigate the public scam inasmuch as no State agency could be appointed in a scenario involving high ranking Officials, including a senior State Minister.
- 48)** Further to the above, this Court refers to the pronouncement of the Hon'ble Apex Court in *Vineet Narain and ors. Vs. Union of India and another*, 1998 (1) SCC 226 at paragraphs 50, 55 and 56 which read as follows:-

“50. There is another aspect of rule of law which is of equal significance. Unless a proper investigation is made and it is followed by an equally proper prosecution, the effort made would not bear fruition. The recent experience in the field of prosecution is also discouraging. To emphasise this point, some reference has

to be made to a large number of prosecution launched as a result of monitoring by the court in this matter which have resulted in discharge of the accused at the threshold. It took several years for the CBI to commence investigation and that too as a result of the monitoring by this Court. It is not as if the CBI, on conclusion of the investigation, formed the opinion that no case was made out for prosecution so that the earlier inaction may have been justified. The CBI did file numerous charge-sheets which indicated that in its view a *prima facie* case for prosecution had been made out. This alone is sufficient to indicate that the earlier inaction was unjustified. However, discharge of the accused on filing of the charge-sheet indicates, irrespective of the ultimate outcome of the matters pending in the higher courts, that the trial court at least was not satisfied that a *prima facie* case was made out by the investigation. These facts are sufficient to indicate that either the investigation or the prosecution or both were lacking. A similar result of discharge of the accused in such a large number of cases where charge-sheets has been filed by the CBI is not consistent with any other inference. The need for a strong and competent prosecution machinery and not merely a fair and competent investigation by the CBI can hardly be over emphasised. This is the occasion for us to take the view that a suitable machinery for prosecution of the cases filed in court by the CBI is also essential to ensure discharge of its full responsibility by the CBI. Unless a competent prosecution follows a fair and competent investigation, the exercise in the ultimate analysis would be futile. Investigation without improving the prosecution machinery is of no practical significance. We would, therefore, consider the aspect of prosecution also in the formulation of the guidelines.

55. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinising the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and, therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a *prima facie* case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is duty of the judiciary to enforce the rule of law and, therefore, to guard against erosion of the rule of law.

56. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World Bank who have warned that future aid to under-developed countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption has led to investigative journalism which is of value to

a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent in India but is not unknown in other countries: R v Secretary of State for Foreign and Commonwealth Affairs.”

- 49)** Mr. Shaktinath Mukherjee, Learned Senior Counsel appearing for one of the members of the so-called *Super Committee* and Mr. Anindya Mitra, Learned Senior Counsel appearing for some other members also of the so-called *Super Committee*, have submitted that no role has been played by their clients in the process of appointments. It is submitted that there are no allegations against their clients and no pleadings in support of such allegations. It is submitted that they were not even made parties to the writ petitions.

Learned Senior Counsel submits that the direction upon the CBI to investigate their clients has resulted in a gross miscarriage of justice. The Hon'ble Single Bench has given a go-by to the principles of *Natural Justice* and, in this connection, Mr. Mukherjee relies upon the authority of 2003 8) SCC 40 at Paragraph 8.

Relying on the authorities of 2011)6 SCC 570 at Paragraph 31 and 2016)1 SCC 743 at Paragraphs 17 to 21, Mr. Mitra submits that it is trite that no order can be passed against a person, such as his client, who is not a party even to the writ petition. Such an Order would be a nullity or, in the alternate, the writ petition would be liable to fail on the ground of non-joinder of a necessary party.

- 50)** *Apropos* the submissions placed by Learned Senior Counsel appearing for the members of the so-called *Super Committee*, this Court is of the view that the allegations of illegal appointments were against the activities of the so-called *Super Committee* as a whole. It is not

possible at this stage to separate the roles of individual members of the so-called *Super Committee*.

- 51)** It would be premature at this stage to suggest or presume that the members of the so-called *Super Committee* were unaware of the reasons behind the constitution of the so-called *Super Committee* or were mere passive name leaders to its activities. It has not been suggested or, materials produced before this Court, to show that the so-called *Super Committee* ever ceased to function or stood dissolved. Neither any material has been shown to this Court to show that either Mr. Mukherjee or, Mr. Mitra' clients, had ceased to be members of the so-called *Super Committee*.
- 52)** Ms. Koeli Bhattacharyya, Learned Counsel appearing for the Board, has submitted that the Board has simply acted like a post office, since the Board had to act on the basis of the recommendations of the SSC. It is submitted that the recommendations of the appointments which are presently under scrutiny by the Hon'ble Single Bench, have been made on a pendrive to the Board by the SSC.
- 53)** The attention of this Court is also drawn to *Paragraphs 4 and 5* of the affidavit filed by one Dr. Kalyanmoy Ganguly, the President of the Ad-Hoc Committee of the Board. The said affidavit has been affirmed on 6th of April, 2022 and, at *Paragraphs 4 and 5* reads as follows:-

“4. I state the entry of the outsiders remains restricted and/or closed for outsiders from the month of December upto the month of March every year for receiving and sending confidential documents such relating to Madhyamik Examination. Outsiders and/or visitors are generally not allowed inside the office premises. The same restrictions were also followed for the Madhyamik Examination of 2020. From

December, 2019 to March, 2020 outsiders and/or visitors were restricted and/or prevented from entering the office premises.

I further state that all the recommendations received from the School Service Commission after 04.5.2019 and the appointment letters generated by the Board on 17.3.2020, 19.3.2020 and 20.3.2020 on basis of such recommendations were handed over personally by myself to the Advisor of Central School Service Commission, Dr. Sandi Prasad Sinha who assured me that all appointment letters would be handed over to the candidates from the new building of Central School Service Commission situated beside Anandolok Hospital, Salt Lake, Kolkata.

- 5. I state that as the whole office of the Board got involved and busy for the preparation of Madhyamik Examination particularly during the time period of January, 2020 upto March, 2020, it was not possible for the Board to arrange the process of distribution of appointment letters to the candidates. Moreover as the entry of the outsiders were restricted during those days in the premises of the Board's office the Advisor of Central School Service Commission, Dr. Santi Prasad Sinha took the responsibility of distributing the appointment letters to the candidates."*

54) However, to the mind of this Court, it would be relevant to read Paragraphs 4 and 5 of the Affidavit of Dr. Kalyanmoy Ganguly (*supra*), in the light of the evidence collected by the Bag Committee and other independent agencies.

55) Arguing on behalf of the appointees following the recommendations of the so-called *Super Committee*, Mr. Partha Sarathi Bhattacharyya, Learned Senior Counsel, Mr. Chittopriyo Ghosh and Mr. Shubro Prakash Lahiri, Learned Counsel, submit that the order of refund of salaries as directed by the Hon'ble Single Bench is completely improper. It is submitted that the appointees are serving in several

schools after their names were recommended by the SSC. It is submitted that the panel of appointees is no longer alive having since expired, it is submitted that the writ petitions were filed before the Hon'ble Single Bench beyond the lifetime of the panel. It is submitted that the selection process having been concluded, no relief can be granted at this stage to the writ petitioners. Reliance is placed on the authorities reported in 1999) 2 SCC 7 at Paragraphs 4 to 9; 1996) 9 SCC 309 at Paragraphs 9, 10; and 2010) 6 SCC 777 at Paragraphs 5 and 16.

- 56)** *Apropos* the submissions of the appointees as well as the submission of Learned Senior Counsel for the SSC that the writ petitions are delayed, the attention of this Court is drawn to order dated 03.03.2022 of the Hon'ble Single Bench. By the said Order the issue of delay was considered by the Hon'ble Single Bench and answered in the following terms:-

"03.03.2022

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5. Here I must record one objection of the learned advocate for the Commission yesterday, (his other objections will be recorded latter) as to the delay in preferring this application.

6. I have found that the recommendation was done surreptitiously. Today it has come to light that no counselling was held before recommending Sk. Insan Ali in a school. If an authority acts surreptitiously in giving recommendation then the persons who are suffering has to act like a sleuth.

7. We are fortunate, today in our country there is an Act, namely, Right to Information Act. The petitioners on 1st February, 2021

filed one application under Right to Information Act to the school for knowing certain facts and the school gave its reply stating that the said Sk. Insan Ali joined the school on 1st December, 2020 under category OBC-A for classes IX and X.

8. So the petitioners for the first time came to learn specifically that the respondent no. 6, who was a belowranked candidate, was appointed in February, 2021. This writ application has been affirmed in August, 2021 and I cannot blame the petitioners for filing it after six months keeping it in mind that the unemployed youth are facing a mammoth authority namely West Bengal Central School Service Commission.

9. After considering that particular objection of the learned advocate for the Commission, Mr. Dutta, the court's observation is that there is no delay in filling the application in the facts and circumstances of the case."

Accordingly, this Court has no reason to take a view different from that of the Hon'ble Single Bench that upon disclosure of necessary information to the writ petitioners, the writ petitions came to be filed and hence cannot be said to be barred by delay.

- 57)** Next, on the question of the direction passed by the Hon'ble Single Bench to stop the salaries of the present appointees on the ground that they were illegally appointed on the basis of recommendations by the so-called *Super Committee*, this Court reiterates the salutary legal principle that fraud vitiates all action. This Court finds that *prima facie* the facts indicate that fraud has been committed in the appointments. The State has also accepted such position, however choosing to describe the fraud as a *mistake*. The State has also undertaken to have the matter investigated by a SIT.

The Bag Committee has, *inter alia*, held in its Reports that the beneficiaries of the illegal appointments knew of the illegality since

they knew that they were either one or, a combination of the following, being respectively unsuccessful, not empanelled, not called for counselling or, plainly unmeritorious.

- 58)** For each and all of the above reasons, this Court also finds that the appointees to public posts under the SSC or, in other words, the beneficiaries of the scam, could not have been appointed without participating in the scam with full knowledge thereof. In the language of Sherlock Holmes it would be *elementary* not to presume that the appointees secured appointments upon payment of illegal gratification. The appointments being fraudulently procured and such is *prima facie* evident from the two reports of the Bag Committee and also noted in detail by the Hon'ble Single Bench *vide* its Orders dated 28.02.2022, 03.03.2022, 07.03.2022, 31.03.2022 among others.

It is a matter of shame that such abundant facts have emerged in the records of the Hon'ble Court and from the Bag Committee, whose integrity has not been impeached, *prima facie* establishing the role of white collared individuals in charge of Education in letting down a generation of teachers and the taught.

- 59)** Since it is trite in law that fraud undoes all action taken, the fraudulently appointed candidates to all three categories of posts are not entitled to continue in service, far less seeking any modification of the Order of the Hon'ble Single Bench stopping their salaries. Since such appointees were not regular appointees, their service having been obtained by practising fraud, the State is well within its rights to seek refund of salaries already paid subject to directions of the Hon'ble Single Bench. Furthermore, no substantive defence could be

presented by the appellants to rebut the invalidity of the Order dated 1st November, 2019 of the School Education Department appointing the so-called *Super Committee*. As a consequence thereof all appointments made on the basis of recommendations of the so-called *Super Committee* are deemed to be invalid *ab initio*.

60) For the above reasons this Court holds as follows:-

- A.** The Reports of the Bag Committee are *prima facie* accepted and be now placed before the Hon'ble Single Bench.
- B.** The orders impugned of the Hon'ble Single Bench require no intervention.
- C.** The Hon'ble Single Bench shall be entitled to direct investigation and collection of further facts, including any money trail, as considered necessary.
- D.** The Hon'ble Single Bench will extend the opportunity to be heard to the appellants at a stage, at a time and on factors considered appropriate.

This Court now accepts the resignation tendered by the Chairman of the Bag Committee, Justice R. K. Bag (Rtd.). Consequently the Committee stands dissolved and its members discharged of their responsibilities for the present.

Let the Reports of the Bag Committee produced in Court at the hearing be now handed over to the Learned Registrar General High Court at Calcutta, for placing the same before the Hon'ble Single Bench.

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Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Ananda Kumar Mukherjee, J.)

(Subrata Talukdar, J.)

Later:-

Stay of operation of the order is prayed for by Mr. Anirban Ray, Learned Government Pleader, appearing for the State/appellants.

Prayer for stay is considered and refused.

I agree.

(Ananda Kumar Mukherjee, J.)

(Subrata Talukdar, J.)