

**06.05.
2022**

Ct. No. 04

Ab

MAT 368 of 2022

With

IA No. CAN 1 of 2022

**Md. Jahangir Alam and another
Vs.
The State of West Bengal and others.**

**Mr. Uday Sankar Chattopadhyay,
Mr. Santanu Maji,
Mr. Suvayu Das,
Mr. Trisha Rakshit.**

... for the appellants.

**Mr. Tapan Kumar Mukherjee,
Ms. Debdooti Dutta.**

... for the State.

**Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Mousumi Hazra.**

... for the respondent no. 7.

**Mr. Sarwar Jahan,
Mr. Sk. Nayeemul Haque.**

... for the respondent no. 8.

**Mr. Prasenjit Mukherjee,
Ms. Madhurima Sarkar.**

... for the Madrasah Commission.

The instant appeal arises from an order dated 24th February 2022 passed by the Single Bench in WPA 2208 of 2022 by which a direction was passed upon the respondents therein to file affidavit-in-opposition and the matter was directed to be treated as ready for hearing. Simultaneously, the Single Bench refused to pass the interim order. Precisely for such reason, the present appeal has been taken out by the writ petitioners/appellants seeking stay of operation of the order of the District Inspector of Schools (SE), Murshidabad dated 1st February 2022 approving the

panel sent by the concerned Madrasah for the post of the Assistant Headmaster.

The writ petitioners/appellants have been arraigned as second and third position in the said panel. The challenge is made not only on the ground of non-observance of the relevant provisions of the statute but also the member of the selection committee in the capacity of a teacher representative.

It is contended before the Court that there was no necessity of co-opting the teacher representative in the selection committee while such representation was in existence and, therefore, the action of the selection committee is not in consonance with the provisions.

The District Inspector of Schools (SE), Murshidabad found that although the same is apparent but the entire process has been initiated in terms of the provisions and, therefore, it would not be proper to keep the panel in abeyance or reject the same. Such being the point having taken in the writ petition, the Single Bench thought it fit to decide the matter upon exchange of affidavits.

The disputed question of fact cannot be decided solely on the basis of the averments made in the writ petition. The opportunity to deal with such fact is the hallmark of the dispensation of justice and, therefore, we do not find any illegality and/or infirmity in the order by which a direction was passed upon the parties to exchange affidavits.

Furthermore, our attention is drawn to the fact that pursuant to the approval having granted by the said authority, the private respondent has already been appointed to the post of Assistant Headmaster and, therefore, if the prayer for stay of operation of the approval order is passed, it would tantamount to revert the situation and may create anomalous situation.

Since the appointment has been made after filing of the writ petition, we make it clear that the private respondent shall not claim any special equity on the basis thereof and it is open to the Single Bench to take a decision and pass an appropriate/consequential order based upon the ultimate findings returned at the time of final disposal of the writ petition.

It has been pointed out by the respondents that because of the pendency of the instant appeal, the affidavit-in-opposition could not be filed within the time indicated in the writ petition.

To expedite the matter, time to file affidavit-in-opposition to the writ petition is extended by a week from date; reply thereto, if any, shall be filed within three weeks thereafter.

The request is made to the Single Bench to give precedence to the writ petition, if mentioned by the respective parties.

With these observations, the appeal is disposed of.

In view of disposal of the appeal itself, the connected application being CAN 1 of 2022 has become infructuous and the same is also disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

