

**31.01.
2022**

Ct. No. 04

Ab

**MAT 754 of 2021
CAN 1 of 2021**

**Jesmina Khatun and others.
Vs.
State of West Bengal and others.**

With

**MAT 731 of 2021
CAN 1 of 2021**

**The Managing Committee of Madhabpur Prahlad
Smriti Vidyapith (HS) and another
Vs.
Jesmina Khatun and others.**

**Mr. Shamim ul Bari,
Ms. Molly Saha.**

**... for the appellants in MAT 754 of 2021
& for the respondent no. in
MAT 731 of 2021.**

**Mr. Biswarup Biswas,
Mr. G. C. Samanta.**

**... for the appellants in MAT 731 of 2021
& for the respondent no. in
MAT 754 of 2021.**

**Mr. Aniban Ray, Ld. GP,
Mr. Raja Saha,
Ms. Rupsa Chakraborty.**

... for the State.

Ms. Koyeli Bhattacharya.

... for the WBBSE.

These two appeals are taken up together having filed against the common judgement dated 27th July, 2021 disposing of the aforesaid two writ petitions directing the West Bengal Board of Secondary Education to make an enquiry against the Headmaster of the concerned school and to submit a report before the Writ Court. Simultaneously, the Single Bench imposed personal costs on the Headmaster of the said school to be paid to the students as compensation for the lapses and laches attributable to his conduct.

The appeal, being MAT 754 of 2021 is taken out

by the students, as no relief was granted in their favour except the direction upon the Board to make an enquiry against the Headmaster of the concerned school and the compensation to be paid by the said Headmaster to the students.

At the time of moving the instant appeals, this Court directed the Board to disclose the relevant facts and also to produce the software for demonstration as it appears to the Appellate Court that within the extended time an approach was made by the Headmaster of the school to the Board for submission of the applications concerning the enrolment of the students, who did not put their respective signature at the first phase.

The affidavit-in-opposition filed by the Board would reveal that a decision was taken by the Board not to conduct the physical examination for the year 2021; instead the evaluation of the marks shall be made on calculation of the marks obtained in the annual examination of Class IX and all the head of the institutions were instructed to open a notified URL between 21st June, 2021 to 24th June, 2021 along with requisite information of each student. It would further reveal that the respondent/school submitted the enrolment forms of 224 students on or before 19th March, 2021 barring 8 students, which include the writ petitioners/appellants herein.

The school took a plea that the Headmaster after securing a necessary permission from the Government on 22nd June, 2021 for visiting the office of the Board and upon obtaining the said permission allegedly visited the Board on 23rd June, 2021 but no response was made nor the applications pertaining to the appellants were accepted.

In course of hearing, the learned Advocate for the School Authorities submitted that though the website was reopened on 27th and 28th June, 2021 but no access was given nor the physical copy of the enrolment

applications were accepted by the Board. It is undisputed that the submission of an application was closed on 10th February, 2021 and, in fact, the school authorities submitted 224 applications within the stipulated time. The said website was reopened for access on 27th and 28th June, 2021 but restricted to the schools, who have reported to the Board that there has been discrepancy or mistake in the marks disclosed by the school authorities at the time of submission of enrolment forms. Rather it was restricted to those schools, who requested the Board to correct the mistake and not open for all and sundry.

The fact remains that the enrolment forms were not signed by the appellants within the date notified by the Board and the alleged attempt by the Headmaster of the school was much beyond the expiry period. A plea has been taken by the school that though the enrolment was filled up by the writ petitioners/appellants, but they did not put their signatures thereupon, which constrained the school not to forward such enrolment forms to the Board.

There has been a complete silence for a pretty long time and the story of the filling up of the enrolment forms and not putting the signature thereupon has been made out to cover the lapses and laches on the part of the candidates. It is unbelievable that 232 students of the concerned school have filled up the enrolment forms and put their signature for onward transmission to the Board and because of the lack of signature having put on the enrolment forms the writ petitioners/appellants could not get themselves enrolled with the Board to participate in the said examination.

We cannot overlook the fact that the result was declared by the Board in the month of July, 2021 foreclosing the entire process of examination and, in fact, the students are pursuing their study in Class XI on the basis of the marks obtained by them in the

Madhyamik Examination. It is too late in a day to accede to the prayer of the writ petitioners/appellants to declare the result upon permitting to submit the enrolment forms.

So far as the enquiry is concerned, the District Inspector of Schools (SE) has found certain lapses on the part of the school authorities for which necessary steps would be taken in accordance with law. However, in course of hearing the school authorities have disclosed the documents seeking permissions as there was a restrictive movement due to pandemic, which cannot be overlooked. Since the enquiry has already been conducted, we do not find any justification in quashing and/or rescinding the same when the entire matter is pending before the Trial Court.

However, the imposition of costs on assumption and/or presumption of a notion cannot be supported unless there are convincing and cogent materials found in course of hearing. Such part of the order is hereby set aside.

A suggestion has come from the Board that though today is the last date of submission of the application for enrolment to sit in the examination for the year 2022, but as a special case the writ petitioners/appellants may be permitted to submit the applications through the school authorities within 4th February, 2022.

In view of such suggestion, we direct the school authorities and permit the writ petitioners/appellants to fill up enrolment forms by putting their respective signatures to sit in the examination for the year 2022 within 4th February, 2022 as a special case.

The aforesaid permission shall not be treated as a precedent as has been passed in the backdrop of the special facts involved in the instant case.

With these observations the appeals are disposed of. The connected applications are also disposed of.

All parties shall act on the basis of the server copy of this order downloaded from the official website of this Court.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)