

02.08.2022
Item Nos.180-184
Crt. No.11.
KB

MAT 708 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022
State of West Bengal and Ors., service
through the Principal Secretary & Anr.
-Versus-
Mallika Kar & Ors.
with
MAT 1160 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022
State of West Bengal and Ors.
-Versus-
Ruman Mitra & Anr.
with
MAT 1161 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022
State of West Bengal and Ors.
-Versus-
Lipika Shil & Anr.
with
MAT 1162 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022
State of West Bengal and Ors.
-Versus-
Soma Dutta & Anr.
with
MAT 1163 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022
State of West Bengal and Ors.
-Versus-
Susmita Roy & Anr.

Mr. Swapan Kumar Datta
Mr. Rajat Kumar Dutta
.... For the Appellants in all matters.

Mr. Soumya Majumder
 Mr. Biswaroop Bhattacharjee
 Mr. Subhankar Chakraborty
 Mr. Saptarshi Bhattacharjee
 ... For the Writ Petitioners/
 Respondents in all the matters.

Mr. Amitava Chaudhuri
 Mr. N. Roy
 ... For the W.B. Joint Entrance
 Exam. Board in all the matters.

Mr. Nilotpall Chatterjee
 ... For the INC in all the matters.

**In Re: IA No. CAN 2 of 2022 in
 MAT 708 of 2022 and all
 IA No. CAN 1 of 2022 in
 MAT 1160 of 2022, MAT
 1161 of 2022, MAT 1162
 of 2022 and MAT 1163
 of 2022.**

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

The appeals are analogous in nature arising
 out of the Order of the Hon'ble Single Bench connected
 to admissions to Post Basic B.Sc. (Nursing) and M.Sc.
 (Nursing) Courses.

In all the appeals, the State is the appellant.

The Writ Petitioners are the Respondents in
 each of the appeals.

Mr. Datta, Learned Additional Government
 Pleader (AGP), represents the State appellants in each of
 the appeals.

The Writ Petitioners/the Respondents in each of the appeals are represented by Mr. Majumder, Learned Counsel with Mr. Bhattacharjee, Learned Counsel.

Mr. Chaudhuri, Learned Counsel represents the Proforma Respondents, which is the Joint Entrance Examination Board (for short the Board) in each of the appeals.

It is uniformly submitted that each of the appeals is barred by delay. Such delay has been also reported by the Additional Stamp Reporter.

In each of the appeals, the prayer has been made for condonation of delay by filing individual applications.

The individual applications are CAN 2 of 2022 in MAT 708 of 2022 and in the other applications IA CAN 1 of 2022 in MAT 1160 of 2022, MAT 1161 of 2022, MAT 1162 of 2022 and MAT 1163 of 2022, which are all for condonation of delay.

Heard the parties on the question of the prayer for condonation of delay.

Perused the contents of the respective applications.

This Court is of the view that sufficient cause has been made out to condone the delay in filing the appeals.

Accordingly, the delay in filing each of the appeals stands condoned.

IA No. CAN 2 of 2022 in MAT 708 of 2022 and all **IA No. CAN 1 of 2022 in MAT 1160 of 2022, MAT 1161 of 2022, MAT 1162 of 2022 and MAT 1163 of 2022** stand accordingly **disposed of**.

In Re: MAT 708 of 2022 with IA No. CAN 1 of 2022, MAT 1160 of 2022 with IA No. CAN 2 of 2022, MAT 1161 of 2022 with IA No. CAN 2 of 2022, MAT 1162 of 2022, with IA No. CAN 2 of 2022, MAT 1163 of 2022 with IA No. CAN 2 of 2022.

Now all the appeals are taken up analogously for hearing.

This batch of appeals are against final Judgement and Order dated 1st March, 2022 of the Hon'ble Single Bench covering a common issue. The petitioners are the respondents in this batch of appeals.

The writ petitioners claim admission as Trainee-Reserve (for short TR) Nurses in post B.Sc. Nursing and M.Sc. Nursing Courses. The admissions are jointly handled at several levels by the West Bengal Joint Entrance Examination Board (for short the Board), the

West Bengal University of Health Sciences (for short the University) and the State of West Bengal represented through its Department of Health and Family Welfare.

On behalf of the writ petitioners it is submitted that on the 13th of December, 2021 the Hon'ble Single Bench noticed that a previous merit list published by the Board and handed over to the State for allotment of seats of TR Nurses, stood cancelled and a revised list prepared.

The Hon'ble Single Bench upon noticing the above fact, by the interim order dated 13th December, 2021 found that the writ petitioners who received valuable ranks eligible to be allotted seats in the pre-revised list, were ranked far below their previous ranking in the revised merit list and there appears to be no reason given by the Board as to why the entire merit list was suddenly decided to be cancelled. The Hon'ble Single Bench therefore held that the evidence produced on the exercise of revising the merit list being scant, hence directed the Board to keep 49 seats vacant in the TR Nursing courses till the writ petitions are finally considered on affidavits.

It is noteworthy to mention that the Hon'ble Single Bench permitted the counselling to continue after keeping the 49 seats vacant subject to the final outcome of the writ petitions.

The writ petitions were finally decided by the Hon'ble Single Bench on the 1st of March, 2022. The Hon'ble Single Bench discussed three issues, of which the issue germane to the arguments advanced in these appeals connects to the marks allotted in the OMR sheets. The Hon'ble Single Bench found that the claim of the Board to have committed a mistake in preparing the first merit list is undeserving of serious attention as no material was produced by which such claim could be substantiated and, consequently rectified. The Hon'ble Single Bench therefore directed placement of the available vacancies for admission in the nursing courses in favour of the petitioners upon taking into account the statutory rules.

The State is in appeal before this Bench challenging the Final Order dated 1st March, 2022. The State submits through Mr. Datta, Learned AGP, that the directions of the Hon'ble Single Bench as contained in its Judgement and Order dated 1st March, 2022 are impossible of performance since the writ petitioners cannot be appointed from a merit list which has been cancelled.

The Board and the State attempt to unload the responsibility of the *mistake* upon each other. The Board submits that following the interim order dated

13th December, 2021 of the Hon'ble Single Bench and prior to the Judgement and Final Order dated 1st March, 2022, around 429 vacancies in the B.Sc. Basic Nursing Course and 219 vacancies in the M.Sc. Nursing Course were handed over by the Board to the State for taking necessary steps.

The Board, represented by Mr. Chaudhuri, Learned Counsel, attempts to distance itself from the responsibility of the *mistake* in preparing the merit list by arguing that it is the University which, according to the Board, is the examination conducting authority. Interestingly, the University was neither impleaded, nor added and therefore not represented before the Hon'ble Single Bench.

The Board further submits, relying on its affidavit-in-opposition placed before the Hon'ble Single Bench, that the decision to revise the merit list was passed on *mistakes* discovered by experts in the answer keys of the OMR Mark Sheets and hence considering that sufficient number of candidates had approached the Board with grievances, the *mistakes* were removed and the merit list rectified

The Regulatory Authority of the Nursing Authority in question, being the Indian Nursing Council (for short the Council), which is represented by Mr.

Chatterjee, Learned Counsel, submits that following the pronouncement of the Hon'ble Apex Court admissions to the Nursing Courses are required to be closed on an expeditious basis. It is pointed out by Mr. Chatterjee that the State has entered into a correspondence with the Council with regard to the manner of implementation of the Judgement and Order of the Hon'ble Single Bench dated 1st March, 2022 and there is a proposal that the cut-off date for admission to the Nursing Courses which is 7th April, 2022 could be taken to be the deemed cut-off date in respect of the writ petitioners who were admittedly aspirants to the vacancies as directed to be maintained by the Hon'ble Single Bench on the 13th of December, 2021 which is prior to the cut-off date 7th of April, 2022. Subsequently by the final Judgement and Order dated 1st March, 2022, the interim order of 13th December, 2021 stood confirmed with the direction to admit the writ petitioners.

The urgency for preferring these appeals arises *apropo* the fact that the writ petitioners have now preferred two contempt applications before the Hon'ble Single Bench requesting for implementation of the Order dated 13th December, 2021 as confirmed by the Final Order and Judgement dated 1st of March, 2022.

After hearing the parties in sufficient detail and considering the materials placed, this Court is surprised at the conduct of the State appellants as well as the Board, not to mention the University, which is the examination conducting authority, that in the teeth of a direction dated 13th of December, 2021 steps were taken to act in terms of a revised merit list and to swallow up the 49 vacancies otherwise reserved subject to the final outcome of the writ petitions on the ground that the merit list on which the writ petitioners place their claim suffers from *mistakes* and hence substituted by a fresh merit list.

This Court is no less surprised at the fact that the appellants as well as the Board and other concerned Authorities had the opportunity of apprising the Hon'ble Single Bench of the turn of events which they now canvass in these appeals and based on such appraisal invite the Hon'ble Single Bench to grant leave to take appropriate steps.

This Court finds that the appeals, if allowed to be admitted at this stage, would lead to a travesty of the solemn Orders dated 13th December, 2021 and the Final Judgement and Order dated 1st March, 2022.

Statements made on affidavit without producing convincing materials in support thereof, persuade this

Court not only not to grant any reliefs in these appeals but also to draw the attention of the Hon'ble Single Bench to order a forensic investigation, if found necessary, on the genesis and the manner of treatment of claimed *mistakes*.

Accordingly, this Court permits the Hon'ble Single Bench to proceed without facing any further encumbrance with its directions dated 13th December, 2021 and the 1st of March, 2022

This Court also finds no reason to call for further affidavits in view of the elaborate submissions advanced by the parties on the basis of materials already on record.

MAT 708 of 2022 with IA No. CAN 1 of 2022, MAT 1160 of 2022 with IA No. CAN 2 of 2022, MAT 1161 of 2022 with IA No. CAN 2 of 2022, MAT 1162 of 2022 with IA NO. CAN 2 of 2022 and MAT 1163 of 2022 with IA No. CAN 2 of 2022 stand accordingly dismissed.

All parties to act on a gist of the communication of this order.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Lapita Banerji, J.)

(Subrata Talukdar, J.)