

15.09.2022
Item No.08
Court No.32
Avijit Mitra

**MAT 1454 of 2022
with
IA No. CAN 1 of 2022**

**Raj Kumar Das & ors.
- Versus -
Ali Hossain Mandal & ors.**

Mr. Chittapriya Ghosh,
Mr. Kuntal Ray,
Ms. Priyanka Saha,
Ms. Komal Singh
...for the appellants

Mr. Saikat Banerjee,
Mr. Ratul Biswas,
Mr. Koushik Chowdhury
....for the Board

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.,
Mr. Dibyendu Chatterjee,
Ms. Jhuma Chakraborty,
Ms. Reshmi Ghosh,
Ms. Piyali Paul
....for the writ petitioners/respondents

The present appeal has been preferred challenging an order dated 24th August, 2022 passed by the learned Single Judge in a writ application being WPA No.8981 of 2022 rejecting the application for addition of party being IA No.CAN 2 of 2022 preferred by the appellants.

Records reveal that the writ petition was preferred primarily praying for the following relief :

‘(a) A writ of or in the nature of Mandamus do issue commanding the respondents, their agents, servants, subordinates, employees and/or assignees, to fill up the remaining vacant 6024 seats for appointment to the post of Assistant Teachers in terms of the Notification dated 23.12.2000 by reducing the cut off marks in each and every

category and by offering appointments to the petitioners herein.'

Mr. Ghosh, learned advocate appearing for the appellants submits that in the event the cut off marks in the concerned recruitment process towards appointment of primary teachers is reduced and appointments are granted, the same would lead to reduction of the vacancies in future recruitment process. Such direction, if passed by the learned Single Judge, would seriously prejudice the claim of the appellants, who are now eligible for appointment to the post of primary teachers. The appellants would not be able to challenge such decision towards curtailment of vacancies unless they are added as party respondents to the writ petition. As such, the appellants' application for addition of party ought to have been allowed by the learned Single Judge since their presence is necessary for adjudication of the *lis* involved in the writ petition. In support of such contention Mr. Ghosh has placed reliance upon a judgment delivered in the case of *Amit Kumar Shaw & anr. V. Farida Khatoon & anr.* reported in *AIR 2005 SC 2209*.

Such contention of Mr. Ghosh has, however, been disputed by Mr. Bhattacharya, learned senior advocate appearing for the writ petitioners and by Mr. Banerjee, learned advocate appearing for the West Bengal Board of Primary Education.

The writ petition pertains to a recruitment process for filling up of posts of primary teachers initiated by a notification dated 23rd December, 2022. Admittedly, the appellants were not eligible for participating in the said recruitment process as they earned the requisite qualification for appointment to the post of primary teachers only in the year 2022. They are apprehensive that in the event vacancies are filled up by lowering the cut off marks, the quantum of vacancies in the next recruitment process, in which they would be eligible for participation, would stand reduced. Merely on the rudiments of such apprehension, the appellants claim for addition as party respondents in the writ petitioner. The appellants have no nexus with the present recruitment process. No fresh recruitment process has yet been initiated. The appellants are neither necessary parties nor proper parties and their presence is not required for adjudication of the *lis* in the pending writ petition. The judgment delivered in the case of *Amit Kumar Shaw (Supra)*, upon which reliance has been placed by Mr. Ghosh is also distinguishable on facts.

In our opinion, the learned single judge has rightly refused to exercise discretion in favour of the appellants and has dismissed their application for addition of party. We do not find any infirmity in the order impugned.

For the reasons discussed above, the appeal being MAT 1454 of 2022 and the connected application being IA No.CAN 1 of 2022 are dismissed.

There shall however be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)