

24.11.2022

Court No.32
rpan/**SL-1&2**

MAT 1852 of 2022

+

IA No: CAN 1 of 2022

**West Bengal Central School
Service Commission & Ors.**

Vs.

Sandeep Prasad & Ors.

With

MAT 1853 of 2022

+

IA No: CAN 1 of 2022

State of West Bengal

Vs.

Sandeep Prasad & Ors.

Mr. Kalyan Bandyapadhyay,

Dr. Sutanu Patra

Mr. Suman Sengupta

Mr. Dip Jyoti Chakraborty

Mr. Rahul Kr. Singh

... for the Appellants

(in MAT 1852 of 2022).

Mr. S.N. Mookherjee, Ld. AG

Mr. Anirban Ray, Ld. GP

Mr. Sirsanya Bandapadhyay, Ld. Jr. Standing Counsel

Mr. Arka Kumar Nag

... for the Appellant/State

(in MAT 1853 of 2022).

Mr. Bikash Ranjan Bhattacharya, Mr. Sudipta Dasgupta

Mr. Bikram Banerjee

Ms. Dipa Acharyya

Mr. Arka Nandi

Mr. Sutirtha Nayak

... for the Writ Petitioners.

Ms. Koyeli Bhattacharyya

... for WBBSE.

Mr. Billwadal Bhattacharyya,

Ld. Deputy Solicitor General of India

Mr. Arijit Majumder

... for the CBI.

The present appeals being MAT 1852 of 2022 and MAT 1853 of 2022 have been preferred challenging an order dated 23rd November, 2022 (at 3.00 p.m.) passed by the learned Court in the writ petition being WPA 12266 of 2021. Both the appeals are taken up for hearing together since the same order is under challenge in the said appeals.

Mr. Bandyapadhyay, learned senior advocate appearing for the appellants in MAT 1852 of 2022 and Mr. Mookherjee, learned Advocate General appearing for the State/appellants in MAT 1853 of 2022 at the inception submit that inadvertently the names of the added respondents in the writ petition were not incorporated in the cause titles of the memorandum of appeals and they pray for inclusion of their names in the cause titles. To that effect they have placed before this Court lists of the said respondents. Such prayer for correction has not been opposed by Mr. Bhattacharyya, the learned senior advocate appearing for the writ petitioners. In view thereof, the learned advocates-on-record of the appellants in both the appeals are granted leave to incorporate the list of names in the cause titles of the memorandum of appeals as well as the stay applications.

In view of the order that is to be passed in the present appeal, service of copies of the stay applications upon the added respondents is dispensed with.

Mr. Bandyapadhyay submits that in the writ petition on 23rd November, 2022 an order was passed in the morning which is annexed at pages 142-145 of the stay application. Subsequent thereto, the impugned order was passed after recess at about 3.00 p.m. Drawing our attention to the order impugned, he submits that before arriving at any finding as regards commission of any cognizable offence, the learned Court directed the CBI to start investigation in connection with the cases already registered in the matter. Such direction was issued without coming to any conclusion that the materials before the Court were sufficient to direct an investigation by the CBI. Such extraordinary power directing CBI to conduct an investigation needs to be exercised very sparingly, cautiously and in exceptional situation. In support of such contention Mr. Bandyapadhyay has placed reliance upon the judgements delivered in the cases of *State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal and others*, reported in (2010)3 SCC 571, *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others Vs. Sahngoo Ram Arya and another*, reported in (2002)5 SCC 521 and *H.N. Rishbud and Inder Singh Vs. State of Delhi*, reported in AIR 1955 SC 196.

Drawing our attention to an application, being CAN 6 of 2022 filed by the West Bengal Central School Service Commission (hereinafter referred to as the Commission),

Mr. Bandyapadhyay submits that the averments in paragraph 6 of the said application only speak of a proposal. There might have been administrative laches in filing such application. Mere filing of the same cannot be construed to be offence, moreso when the Chairman of the Commission being personally present before the Court made a categorical statement that he wants to take responsibility of such application and wants to withdraw the same. However, the learned Court rejected such prayer and went on to direct CBI investigation.

He strenuously argues that the investigation directed could not have been tagged with some other investigation which is continuing. Such direction could have been issued only after coming to a categorical finding that a cognizable offence has been committed. In view thereof, the direction towards CBI investigation is not sustainable in law.

Mr. Bandyapadhyay further argues that on behalf of the State Government a memorandum dated 19th May, 2022 was issued towards creation of 6861 supernumerary posts of teaching and non-teaching staff. He informs us that the said memorandum has already been challenged by a separate writ petition and the same is still pending. In the application, the Commission made a prayer for issuance of necessary direction on the basis of the averments made in the said application. It was also prayed that some alternative directions may also be

issued. The same was thus an innocuous one. Surprisingly, the said application was termed as a '*Benami application*'. No reason has been disclosed as to why such nomenclature was used.

Drawing our attention to the contents of the order impugned, Mr. Bandyapadhyay argues that the Court arrived at a definite conclusion as regards the alleged guilt and that too without granting appropriate opportunity of hearing. The same has been passed on the basis of extraneous consideration. In such circumstances, the order impugned is not sustainable in law.

Mr. Mookherjee, learned Advocate General appearing on behalf of the appellants in MAT 1853 of 2022 argues that the directions contained in the order impugned are beyond the pleadings made in the application, being CAN 6 of 2022. In the application there was no allegation against any party. It was filed forwarding a proposal. There is no criminality in such action and no cognizable offence has been committed. As such the learned Judge erred in law in directing a fresh investigation by the CBI.

Drawing our attention to the contents of the order dated 23rd November, 2022 passed before recess, Mr. Mookherjee submits that a proposal was placed before the Court through the said application. The Chairman of the Commission personally appeared and categorically stated that the Commission wants to withdraw the application

and does not want to press the same. No reason is forthcoming as to why such prayer was refused. On the contrary only since the proposal was given, the learned Judge directed a CBI investigation. A judicial order directing investigation against a body can be passed only after grant of an opportunity of hearing. From the materials on record it cannot be inferred that any cognizable offence had been committed. In view thereof, the impugned direction upon CBI to conduct an investigation is not sustainable and there was also no necessity to direct the Principal Secretary to be personally present. In support of his argument, Mr. Mookherjee has placed reliance upon the judgments delivered in the cases of *State of Punjab Vs. Davinder Pal Singh Bhullar and others*, reported in (2011) 14 SCC 770 and *Noor Bux Kazi and others Vs. The Empress*, reported in ILR 6 (Cal) 279.

Per contra, Mr. Bhattacharyya, learned senior advocate appearing for the writ petitioners submits that all the arguments as advanced by Mr. Bandyopadhyay and by Mr. Mookherjee today were also advanced before a coordinate Bench of this Court when several appeals against orders passed by the learned Court in the present writ petition. Drawing our attention to paragraph 60 of the judgment delivered by the coordinate Bench on 18th May, 2022, Mr. Bhattacharyya submits that the Hon'ble Court while disposing of the appeals *inter alia* observed that:

'(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.'*

In view of the directions passed in the earlier appeals, the learned Court had the jurisdiction to direct CBI to start investigation in connection with the cases already registered. Such direction does not suffer from any jurisdictional error.

Mr. Bhattacharyya further argues that by the order impugned in the present appeals the Court ultimately directed the CBI to file a report as to the origin of the instruction or the decision for filing of such application within a period seven days. The State respondents have not been prejudiced in any manner by the directions as issued. The Principal Secretary to the Government of West Bengal was asked to appear personally before the Court to give reply to some questions to be put by the Court.

Mr. Bhattacharyya informs this Court that three other applications containing identical averments, as

pleaded in the present application, being CAN 6 of 2022 were filed by the Commission in different writ petition.

Drawing the attention of this Court to the contents of the said application being CAN 6 of 2022, Mr. Bhattacharyya submits that the sequence of averments made in paragraphs 4, 5, 6 and 7 as well as the prayer would reveal that there was an attempt on the part of the Commission to legalize, illegal appointments which were granted earlier and to espouse the cause of illegal appointees.

He further submits that the State itself would be benefited in the event there is a disclosure of the actual facts and as such the Principal Secretary was directed to appear before the Court to give reply to some questions which may be asked by the Court.

In the judgment dated 18th May, 2022, it was *inter alia* directed that *'the Hon'ble Single Bench shall be entitled to direct investigation and collection of further facts, including any money trail, as considered necessary'*. In view of such direction passed in the earlier appeals, the learned Court had the jurisdiction to direct CBI to start investigation in connection with the cases already registered.

In paragraph 5 of the application being CAN 6 of 2022 it has been stated that *'the candidates who have been appointed, having been employed for the last 2 to 4 years and no complaints have been made against any of*

them in the performance of their duties'. In the following paragraph being paragraph no.6 it has, inter alia, being stated that 'supernumerary posts be also created to accommodate those whose appointments are subsequently found to be invalid' and that 'such proposal will result in no loss of jobs and enable such appointees to have means of livelihood'. Following such averments it was, inter alia, prayed that 'appropriate directions be given as stated in paragraph 6 above, on such terms and conditions as this Hon'ble Court may deem fit and proper'.

The said application was filed on 27th September, 2022 subsequent to issuance of the government memo dated 19th May, 2022 by which 6861 supernumerary posts teaching and non-teaching staff were created for absorbing the waitlisted candidates in the supernumerary posts so created as per approval of the State Cabinet. In the said memo there was no direction towards accommodation of any illegal appointees. It is surprising as to how the Commission proposed that such supernumerary posts needs to be filled up by those candidates, whose appointments were found to be invalid. Furthermore, through the said application the Commission prayed that appropriate directions be given as stated in paragraph 6 of the application.

The contents of the order need to be considered together and not in isolation. As admittedly CBI investigation is in progress in connection with the cases

already registered and as upon perusal of the files of the Commission, the Court did not find that there was any instruction to file such application, direction was issued upon CBI to find out from where the application had originated. It was also directed that the CBI should file a report as to the origin of the instruction or the decision for filing such an application.

We do not find any infirmity in the directions issued and as such no interference is called for in the present appeal.

The Court, it appears, had asked the Principal Secretary to the Government of West Bengal, who is a responsible officer, to appear before the Court and to assist the Court. It is always the duty of a senior officer of State to assist the Constitutional Court. Thus, it is surprising that such innocuous direction has been challenged by the State.

For the reasons as discussed above, we do not find any infirmity in the order dated 23rd November, 2022 (at 3.00 p.m.) impugned in the present appeals.

The appeals and the connected stay applications are dismissed.

There shall, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

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