

20.05.2022
Court No.13
Jalpaiguri Circuit
Bench Item No.1
AP

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

WPCRC 5 of 2021
Sanjoy Saha and Ors.
Vs.
Dilip Kumar Roy

In
WPA 305 of 2021
With
CAN 1 of 2022
Sanjoy Saha and Ors.
Vs.
State of West Bengal and Ors.

Mr. Arik Banerjee
Mr. Joyjit Dutta

... For the Petitioners.

Mr. Subir Sanyal
Mr. T.P. Halder

... For the respondents.

Mr. Subir Sanyal, learned counsel appearing for the respondents presses the application under Order IX Rule 13 of the Civil Procedure Code, 1908, seeking recall of the order dated 23rd September 2021.

Sufficient grounds are available to explain the absence of the counsel for the respondents on the said date.

It appears from the submissions of Mr. Sanyal that the recruitment process in the year 2009 went as far as the examination process. The results were not declared. No panel was prepared. The reason was the coming into force of the subsequent rules in the year

2012. It is submitted that the 3 recruitment processes have occurred under the new 2012 Rules.

According to Mr. Sanyal, the 2001 Rules as amended until the year 2009, and the examination conducted thereunder, stood replaced by the subsequent Rules of 2012.

It is also, therefore, submitted, that the examination conducted under the earlier and repealed Rules, have been rendered infructuous. No rights as such accrue to the writ petitioners merely by reason of sitting in an examination.

Mr. Arik Banerjee, learned counsel for the petitioners, aggressively opposes the submissions of the respondents.

Counsel for the writ petitioners, however, submits that his claim is supported by a judgement of a Coordinate Bench dated 8th January 2021, in **WPA 15128 of 2017 (Nihar Biswas & Ors. Vs. The State of West Bengal and Ors.)**.

This Court is of the view that there are substantial issues that need to be gone into to ascertain the rights of the petitioners for having sat in an examination albeit under the Rules of 2009, which has since been replaced.

In that view of the matter, the order dated 23rd September 2021 shall stand recalled. The writ petition is restored to its file and number.

The parties are at liberty to mention the writ petition for early hearing before an appropriate bench.

In view of the above the contempt application being WPCRC 5 of 2021 is rendered infructuous and shall stand disposed of without any orders.

Interim order, if any, shall stand vacated.

Rule, if any, shall stand discharged.

There will be no order as to costs.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)