

21.08.2023
SL No.3-4
Court No.8
(gc)

FMA 803 of 2017

**Abdul Khayer
Vs.
The State of West Bengal & Ors.**

With

**MAT 302 of 2023
CAN 3 of 2023**

**Md. Sahajahan
Vs.
Md. Nurul Islam & Ors.**

Sk. Humayan Reza,
...for the Appellant
In FMA 803 of 2017
& for the Respondent
In MAT 302 of 2023.

Mr. Prosenjit Mukherjee,
Mr. Jahangir Hossain,
...for the Appellant
In MAT 302 of 2023.

Ms. Tapati Samanta,
...for the State
In FMA 803 of 2017.

Mr. Bhaskar Prasad Vaisya,
Ms. Tapati Samanta,
Mr. Suman Dey,

...for the State
In MAT 302 of 2023.

1. In spite of our order, Abdul Khayer and Md. Nurul Islam are not present. Sk. Humayan Reza, Advocate is representing both of them. The explanations furnished for non-appearance of the said two persons are not acceptable. However, we do not propose to keep these appeals pending. We take up both the matters together and disposed of by this common order.

2. Md. Sahajahan has filed an application for leave to intervene. In the application the order passed by Justice Tapabrata Chakraborty in WP No.13(W) of 2016 (Abdul Khayer Vs. The State of West Bengal & Ors.) with CAN No.385 of 2016 has been disclosed. Abdul Khayer was the writ petitioner. He filed the writ petition praying, inter alia, for a direction upon the respondents to approve the appointment of the writ petitioner as a Siksha Samprasarak in the Social Science group at Loharpur Kantagoria Madrasah Siksha Kendra (in short "MSK"). It appears that Abdul Khayer as well as the Secretary made a representation on 23rd November, 2015 before the respondent No.3 with a prayer for upgradation of the candidates from the post of non-teaching staff to Shiksha Samprasarak. Justice Chakraborty has noted that there is only one vacancy in the Social Science group. Abdul Khayer being a non-teaching staff could not have been considered for approve in the sanctioned vacancy in Social Science group.
3. Justice Chakraborty dismissed the writ petition. The appeal is before us.

4. In WPA 26975 of 2022, the Secretary of MSK was represented but surprisingly the order of Justice Chakraborty was not brought to the notice of Justice Aniruddha Roy. If Md. Nurul Islam is a non-teaching staff, till the decision of Justice Chakraborty is not modified and/or reversed, he has no right to be considered for the said post and the respondent No.3 cannot decide the said issue.
5. We agree with the submission made on behalf of Md. Sahajahan that there is a clear suppression of material facts, if not at the instance of the writ petitioner but by the Secretary and Abdul.
6. The writ petition filed by Md. Nurul Islam appears to be a collusive proceeding and by suppressing material fact, he wanted his case to be considered. Moreover, we do not find any reason to interfere with the order passed by Justice Chakraborty.
7. The learned Single Judge was misled in passing the impugned order. It was a clear abuse of the process of law.
8. Under such circumstances, FMA 803 of 2017 is dismissed with cost assessed at Rs.10,000/- to be paid by Abdul Khayer to

the State Legal Services Authority within two weeks from date.

9. Similarly, Md. Nurul Islam is directed to pay cost assessed at Rs.10,000/- to the State Legal Services Authority within two weeks from date.

10. Accordingly, the appeal being FMA 803 of 2017 stands dismissed.

11. The impugned order is set aside. MAT 302 of 2023 is allowed.

12. Accordingly, the appeal being MAT 302 of 2023 and the application being CAN 3 of 2023 stand disposed of.

13. However, there shall be no order as to costs.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)