

02.03.2023
Item No. 04
Crt.No.11
b.r.

MAT 315 of 2023
with
IA No. CAN 1 of 2023

Sarfaraz Nawaz Molla & Ors.
-vs-
Laxmi Tunga & Ors.

Mr. Kalyan Banerjee, Sr. Advocate
Mr. Anindya Lahiri
Mr. Puspall Chakraborty
Mr. Soumyadeep Sarkar
..... for the appellants.

Mr. Firdous Samim
Ms. Gopa Biswas
Ms. Payel Shome
.... For the writ petitioner/Resp. No.1.

Mr. Supriyo Chattopadhyay
Mr. Shamim-ul-Bari
.... For the State-Respondents.

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
..... for the Commission.

Ms. Koyeli Bhattacharya
..... for the Board.

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

Mr. Bandyopadhyay, Learned Senior Counsel
appearing for the appellants, challenges the order dated
10th February, 2023 in the writ petition being WPA
18585 of 2021.

The short point of challenge in this appeal
pertains to the direction of the Hon'ble Single Bench
upon the West Bengal Central School Service

Commission (for short, the Commission) to recommend from the waiting list for appointment to Group-D Posts in schools pursuant to a qualifying examination in 2016 followed by appointments from 2019.

Relying on several authorities reported in *(1997) 8 SCC 488*, *1994 SUPP (2) SCC 591*, *(2009) 4 SCC 555*, *(2021) 3 SCC 755* and *(2006) 8 SCC 686*, Learned Senior Counsel submits that the Hon'ble Single Bench had no power to direct appointments from the waiting list after expiry of the period of validity of the panel.

Taking this Court to Rule 17 of the West Bengal School Service Commission (Selection of Persons for Appointment to the Posts of Non-Teaching Staff) Rules, 2009) (for short, the 2009 Rules) and particularly Rule 17 thereof, learned Senior Counsel submits that the period of validity of the panel has been clearly stated in Rule 17(*supra*) to be one year from the date of acceptance of the panel and the waiting list by the concerned Regional School Service Commission. In terms of Rule 17(2) (*supra*) the period of validity of the panel and the waiting list can be extended for a period of one year and thereafter for any reason to be recorded in writing, a further period not exceeding six months, beyond which neither the panel nor the waiting list shall be extended.

Mr. Bandopadhyay submits that the panel for appointment was published in 2019 along with the waiting list. Mr. Bandopadhyay further submits that by a Notification dated 2nd of September, 2019, the Commission had stated that the panel and the waiting list in relation to the selection in issue, being the 3rd Regional Level Selection Test (Non-Teaching), 2016 for recruitment to the posts of Clerk and Group-D in aided/sponsored Secondary and Higher Secondary Schools, expired on 18th May, 2019 and 4th of May, 2019 respectively as per the relevant rules.

Therefore, Learned Senior Counsel points out that the Hon'ble Single Bench could not abrogate to itself the power to direct appointments from the wait-listed candidates even assuming that the appointments from the regular panel were made on the basis of manipulation.

Learned Senior Counsel further submits that the present appellants are now eligible to participate in the selection process for appointments to Group-C and Group-D posts.

In view of the fact that the wait listed candidates have been directed to be considered for appointments from the panel which were cancelled due to the alleged manipulation, the appellants have a vested right to approach this Court in appeal challenging the

Judgement and Order dated 10th of February, 2023 in WPA 18585 of 2021 to which they are not parties. Accordingly, the present appellants have preferred an application for Leave to Appeal ventilating their right to be considered for the said Group-D vacancies.

Arguing for the Commission, Dr. Patra, Learned Counsel, takes this Court to the Order impugned dated 10th of February, 2023. It is submitted that fraud vitiates all action. It is submitted that the Commission had stated before the Hon'ble Single Bench that the marks in its server in respect of the candidates appointed from the panel in question were manipulated. In view of such manipulation, the Hon'ble Single Bench had directed cancellation of the appointments.

Dr. Patra points out that in the event the appointments were not made fraudulently, the wait listed candidates would have been considered for appointment during the lifetime of the panel as well as the waiting list. Hence, considering such exceptional situation, the Commission has taken steps to act in terms of the order of the Hon'ble Single Bench.

Mr. Shamim, Learned Counsel appearing for the writ petitioners in WPA 18585 of 2021, submits that the appointments as issued for the vacancies under the 3rd RLST (NT), 2016, are finite in number. In normal circumstances, the number of vacancies would be filled

up from candidates who have participated in the said selection test and their names published in the regular panel or, in the waiting list.

It is thus submitted that the appellants, who are not participants in the selection process of 3rd RLST (NT), 2016, do not have a vested right to raise any challenge to the process of granting appointments resulting out of the vacancies from such selection process. It is submitted that the petitioners as yet do not have an enforceable right to move the Hon'ble Division Bench since they are merely aspirants for being selected to Group-C and Group-D posts.

The State is represented by Mr. Shamim-ul-Bari, Learned Counsel led by Mr. Chattopadhyay, Learned Counsel.

The Respondent/West Bengal Board of Secondary Education is represented by Ms. Bhattacharya, Learned Counsel.

Having heard the parties and considering the materials placed, this Court must take notice of the fact that the Commission has admitted before the Hon'ble Single Bench the manipulation of marks discovered from the data of their OMR sheets of candidates who have participated in the 3rd RLST (NT), 2016.

This Court must further recognise that an exceptional situation has arisen out of the fraud allegedly committed in granting such appointments.

Having regard to such exceptional situation and the principle that in the light of such fraud which has been now discovered, the Hon'ble Court is not devoid of jurisdiction to recognise the invalidity of all past actions taken by the Commission and steps to restore the rights of the parties affected by such fraudulent past actions, this Court does not find the order of the Hon'ble Single Bench to be vitiated by any infirmity.

Furthermore, this Court also does not find that the present appellants have been able to make out a case connected to assertion of any enforceable right being merely aspirants to Group-C and Group-D posts.

In the light of the above discussion, *Leave to Appeal* is denied. In view of the denial of *Leave to Appeal*, no further orders are required to be passed in the present appeal.

CAN 1 of 2023 stands accordingly **dismissed**.

In view of the dismissal of CAN 1 of 2023 no order is required to be passed in **MAT 315 of 2023**, which stands accordingly **dismissed as infructuous**.

Since Affidavits are not invited, allegations to the contrary are deemed to be denied and disputed.

Parties to act in terms of the copy of the order downloaded from the official website of this Court.

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

(Supratim Bhattacharya, J.) (Subrata Talukdar,J.)