

05.
20.03.2023.
Ct. No. 11.
F.B.

**MAT 1136 of 2022
with
IA No. CAN 1 of 2022**

**The University of Kalyani & Ors.
-Vs.-
Vivek Das & Anr.**

**Mr. Amitava Choudhuri,
Mr. N. Roy
..... For the Appellants.**

**Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Trisha Rakshit,
Mr. Rajashree Tah
..... For the Respondent No. 1/
Writ Petitioner.**

**Mr. Bhaskar Prasad Vaisya,
Mr. Suman Dey
..... For the State.**

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

In the previous Order dated 14th of March, 2023
the case number of the appeal has been inadvertently
typed as FMA 1136 of 2021 instead of MAT 1136 of
2022. It should be read as MAT 1136 of 2022.

Registry to take steps.

Under challenge in this appeal is the Order of the Hon'ble Single Bench dated 22nd of June, 2022 passed in the writ petition being WPA 7565 of 2022.

Although the matter appears under the heading "To Be Mentioned" today, in view of the extreme urgency pleaded by the Appellants/the Kalyani University, parties are heard at length.

The short point urged by the University is that the Hon'ble Single Bench could not have enlarged the scope of the writ petition by permitting the writ petitioners to file a Supplementary Affidavit incorporating and challenging Clause 47(4) of the University Ordinance.

Mr. Choudhuri, Learned Counsel appears for the Appellants/the Kalyani University and submits that the core issue before the Hon'ble Single Bench is of promotion of the writ petitioner from the post of Group-D to Group-C.

The University takes the stand that the writ petitioner has been twice unsuccessful in getting promotion. Being unsuccessful, the writ petitioner cannot be allowed to challenge the promotional exercise. In this connection, Learned Counsel relies upon judicial authorities reported in (2014) 16 SCC 187 (*Ranjan Kumar & Ors. -Vs.-State of Bihar & Ors.*) and

(1995) 3 SCC 486 (*Madan Lal & Ors. –Vs.-State of J&K & Ors.*).

In support of the argument that the scope of the writ petition cannot be allowed to be enlarged by filing a Supplementary Affidavit, Mr. Choudhury relies on the authorities of (2014) 3 SCC page 502 at paragraph 64 (*Dipak Babaria & Anr. –Vs.-State of Gujarat & Ors.*) and an unreported decision of the concurrent Hon'ble Division Bench of this Court in *FMA 433 of 2003 (MAT 1176 of 2003) at paragraph 11*.

Mr. Vaisya, Learned Additional Government Pleader (AGP), appearing for the State Respondents supports the stand taken by the Appellants/the University.

Per contra, Mr. Chattopadhyay, Learned Counsel appearing for the Respondent No. 1/the Writ Petitioner, submits that the Hon'ble Single Bench discovered on perusal of the University Ordinance that Clause 47(4) dealt with promotions in non-teaching posts, meaning thereby promotions from Group-D to Group-C posts. It is therefore submitted that since the issue before the Hon'ble Single Bench is one whether the correct Rules were applied by the University in effecting promotions from Group-D to Group-C category, no error has been committed by the Hon'ble Single Bench expressing its

intention to examine the application of Clause 47(4) of the University Ordinance which deals with Promotion, to the issue.

Reference has also been made before this Court on the point of application of Clause 42 of the University Ordinance. This Court, on perusal of Clause 42 finds that the same relates to recruitment and not to promotion. Furthermore, the Hon'ble Single Bench has a right to examine the law as emanating from the position of the Rules incorporated in the University Ordinance *qua* the issue pending before the Single Bench.

Before parting with this discussion, this Court also notices that by the Order impugned dated 22nd of June, 2022, the rights of the contesting parties have not been determined. Accordingly, to the mind of this Court doubts exist whether the Order impugned qualifies to be a Judgement within the meaning of Clause 15 of the Letters Patent.

With the above observations, the writ petition is returned to the Hon'ble Single Bench to be heard out on merits. No interference is therefore called for in this appeal.

MAT 1136 of 2022 with IA No. CAN 1 of 2022
stand accordingly **disposed of**.

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

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

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