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04-08-2023
debajyoti
(Ct. no.06)

MAT 1469 of 2023
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IA NO:CAN/1/2023
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CAN/2/2023
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CAN/3/2023

Samik Kumar Ghosh
Vs.
Kashmira Begam Khan & Ors.

Mr. Jaydip Kar, Sr. Adv.,
Mr. Siddhartha Banerjee,
Mr. Abhisek Baran Das,
Mr. Sudipta Nayan Ghosh,
Ms. Jyoti Routh
... For the Appellant.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Mr. Sabyasachi Chatterjee,
Mr. Sandipan Das,
Mr. Sayan Banerjee,
Mr. Badrul Karim,
Mr. Omar Faruk Gaji,
Mr. Subhrajit Saha,
Mr. Dipankar Das,
Ms. Kiran Sk.,
Ms. Indrani Roy
... For the Respondents/Writ Petitioners.

Ms. Sonal Sinha,
Mr. Tarun Kumar Chatterjee,
Mr. Sujit Gupta,
Mr. Sayan Datta,
Mr. Soumen Chatterjee
... For State Election Commission.

Mr. Anuran Samanta
... For Election Commission of India.

Mr. Sirsanya Bandopadhyay, Jr. Standing Counsel,
Mr. Arka Kumar Nag
... For the State.

Re : CAN/3/2023

This is an application for leave to prefer appeal against an order dated July 27, 2023, passed by a learned Single Judge in WPA No.14723 of 2023.

The intending appellant was the Sub-Divisional Officer, Uluberia-I. He was impleaded as a respondent in the writ petition in his official capacity. He intends to file an appeal against the order of the learned Single Judge referred to above, in his individual capacity as he says that the order affects him vitally.

We have heard learned counsel for the parties and we are of the opinion that the appellant has locus *standi* to maintain an appeal against the aforesaid order of the learned Single Judge.

Accordingly, CAN 3 of 2023 is allowed.

Re : MAT/1469/2023, CAN/1/2023 & CAN/2/2023

By consent of the parties, the appeal and the connected applications are taken up together for hearing.

By a judgment and order dated June 26, 2023, whereby we had disposed of MAT 1135 of 2023, we had appointed a former Judge of this Court as a one-man Commission under whose supervision the State police was directed to conduct an enquiry as regards the allegations made in the writ petitions wherefrom MAT 1135 of 2023 arose. We had requested the one-man Commission to file a report before the learned Single Judge after due enquiry. Such a report dated July 19, 2023, was filed by Justice Debi Prosad Dey (Retired), the one-man Commission, whom we had appointed, before the learned Single Judge in WPA 14723 of 2023.

What the writ petitioners had alleged before the learned Single Judge was that they were wrongfully prevented from contesting the Panchayat elections. According to them, although they had submitted OBC Certificates along with their nomination papers, which were duly accepted, subsequently, the Returning Officer being the concerned Block Development Officer and other officers in the administration, conspired to remove such certificates from records and disqualify the writ petitioners from contesting the Panchayat elections.

The one-man Commission's report filed before the learned Single Judge is to the effect that there is merit in the grievance of the writ petitioners. To put it shortly, the report categorically states that the present appellant as also two other officers in the administration being the concerned Block Development Officer and the Inspector-in-Charge, BCW, Uluberia-I, in connivance with each other, were instrumental in documents being tampered with, thereby illegally precluding the writ petitioners from contesting the Panchayat elections.

Based on the aforesaid report, the learned Single Judge has passed an order dated July 27, 2023, which is assailed before us in this appeal.

Mr. Kar, learned Senior Advocate, appearing for the appellant, says that nowhere it is on record that the present appellant had any role to play regarding alleged tampering with documents. Secondly, he submitted that the learned Judge had no jurisdiction to order suspension of the appellant. Thirdly, learned Senior Advocate submitted that without giving an opportunity of hearing to the appellant, the appellant could not have been placed under suspension. This

was in breach of the fundamental principles of natural justice.

Mr. Bhattacharyya, learned Senior Advocate, appearing for the respondents/writ petitioners, says that no hearing need be given to an employee prior to placing him under suspension. There is no such requirement in Service Jurisprudence.

We are of the view that the appellant is under a mis-apprehension. The order under appeal, as we read it, does not place the appellant under suspension. The relevant portion of the order reads as follows:

“ Relying on the facts unearthed after inquiry under supervision of the one man Commission, the Court is convinced that for committing such illegal acts, appropriate steps ought to be taken against the Block Development Officer, Niladri Sekhar Dey, Additional Inspector, BCW Mr. Kripasindu Samui, and Sub-Divisional Officer, Uluberia Mr. Samik Kumar Ghosh

The controlling authority of the aforesaid officers are directed to consider initiating disciplinary proceeding against them and, to prevent further perpetration of such illegal acts, place them under suspension with immediate effect”

We are of the view that the learned Judge directed the employer of the aforesaid three officers to consider whether or not disciplinary proceedings should be initiated against them and whether or not they should be immediately placed under suspension. Hence, in our opinion, the apprehension of the appellant that he has been placed under suspension by the order impugned, does not have any basis.

Insofar as the grievance of the appellant regarding breach of the principles of natural justice is concerned, we request the learned Single Judge to treat the observations made by Her Ladyship in the impugned order as tentative insofar as the subject matter of this appeal is concerned and before passing any fresh order, give an opportunity of hearing to the present appellant in his individual capacity and not as an officer of the State.

The appeal, in which we had passed the judgment and order dated June 26, 2023, had been preferred by 3/4 officers of the State Government, including the present appellant. The appellants in that appeal were aggrieved that although the State police are competent to hold an enquiry as regards the allegations made by the writ petitioners, the learned Judge had directed investigation by Central Bureau of Investigation. We had accepted the contentions of the appellants in that appeal and had, accordingly, directed the State police to conduct necessary investigation instead of Central Bureau of Investigation. However, to instill confidence in the minds of the members of the public at large, as regards the impartiality of the investigation, we had requested Justice Debi Prosad Dey (Retired), a former Judge of this Court, to act as one-man Commission to supervise the investigation of the state police. Our order was not challenged before the Hon'ble Supreme Court by the appellants or any of them, including the present appellant.

Pursuant to our direction, the one-man Commission has filed a report before the learned Single Judge. It is upto the learned Judge to assimilate the contents of the report and pass an appropriate order. The learned Judge has passed an

order, which is impugned before us in this appeal. We are not inclined to interfere with the order. We leave it entirely to the discretion of the learned Single Judge to pass a final order on the writ application after affording an opportunity of hearing to the present appellant in his individual capacity. However, if any steps have been taken on the basis of the impugned order, we do not interfere with the same.

Mr. Siddhartha Banerjee, learned advocate, appearing for the appellant, says that the appellant should be given copies of the depositions of the witnesses mentioned in the report of the one-man Commission as also copies of documents mentioned in the said report. According to us, it will be more appropriate for the appellant to make that prayer before the learned Single Judge.

The appeal and the connected applications are, accordingly, disposed of.

Affidavits not having been called for, the allegations made in the stay application shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)