

05.10.2023
SL No.4
Court No.8
(gc)

**MAT 1968 of 2023
CAN 1 of 2023**

**The West Bengal College
Service Commission & Ors.
Vs.
Dr. Monalisa Ghosh & Ors.**

Mr. Kishore Datta, Sr. Adv.,
Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya,
Ms. Mithu Singha Mahapatra,
...for the Appellants.
Mr. Sudipta Dasgupta,
Mr. Arka Nandi,
Ms. Saptaparni Raha,
...for the Respondent No.1/
Writ petitioner.
Mr. Biswabrata Basu Mallick, Ld. A.G.P.
Mr. Biman Halder,
...for the State Respondents.

1. The appeal is arising out of an order dated 26th September, 2023 in which a prayer was made on behalf of the writ petitioner for a provisional merit panel disclosing the break-up and/or segregation of marks obtained by the petitioner and all the empanelled candidates in respect of the selection process initiated by the Advertisement No.1/2020 and also the prayer for uploading the online application forms of the empanelled candidates submitted in respect of the selection process initiated by the Advertisement No.1/2020.

2. The learned Single Judge without giving an opportunity of filing affidavits to disclose the defence to the claim of the writ petitioner passed an order in terms of prayer (c) by 10th October, 2023 and directed the appellants to affirm an affidavit-in-opposition within ten days and reply within three days thereafter. The matter was treated as heard-in-part and the matter was directed to be listed on 13th October, 2023 at 1 P.M.
3. Mr. Kishore Datta, learned Senior Counsel appearing for the appellants submits that the cardinal principle for passing an interim order has not been fulfilled in the instant case.
4. It appears that the College Service Commission has argued that there is no provision in the College Service Commission Act or the regulation to publish the panel disclosing the break-up and/or segregation of marks and the uploading of the application forms. The learned Single Judge applied the test of transparency in order to reject the said contention and in allowing the prayer (c) of the writ petition.
5. The exercise of such discretion is depending upon a fair adjudication of the issues and in absence of challenge being thrown to the regulations, the prayers allowed may not be

permissible. A writ of mandamus can only be issued provided the appellants have failed to act in accordance with statutes and/or regulations. It is submitted that the appellants cannot be directed to act in a manner not required to be executed or performed in terms of the statute. This is a matter which requires consideration.

6. Mr. Datta has submitted that the learned Single Judge was having only an urgent determination for two weeks and there was no reason for not having the matter decided by the Regular Bench and there was no consent given by the appellants for treating the matter as heard-in-part.
7. Mr. Sudipta Dasgupta, learned Counsel appearing on behalf of the respondent no.1/writ petitioner has submitted that the matter was heard-in-part by consent of the parties.
8. However, we feel that it is exclusively falls within the domain of the Court to decide whether a matter may be treated as heard-in-part. We refrain from making any comment on that. It is for the learned Single Judge to decide the future course of action.
9. The interim order shall remain stayed till the disposal of the writ petition.

10. The affidavit-in-opposition shall be filed on or before 17th November, 2023, reply thereto, if any, within 24th November, 2023.
11. We request the learned Single Judge to decide all the issues after exchange of affidavits.
12. Mr. Datta has submitted that the point of maintainability shall be kept open. In the event question of maintainability is raised in the affidavit-in-opposition, we would request the learned Single Judge also to decide the said issue.
13. We make it clear that in the event the writ petitioner is found to be eligible, it would not be open for the Commission to contend that by reason of completion of the recruitment process, the writ petitioner cannot be accommodated. The Commission in that case would be obliged to give appointment to the writ petitioner.
14. Accordingly, the appeal and the application stand disposed of.
15. However, there shall be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)