

Item-
SL-1. 06-10-2023

sg/gc/ar Ct. 8

MAT 2023 of 2023

West Bengal College Service Commission & Ors.
Versus
Jaya Biswas @ Jaya Biswas (Roy) & Ors.

Mr. Kishore Datta, Sr. Adv.
Mr. Srijib Chakraborty, Adv.
Mr. Subhrangsu Panda, Adv.
Ms. Mithu Singha Mahapatra, Adv.
...for the appellants

Mr. Biswarup Biswas, Adv.
Mr. Sudipta Dasgupta, Adv.
...for the writ petitioner/respondent

1. On urgency being shown, by consent of the parties, the appeal is taken up for consideration and disposed of by this common order.
2. On 13th March, 2023, Justice Kausik Chanda, taking note of the submission made by Mr. Kishore Datta, learned Senior Advocate appearing for the Commission that the interim order dated 12th August, 2021 is now the subject matter of a review application being RVW 157 of 2021 (West Bengal College Service Commission and Others vs. Jaya Biswas), directed the matter to go out of the list. Justice Chanda is presently in Circuit.
3. Admittedly, this matter was not mentioned before Justice Chanda for recalling of the said order or for reconsideration of the said order. During the period when Justice Chanda was in the Circuit, this matter was mentioned before Justice Abhijit Gangopadhyay in which an order claimed to have been passed today directing the Commissioner of Police, Bidhannagar Commissionerate to bring the Chairman,

College Service Commission personally today at 8:30 P.M. with documents.

4. It is extremely unfortunate that the matter was not mentioned before Justice Chanda when His Lordship was available with a prayer for reconsideration of the order dated 13th March, 2023 showing any urgency. The petitioner did not feel any need, far less any urgent need, to mention the matter before Justice Chanda for reconsideration of the order dated 13th March, 2023. Justice Chanda is having the regular determination.
5. The learned Counsel appearing on behalf of the writ petitioner has failed to offer any explanation for not mentioning the matter before Justice Chanda or for not filing any application for recalling of the order dated 13th March, 2023. Justice Gangopadhyay is not having the regular determination. Unless the order dated 13th March, 2023 is recalled and a decision that notwithstanding the pendency of a review application, the matter can still be proceeded with, it is not permissible to proceed with the writ petition that is pending since 2021.
6. The learned Counsel for the petitioner ought not to have mentioned this matter before Justice Gangopadhyay with a request to take up the matter out of turn during the period when Justice Chanda is not available. Admittedly, no application has been filed for recalling of the order dated 13th March, 2023. Once Justice Chanda is of the opinion that the writ petition is not required to be heard till the review application is disposed of, it was not proper to pass any order

in the writ petition without first recalling the order dated 13th March, 2023.

7. We deprecate the practice adopted by the Advocate for the writ petitioner in this regard.
8. All proceedings in WPA 12259 of 2021 shall remain stayed including the orders passed in the said writ petition on 6th October, 2023.
9. The order passed by Justice Chanda on 13th March, 2023 is still in force.
10. However, we make it clear that we have not gone into the merits of the matter. We proceeded on the basis that it was not proper for the learned Advocate for the writ petitioner to mention the matter before Justice Gangopadhyay without any urgency being shown or any change of circumstances warranting immediate intervention of the learned Single Judge having the determination till this date.
11. Having regard to the fact that the determination was for a limited period, it was not open for another learned Single Judge to disregard the order passed by the Regular Bench and proceeded with the hearing of the writ petition without any urgency being shown for reconsideration of the earlier order. We have repeatedly ask the learned counsel for the writ petitioner to show immediate urgency or any change of circumstances in between, however, the learned counsel could show none and has admitted that it was mentioned since the writ petition is pending since 2021 and the appellant did not take any steps for listing the review application. This explanation is not accepted.

12. In absence of the order dated 13th March, 2023 being recalled and urgency being established for immediate intervention of the Court the impugned order could not have been passed. Admittedly, there has been no change of circumstances between 13th March, 2023 and 6th October, 2023. We are not aware whether this fact was brought to the notice of Justice Gangopadhyay.
13. It was on such consideration, we set aside the impugned order passed on 6th October, 2023.
14. The appeal is allowed. MAT 2023 of 2023 is disposed of.
15. The review application shall be listed in the combined monthly list of December, 2023.
16. The learned Counsel for the appearing parties are directed to file their short list of dates and notes of argument in the meantime.
17. The learned Registrar General, High Court at Calcutta shall immediately communicate this order to the Commissioner of Police, Bidhannagar Commissionerate for information and doing the needful.

(Uday Kumar, J.)

(Soumen Sen, J.)