

18.12.2023
SI No.21
Court No.8
(gc)

MAT 2392 of 2023
CAN 1 of 2023
CAN 2 of 2023

Jesmine Khatun
Vs.
The State of West Bengal & Ors.

Mr. Probal Mukherjee, Sr. Adv.,
Mr. Sankar Paul,
Mr. Imtiaz Ahmed,

... for the appellant.

Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Sampriti Saha

... for the respondent/writ petitioner.

Mr. Sirsanya Bandopadhyay, Ld. J.S.C.,
Mr. Arka Kumar Nag,

... for the State

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey

... for the WBCSSC

1. We have heard the learned counsel for the parties.

Re: CAN 2 of 2023

2. This is an application for leave to appeal.
3. Since the appellant is likely to be affected by the impugned order leave to file the appeal being CAN 2 of 2023 is, hereby, allowed.

Re: MAT 2392 of 2023
CAN 1 of 2023

4. This appeal has been filed against the order dated 1st December, 2023 by one

Jesmine Khatun against whom certain adverse remarks have been made in the order dated 1st December, 2023.

5. Mr. Probal Mukherjee, learned Senior Counsel appearing on behalf of the appellant Jesmine Khatun, submits that on the basis of this order FIR has been lodged and she is apprehending arrest.
6. Mr. Mukherjee has further submitted that Jesmine Khatun has been punished without being heard.
7. Learned counsel for the State submits that a Three-member Committee was constituted to review the appointments of teachers from 2016 onwards and in a report the Committee was of the view that the appointment of two persons named in the order, namely, Jesmine Khatun and Suvendu Hatua, appear to be doubtful. However, no conclusive opinion was given by the Committee. The learned Counsel has submitted that on the basis of the materials available with the State authorities the learned Single Judge was invited to pass such an order.
8. Learned Single Judge in the order impugned has merely referred to the doubts expressed by the Three-member

Committee and directed the District Inspector of Schools to lodge similar FIR as was done in respect of others regarding the said appointment also.

9. We are unable to accept submission on behalf of the appellant as the investigating authority is required to investigate into the matter and the opinion of the Three-member Committee is not conclusive but is relevant consideration to be taken in lodging the FIR. It was only an opinion of the Committee based on certain information gathered from record. It is for the investigating agency to decide if an FIR is required to be lodged against Jesmine Khatun.
10. We are of the view that the order impugned should not form the basis of the FIR against Jesmine Khatun and it should be on the basis of the materials gathered by the investigating authority during investigation. It is for the investigating authority to take up follow up steps in course of investigation.
11. In the event the SIT during investigation finds complicity of this person or if there are sufficient materials indicating the involvement of Jesmine Khatun in the

matter of securing appointment, SIT shall proceed in accordance with law. We reiterate that the inclusion of the name of Jesmine Khatun in the FIR should not be on the sole basis of the order passed by the learned Single Judge and it is to be an independent decision of the investigating agency. The lodging of FIR shall be revisited if it is solely based on the impugned order. The report on which the State has relied upon, shall also be taken into consideration in deciding whether FIR should be lodged against the applicant/appellant.

12. The appeal along with the connected application, are hereby disposed of in terms of the aforesaid order.
13. However, there shall be no order as to costs.
14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)