

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

**MAT 376 of 2023
With
IA NO: CAN 1 of 2023**

**SRI SUBIRES BHATTACHARYYA
VS.
LAXMI TUNGA AND ORS.**

For the Appellant : Mr. L. K. Gupta, Ld. Sr. Adv.
Ms. Mousumi Bhowal,
Mr. Aman Gupta,
Mr. Ishan Bhattacharya, Advocates

For the Respondents : Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Adv.
/Writ petitioners Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Sampriti Saha, Advocates

For WBCSSC : Dr. Sutanu Kr. Patra,
Ms. Supriya Dubey, Advocates

For Respondent No. 9 : Mr. Sanjib Das, Advocate

For WBBSE : Mr. Bibek Dutta, Advocate

Heard & Judgement on: September 03, 2024

DEBANGSU BASAK, J.

1. Appeal is directed against the order dated February 10, 2023 passed in WPA 18585 of 2021. Appellant in this appeal is aggrieved by the directions contained in the impugned order limited to the appellant.

2. Learned senior advocate appearing for the appellant draws the attention of the Court to the impugned order and in particular to paragraph 13, 14, 15 and 16 thereof. He also draws the attention of the Court to the writ petition. He submits that, the directions issued in the impugned order in paragraphs 13 to 16 thereof, which involve the appellant, are beyond the scope and ambit of the pleadings of the writ petition and the prayers made in the writ petition.

3. Learned senior advocate appearing for the appellant submits that the impugned order was passed at a point of time when the appellant was not a party to the writ petition. Therefore, the impugned order was passed without hearing the appellant.

4. Learned senior advocate appearing for the appellant submits that, although, the writ petition in which, the impugned order was passed, was ultimately disposed of by a judgment and order dated April 22, 2024, none the less, since, the directions contained in the impugned order in paragraphs 13 to 16 are such that it partakes the character of a final order and they affect the constitutional and legal rights of the appellant. Without giving an opportunity of hearing to the appellant educational qualifications of the appellant are being questioned. The directions contained in the impugned order is prejudicial to the interest of the appellant.

5. In support of his contentions, learned senior advocate appearing for the appellant relies upon : **(1983) 1 SCC 147 [Sanjeev Coke Manufacturing Company vs. M/s. Bharat Coking Coal Limited & Anr.]; (2010) 7 SCC 263 [Selvi & Ors. vs. State of Karnataka] and (2007) 12 SCC 230 [Aloke Nath Dutta & Ors. vs. State of West Bengal].**

6. Learned senior advocate appearing for the appellant submits that, the nature of the directions contained in the impugned order are such that it is not co-terminus with the final order passed in the writ petition. Consequently, the doctrine of merger cannot be applied so far as the impugned order is concerned. It is his contention also that the directions contained in the impugned order do not partake the character of an interim order as it is final in nature. Such directions contained in the impugned order are not in the aid of the final relief sought for in the writ petition.

7. Learned senior advocate appearing for the writ petitioner submits that the impugned order is an interim order passed in a writ petition. Such writ petition was finally disposed of by the judgment and order dated April 22, 2024. Consequently, according to him, the impugned order merged into the final order.

8. That apart, learned senior advocate appearing for the writ petitioner, submits that, the directions contained in the impugned order so far as the appellant is concerned, were not required to be passed as they were beyond the scope and ambit of the writ petition.

9. None of the appearing parties advanced any submissions in course of hearing of the appeal.

10. Appellant before us was not a party in the WPA 18585 of 2021 where the impugned order dated February 10, 2023 was passed.

11. Writ petition was in relation to a selection process undertaken by the West Bengal School Service Commission. The appellant before us was an integral part of the School Service Commission during the relevant period of time in relation to the selection process under challenge in the writ petition.

12. By the impugned order dated February 10, 2023, learned Single Judge passed the following directions, so far as the appellant is concerned:-

"13. I direct the petitioners to add Mr. Subiresh Bhattacharya, the former Chairman of the School Service Commission (now in custody) as a party respondent.

14. I direct Mr. Suberish Bhattacharya to disclose the names of the person/persons at whose direction such corruption i.e. manipulations of marks in the Commission's server were committed. If such names are not disclosed by him it shall be presumed that it is Mr. Bhattacharya himself who is the mastermind and the fountain-head of such corruption and all persons affected by such corruption shall have the right to recover damages from him and/or his estate.

15. Mr. Bhattacharya, the former Chairman was a Professor, and Vice Chancellor of a University. I hold that he shall not be allowed to use his qualifications of Masters Degree and Doctorate Degree till he is honourably acquitted from the case registered by C.B.I. in this matter.

16. This court hopes and expects that Mr. Bhattacharya will come clean on this issue and name the masterminds and the main beneficiaries of this corruption and if Mr. Bhattacharya requires, this court will direct the Central Forces to give protection to his family members, if he has any apprehension in respect of their safety and security and of himself."

13. Appellant was directed to be added as a party respondent by the impugned order. Therefore, he was not a party to the writ petition when the impugned order was passed. Directions as against the appellant was, therefore, passed without hearing the appellant.

14. It cannot be said that the appellant was neither a necessary nor a proper party to the writ petition given the subject matter of the lis or the involvement of the appellant in the subject of the lis. Moreover, we proceeded on the basis of the addition of party direction contained in the order dated February 10, 2023 till the disposal on April 22, 2024.

15. Consequently, the direction contained in the impugned order directing the appellant to be added as a party to the writ petition is not interfered with.

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16. Writ petition being WPA 18585 of 2021 was, as noted above, disposed of by our judgment and order dated April 22, 2024. In course of hearing of the matters in which, we delivered the judgment and order on April 22, 2024, our attention was not drawn to the pendency of the present appeal. Therefore, we could not deal with the present appeal while disposing of the matters on April 22, 2024.

17. Since the Court disposed of WPA 18585 of 2021 finally on April 22, 2024, interim orders passed in such writ petition including the impugned order merged into the final judgment and order passed on April 22, 2024 therein.

18. The order of disposal of the writ petition being WPA 18585 of 2021 by our judgment and order dated April 22, 2024 does not contain any of the directions appearing in paragraphs 14 to 16 of the impugned order dated February 10, 2023.

19. In view of the doctrine of merger and in view of the fact that order dated February 10, 2023 merged into the final judgment and order dated April 22, 2024, the present appeal is now infructuous. In such circumstances, we are not minded to deal with the ratio of the judgments cited on behalf of the appellant in course of hearing of the present appeal.

20. MAT 376 of 2023 along with connected applications stand **disposed of** accordingly without any order as to costs.

(Debangsu Basak, J.)

21. I agree.

(Md. Shabbar Rashidi, J.)

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