

20.05.2025
Sl No.17 & Suppl. No.1
Court No.8
(SKG)

**MAT 723 of 2025
With
CAN 1 of 2025**

**Rikta Sarkar & Ors.
-vs-
State of West Bengal & Ors.**

And

**MAT 755 of 2025
With
CAN 1 of 2025**

**Mahafujur Rahaman
Vs.
Minakshi Ghosh & Ors.**

Mr. Biswaroop Bhattacharya,
Mr. Pratik Majumder,
Ms. Neelanjana Ghorui
...for the Appellants.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Sudipta Dasgupta,
Mr. Bikram Banerjee,
Mr. Arka Nandi,
Mr. Sondwip Sutradhar
....for the Respondents/
Writ petitioners

Ms. Koyeli Bhattacharyya,
...for the W.B.B.S.E

Dr. Sutanu Kumar Patra,
Ms. Supriya Dubey,
...for the W.B.C.S.S.C

Mr. Sanjib Das,
...for the State

Mr. Partha Sarathi Sengupta, Sr.Adv.
Mr. Saptarshi Banerjee,
Ms. Deepti Priya,
Ms. Anshumala Bansal,
Mr. Richik Chowdhury,
Mr.Bhargav Verma,
..... for the Appellant
In MAT no. 755 of 2025

1. By consent of the parties MAT 755 of 2025 is treated on the day's list and heard analogously with MAT 723 of 2025. MAT 755 of 2025 has been published today in the supplementary cause list.
2. The appeal is arising out of an order dated 7th May, 2025. The learned Single Judge was deciding as to whether the State Government has the power to create supernumerary posts in respect of 1600 Assistant teachers (with breakup of 760 Work Education and 850 Physical and Education teachers and non teaching staff) for absorbing all such wait listed candidates.
3. In spite of service of notice the State is not represented.
4. The learned Single Judge in extending the interim order passed on 18th November, 2022 has considered that the Hon'ble Supreme Court did not decide the aforesaid issue. Prima facie it appears that creation of the supernumerary post to accommodate the wait listed candidate of the said panel was not justified. The Hon'ble Supreme Court set aside the direction for CBI investigation with regard to creation of supernumerary post as it was on the basis of a cabinet decision. The

relevant portion of the order of the Hon'ble Supreme Court dated 8th April, 2025 is reproduced below:

".....Having regard to the aforesaid discussion, we are of the view that the High Court was not justified in referring the issue of creation of supernumerary posts pursuant to the Cabinet decision for investigation by the CBI.

It may be relevant to take note of clause (2) to Article 74 and clause (3) to Article 163 of the Constitution of India, which specifically state that the question whether any, and if so what advice was tendered by the Council of Ministers to aid and advise the President or tendered by the Ministers of the Cabinet to the Governor, shall not be inquired into in any court.

The aforesaid direction is, therefore, set aside and quashed.

We, however, clarify that our observations and directions given in the present order are limited to the extent of the directions for investigation into creation of supernumerary posts, and do not, in any way, impinge or reflect upon the investigation and the chargesheets filed by the CBI on other aspects."

5. The confusion arose with regard to the continuation of the interim order beyond 18th November, 2022 as the State itself had filed an application for vacating the interim order dated 18th November, 2022, however, the said application was treated as an objection to the writ petition.
6. Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel appearing in the virtual mode

has submitted that the matter fixed before the learned Single Judge on 18th June, 2025 at 2 p.m and there cannot be any urgency at this stage for disturbing the interim order passed by the learned Single Judge after an extensive hearing.

7. Mr. Partha Sarathi Sengupta, Senior Advocate appearing in MAT 755 of 2025 has submitted that the present writ petitioners have no locus to maintain the writ petition as they are unsuccessful candidates.
8. Mr. Sengupta has further submitted that the applications of the respondents and the appellants in MAT 755 of 2025 are to be considered for appointment as they are wait listed candidates for which supernumerary posts have been created by the State in lawful exercise of power under the Constitution and appointment is not the subject matter of challenge before the Hon'ble Supreme Court.
9. It is submitted that the balance of convenience should be in favouring the applicants who have been waiting for the last two years and are entitled to appointment as they are successful candidates.

10. Mr. Biswaroop Bhattacharya, learned Counsel appearing on behalf of the appellant in MAT 723 of 2025 has submitted that it is trite law that unsuccessful candidate cannot question the selection process and the decision of the State with regard to creation of supernumerary post to accommodate wait listed candidates who had participated in the selection process and was successful which is not being disputed or cannot be disputed by any of the parties.
11. Mr. Sutanu Kumar Patra, learned Counsel for the WBCSSC and Ms. Koyeli Bhattacharyya, learned advocate for W.B.B.S.E. have submitted that the appointment letter was not issued because of an impression that the interim order passed on 18th November, 2022 was still in existence which appears to be incorrect impression.
12. Upon hearing the learned Counsel for the parties it appears that locus standi of the writ petitioners have been seriously disputed. It is trite law that if a question of locus standi is raised that issue being fundamental and jurisdictional needs to be decided first before any interim order could be passed. An interim order can be passed in aid of final relief. The

writ petitioners have to satisfy the trinity test of injunction to claim any such relief. The argument that the writ petitioners are unsuccessful and hence they cannot maintain the writ petitioners is a matter of substance and requires considerations at the threshold and only upon a prima facie view being formed and other requirements of an interim order are fulfilled the court can pass an interim order.

13. We do not find any such discussion in the impugned orders with regard to the locus standi of the writ petitioners presumably due to the earlier interim order. In fact the learned Single Judge was quite aware of the said issue and has recorded in the order that the locus standi of the petitioners to maintain the writ petition being an issue to be decided in the writ petition which is ready for hearing. In fact it is a fresh interim order as admittedly the earlier interim order had expired. The change in circumstances is an important factor.
14. However, having regard to the fact that the hearing of the writ petition has commenced in which the locus standi of the writ petitioners are required to be decided and the matter is fixed for further hearing on 18th June, 2025

we do not wish to interfere with the interim order at this stage. Moreover the Board has not issued any appointment letter after the interim order had expired on 18th November, 2022 nor the present applicants before us have applied to the court for a direction upon the Board to issue the appointment letters.

15. In so far as the decision of the Hon'ble Supreme Court is concerned it is clear that the direction for investigation by CBI with regard to creation of supernumerary post pursuant to the cabinet decision was set aside. The justification of the State in creating the supernumerary post in exercise of power in terms of Clause (2) to Article 74 and Clause (3) to Article 163 of the Constitution of India is being challenged in the writ petition. However, the essential question requires to be decided is at whose instance the said challenge is thrown. Moreover, if prima facie case has been made out for interfering with the cabinet decision is also to be seen and considered. In this regard the learned Single Judge has made the following observation:

“Therefore, the order of the Hon'ble Supreme Court does not indicate any change in the circumstances warranting variation and/or modification of the interim order of stay and/or to refuse extension thereof, besides the West Bengal Central School

Service Commission in its affidavit in opposition has specifically stated that the panel has already expired, as such, creation of the supernumerary posts to accommodate the wait listed candidates of the said panel prima facie is not justified.”

16. The panel seems to have expired during the pendency of the proceeding and the wait listed candidates are not at fault. Moreover the Hon’ble Supreme Court has not expressly set aside the cabinet decision.
17. Having regard to the fact that the wait listed candidates are waiting for almost 2 years now and they would otherwise be entitled to appointment as wait listed candidates on creation of supernumerary post, but for the challenge to the notification dated 19th May, 2022, we would request the learned Single Judge to decide the said issue as expeditiously as possible. We are not considering the prayer of allowing the applicants namely the wait listed candidates to join the post at this stage leaving it open for them to pray for appointment on the basis of the cabinet decision upon such undertaking the learned Single Judge may deem fit and proper keeping in mind the interest of the students.
18. We make it clear that for the aforesaid reasons we are not interfering with the interim

order with impugned order. The appeals and the connected applications are accordingly disposed of.

(Soumen Sen, J.)

(Smita Das De, J.)