

10.07.2025
SI No.1-2
Court No.8
(sg, gc)

**MAT 1016 of 2025
CAN 1 of 2025**

**West Bengal School Service Commission & Anr.
Vs.
Sanjoy Kr. Doloi & Ors.**

With

**MAT 1018 of 2025
CAN 1 of 2025**

**The State of West Bengal
Vs.
Sanjoy Kumar Doloi & Ors.**

Mr. Kalyan Kumar Bandyopadhyay, Sr. Adv.
Mr. Biswaroop Bhattacharya,
Mr. Arka Nag,
Mr. Rahul Singh.
...for the West Bengal Central School
Service Commission.

Mr. Kishore Dutta, Ld. A.G.,
Mr. Sirsanya Bandyopadhyay, Sr. Counsel
Mr. Biswabrata Basu Mallick, A.G.P
Mr. Debanjan Mandal,
Mr. Sandip Das Gupta,
Mr. Debayan Sen,
Ms. Mohima Chobeas,
Mr. Niket Ojha.

...for the State.

Ms. Koyeli Bhattacharyya,
Mr. Bibek Dutta.

...for the WBBSE.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Sudipta Dasgupta,
Mr. Bikram Banerjee,
Mr. Firdous Samim,
Mr. Gopa Biswas,
Mr. Sondwip Sutradhar.

...Advocates for the
respondents/writ petitioner.

Mr. Anindya Kumar Mitra, Sr. Adv.
Mr. Shownak Ghosh,
Mr. Sakhawat Khandakar,
Ms. Swati Jha.

...Advocates for the respondents
/writ petitioner for WPA 13457 of 2025.

Soumen Sen, J. (Oral):

1. Both the appeals arising out of a common judgment and order dated 7th July, 2025 are being heard and disposed of by this common judgment. The West Bengal Central School Service Commission (in short WBCSSC) and the State of West Bengal have preferred two separate appeals against the said common judgment.
2. The appellants are essentially aggrieved by the direction of the learned Single Judge to exclude the tainted candidates from the purview of the Notification dated 30th May, 2025.
3. The learned Single Judge in the impugned judgment has directed the appellant to proceed with the selection process which has started vide the Recruitment Notification dated 30th May, 2025 but debarred the tainted candidates from participating in the said selection process. If any tainted candidate has submitted an application in order to offer his/her candidature pursuant to the Recruitment Notification dated 30th May, 2025, the same shall stand cancelled. Both the appellants are aggrieved by the aforesaid direction as according to the appellants, the said direction would amount to re-writing the judgment of the Hon'ble Supreme Court and is not in

consonance with the judgment dated 03.04.2025 passed by the Hon'ble Supreme Court in disposing of Civil Appeal No..... of 2025 (arising out of Special Leave Petition (Civil) No.9586 of 2024).

4. The issues raised need to be addressed with reference to the order of the Hon'ble Division Bench in WPA 30649 of 2016 heard with several other matters and decided on 22nd April, 2024 and the judgment of the Hon'ble Supreme Court dated 3rd April, 2025 in SLP against the said judgment and order.
5. Before we advert to the said judgments and the other documents relied upon that may be relevant for the purpose of consideration of the said issue, we briefly indicate the submissions made on behalf of the parties.
6. Mr. Kalyan Bandyopadhyay, learned Senior Counsel appearing on behalf of the West Bengal Central School Service Commission has primarily advanced the argument on behalf of both the appellants. Mr. Bandyopadhyay has submitted that the judgment of the Hon'ble Division Bench deciding the issue with regard to the recruitment process initiated in 2016 has merged with the order of the Hon'ble Supreme Court as would be evident from the conclusion recorded in the judgment of the

Hon'ble Supreme Court from Paragraphs 45 to 49. Mr. Bandyopadhyay has submitted that the Hon'ble Division Bench in Paragraph 363 (ii) has declared the selection process null and void and cancelled and thereafter in Clause (iv) of the said Paragraph has identified and categorized the persons who would be required to return all remunerations and benefits received by them to the State Exchequer along with interest calculated at 12% per annum, from the date of receipt thereof till deposit, within a period of four weeks from date. This observation according to Mr. Bandyopadhyay has merged and stands modified in paragraph 45 of the judgment of the Hon'ble Supreme Court where the services of the tainted candidates who were appointed was directed to be terminated along with the refund of salaries and payments received since their appointments were the result of fraud which amounts to cheating. Mr. Bandyopadhyay has submitted that nowhere in the judgment of the Hon'ble Supreme Court, there is any clear bar and exclusion of the candidates who have suffered consequences for the termination along with refund of salaries and payments received from participating in the fresh recruitment process, that has been initiated by

the School Service Commission in terms of the Notification dated 30th May, 2025 and the rules for such recruitment process described as West Bengal School Service Commission (Selection for Appointment to the Posts of Assistant Teachers for Upper Primary Level of Classes [except Work Education and Physical Education], Classes IX-X and Classes XI-XII) Rules, 2025 (hereinafter referred to as the “Recruitment Rules, 2025”).

7. In view of the urgency for the recruitment process to be initiated and completed steps have been taken inviting the applications with the following disqualification clause 3(v):-

“(v) Disqualification –

(a) No person shall be eligible for selection for appointment unless he is a citizen of India.

(b) No person shall be eligible for selection for appointment if he is convicted by any Court of law.”

8. The educational qualification including the professional qualification for selection of Assistant Teachers for Classes IX-X is mentioned in Schedule-I in terms of Rule 3 and Schedule-II of the said Recruitment Rules, 2025 has laid down the required percentage of marks necessary for selection to the various posts.

9. Mr. Bandyopadhyay has submitted that with a view to throw a spanner in the wheel, writ petitions have been filed by the unsuccessful candidates as well as the candidates who have never participated in the 2016 selection process on a complete misinterpretation of the judgment of the Hon'ble Supreme Court. It is submitted that for the purpose of considering the legitimacy of inclusion of tainted candidates, reference can be made to Paragraph 49 of the judgment of the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has consciously not excluded the tainted candidates while giving relaxation to the disabled candidates and other candidates who are not specifically tainted. It is submitted that unless there is a specific exclusion of the tainted candidates, the appellants are required to give an opportunity in the public employment as denial of such opportunity would result in unequal treatment in public employment. The Recruitment Rules, 2025 has been in exercise of legislative power in public interest in order to enable all aspiring candidates to apply for the job.
10. Mr. Bandyopadhyay has referred to Article 20(2) of the Constitution of India in order to impress upon the Court that the denial of right

to participate in the fresh recruitment process would amount to double jeopardy. on one hand they had suffered termination along with refund of salaries and payments received during their employment and they contended to be disqualified by reason of the order of the Hon'ble Supreme Court. The Hon'ble Supreme Court has never excluded the said candidates who have been described as tainted and imposed punishment without any restriction for participation in the fresh selection process. In this regard, Mr. Bandyopadhyay has relied upon the following decisions:-

(i) Pulin Behari Das & 34 others vs. King Emperor reported at 1911 SCC OnLine Cal 159: (1911-12) 16 CWN 1105;

(ii) Shiv Kumar Sharma Vs. Haryana State Electricity Board, Chandigarh & Ors. reported at 1988 (Supp) SCC 669;

(iii) State (NCT of Delhi) Vs. Sanjay reported at (2014) 9 SCC 772;

(iv) State of Jharkhand Through SP, Central Bureau of Investigation Vs. Lalu Prasad Yadav alias Lalu Prasad reported at (2017) 8 SCC 1.

11. Mr. Bandyopadhyay has referred to Section 26 of the General Clauses Act to show that an offender cannot be punished twice for the same offence, meaning thereby, once in the instant case the candidates having been held to be

tainted and having forfeited their salaries and payments including the termination of service, disqualification or debarring them in the fresh recruitment process would result in punishing the petitioner for the same act twice.

12. Mr. Kishore Datta, learned Advocate General appearing on behalf of the State while adopting the submission of Mr. Bandyopadhyay has submitted that exclusion of tainted candidates would amount to violation of Article 16 of the Constitution of India and has relied upon the decision of the Hon'ble Supreme Court in ***Pradip Gogoi & Ors. Vs. State of Assam & Ors.*** reported at **(1998) 8 SCC 726**. The candidates who have been termed as tainted have equal opportunity of participation in the fresh selection process as denial of such right would be an infringement of fundamental right under Article 16(1) of the Constitution of India. However, it has been fairly submitted by Mr. Advocate General that the facts of the aforesaid case may not match with the facts with which we are presently concerned in both the appeals. Mr. Advocate General has further argued that there is a distinction between 'termination' and 'cancellation'. An order of cancellation may not automatically lead to termination. The termination can arise out of

various grounds, namely, abandonment of service or dismissal in a disciplinary proceeding. In the instant case the services of all the teachers have been cancelled. Whatever the Hon'ble Supreme Court wanted to take away has been taken away and if the Hon'ble Supreme Court wanted to deprive the tainted candidates of their service, they would have said it in the judgment. The entire selection was cancelled and it cannot be held that the service of the tainted candidates have been taken away by the judgment of the Hon'ble Supreme Court to participate in the fresh selection process.

13. Paragraph 49 of the judgment of the Hon'ble Supreme Court in the submission of Mr. Advocate General has duly taken care of such facts and the Hon'ble Supreme Court has not consciously and specifically excluded tainted candidates having regard to the fundamental right available to such candidates under Article 16(1) of the Constitution of India.
14. The learned Advocate General has submitted that the Hon'ble Supreme Court has given the harshest of punishment but was careful enough not to debar them from future employment. Fundamental rights cannot be curtailed.

15. Mr. Advocate General has submitted that cancellation does not mean that door for future employment is foreclosed and it was for that specific purpose, the Hon'ble Supreme Court has not specifically debarred the tainted candidates for participation in the fresh selection process. If the judgment of the Hon'ble Supreme Court is construed to mean that it amounts to disqualification for future employment, it would be a clear infringement of the right of the tainted candidates protected under Article 16 of the Constitution of India.
16. It is submitted on behalf of the learned Advocate General that direction of the learned Single Judge of excluding the tainted candidates is, in fact, rewriting the judgment of the Hon'ble Supreme Court.
17. Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel appearing on behalf of the writ petitioners has submitted that the history of litigation would show that the candidates whose cases are being espoused by the State and the Commission were held to be guilty of fraud and having regard to such conduct, they cannot be allowed to participate in this fresh selection process. The candidates who have been recruited in violation of the laws of the Recruitment Rules resulted in a serious

disruption of the entire academic system of the State and they cannot be benefited by the order passed by the Hon'ble Supreme Court inasmuch as there is no direction in the judgment of the Hon'ble Supreme Court on the basis of which they could be allowed to participate in the recruitment process. Mr. Bhattacharyya has referred to the illegalities in the selection process as summarized in the judgment of the Hon'ble Supreme Court to show that the entire selection process has been vitiated and tainted beyond the resolution and the confession and admission of WBCSSC that there are instances of rank jumping that is to say candidates having lower rank were preferred over those higher rank candidates who are not in the panel and the shortlisted candidates have been recommended and appointed. There are also the candidates who were not recommended by the Commission, however, appointed by the Board and they were the beneficiaries of manipulation of OMR scores. Mr. Bhattacharyya has specifically referred to the admission of the WBCSSC in paragraph 26 of the judgment of the Hon'ble Supreme Court which reads as follows:-

- 1,498 out-of-panel candidates were illegally appointed;

- 926 candidates were involved in rank jumping; and
- 4,091 candidates were recommended despite OMR mismatches.

18. It is submitted that the Commission has even admitted before the Hon'ble Supreme Court that the Commission is not in a position to state the number of such illegal recommendations and/or furnish the details of such candidates. Mr. Bhattacharyya has submitted that the Hon'ble Supreme Court has made the classification of the candidates who can be considered in the fresh selection process permitting thereby the disabled candidates and other candidates not specifically tainted as mentioned in Paragraph 49 of the judgment. There is another category of the candidates mentioned in Paragraph 47, however, those cases are not relevant for the present purpose.
19. Mr. Bhattacharyya has referred to the miscellaneous application filed by the West Bengal Board of Secondary Education before the Hon'ble Supreme Court in which a prayer was made for permitting the appointees not found to be tainted and to continue in service till the end of the academic year or until the basis of fresh appointment to such posts is

concluded. The said application was filed on 7th April, 2025.

20. Mr. Bhattacharyya has relied upon the decision in ***Ms. Mayawati vs. Union of India & Ors.*** reported in **(2012) 8 SCC 106**, paragraphs 41 to 44 for the proposition that if a court issued such direction and the authority exceeded its jurisdiction then the action of the authority or the prosecuting agency is required to be set aside. According to the petitioners, in paragraph 44 of ***Ms. Mayawati*** (*supra*) the Court observed that the CBI exceeded its jurisdiction in lodging FIR since there was no specific direction made by the Court in that particular order. The ratio in ***Ms. Mayawati*** (*supra*), according to the petitioners, is applicable in the present case in view of the observations made in the judgment dated 3rd April, 2025 read with order dated 17th April, 2025 both passed by the Hon'ble Supreme Court where selection process which was required to be conducted, was directed not for tainted candidates but WBCSSC has exceeded its jurisdiction by permitting tainted candidates to offer candidature in terms of recruitment notification dated 30th May, 2025 which is without jurisdiction.

21. Mr. Bhattacharyya has submitted that in the said affidavit, the Board has clearly disclosed the fact that they are not going to proceed with the tainted candidates knowing fully well that they were debarred from doing so for the fresh recruitment process to be initiated in terms of the judgment of the Hon'ble Supreme Court. Mr. Bhattacharyya has also referred to the communication dated 3rd April, 2025 from the Secretary, School Education Department, the Chairman, West Bengal Central School Service Commission to show that the Chairman was requested to immediately take necessary steps to initiate fresh selection process as per the direction of the Hon'ble Supreme Court dated 3rd April, 2025 without prejudice to the rights of the Government since an application for modification was proposed to be filed before the Supreme Court. Our attention is also drawn to the order passed in the miscellaneous application no.709 of 2025 in Civil No.4805 of 2025 decided on 17th April, 2025 in which the following order was passed:-

“We are inclined to accept the prayer made in the present application insofar as it relates to Assistant Teachers for Classes IX and X and Classes XI and XII not found to be tainted, subject to the following conditions: -

1. An advertisement for fresh recruitment to the aforesaid post(s) shall be published before 31.05.2025.

2. The examination and the entire recruitment process shall be completed by 31.12.2025.

3. The State Government, the applicant/appellant, West Bengal Board of Secondary Education, and the West Bengal Central School Service Commission shall file their respective affidavits by 31.05.2025, enclosing therewith a copy of the advertisement for the fresh recruitment as well as the schedule therefor, so as to ensure completion of the recruitment process by 1 31.12.2025.

4. In case the advertisement is not published by 31.05.2025 and the affidavits are not filed by that date, appropriate orders will be passed by this Court, including imposition of costs and vacating of the present order.

We clarify that this order shall not be read as conferring any special right or advantage on the aforesaid teachers, insofar as the fresh recruitment process is concerned.

We are not inclined to accept the prayer in the present application insofar as non-teaching posts in Groups C and D are concerned, as the number of appointees specifically found to be tainted, in the said groups, is substantively high and secondly, what has prompted us to pass this order in respect of Assistant Teachers not found to be tainted is that students undergoing study presently should not suffer on account of the lack of teachers and the lapses and failures, which have resulted in the order passed by this Court.

The Miscellaneous Application stands disposed of in the aforesaid terms.”

22. It is submitted that the aforesaid order of the Hon'ble Supreme Court would show that the prayer was made only in respect of the Assistant Teachers for Classes IX-X and Classes XI-XII not found to be tainted and such prayer was allowed subject to the Board issuing an advertisement for fresh recruitment to the aforesaid posts and the recruitment process being completed by 31st December, 2025.
23. Mr. Bhattacharyya submits that the qualification clause, namely, that any citizen of India only may apply for the post of Teachers, i.e., Assistant Teachers (Classes IX & X) and Assistant Teachers (Classes XI & XII) in Government Aided/ Sponsored Secondary/ Higher Secondary Schools is contrary to the judgment of the Hon'ble Supreme Court as a back door not enabling the tainted candidates to come within the zone of consideration and this attempt was made to cover up their misdeeds and white wash their past antecedents. Mr. Bhattacharyya has distinguished the cases in submitting that Article 20 has no manner of application in service jurisprudence inasmuch as there has been no prosecution against the tainted candidates for any offence. It is submitted that

the decision in ***Shiv Kumar Sharma*** (*supra*) relied upon by the appellants has no manner of application as in the said decision during probation, the petitioner suffered minor punishment and after expiry of one year from the date of minor penalty for the stoppage of one increment for one year, he was put below the juniors in the seniority list. The Supreme Court held that the Board had acted illegally and most arbitrarily in placing the juniors of the appellant above him in the seniority list and/or confirming the appellant to the post with effect from December 1, 1969, that is, long after the date of confirmation of the said respondents nos.2 to 19. Although the Board found that the appellant has satisfactorily completed the period of probation but there is no explanation why the confirmation of the appellant was deferred till December 1, 1969. The question of seniority has nothing to do with the penalty that was imposed upon the appellant. For the same act of misconduct, the appellant has been punished twice, that is, first, by the stoppage of one increment for one year and, second, by placing him below his juniors in the seniority list.

24. The facts in the instant case are completely different from the facts in the present case and

hence it is submitted that the said case has no manner of application in the instant case.

25. Mr. Bhattacharyya has referred to the decision of the Hon'ble Supreme Court in ***Monica Bedi Vs. State of Andhra Pradesh*** reported at **(2011) 1 SCC 284** to show that the fundamental right guaranteed under Article 20(2) of the Constitution of India clearly lays down the principle that a man shall not be brought into danger for one and the same offence more than once. If a person is charged again for the same offence, he can plead, as a complete defence, his former conviction in order to invoke the protection of Article 20(2) (there must be a prosecution as well as the punishment.) In the instant case, it is submitted that no criminal proceeding was initiated in which the tainted candidates were convicted and the direction passed by the Hon'ble Supreme Court are merely consequential upon termination of service of the tainted candidates.
26. Mr. Anindya Mitra, learned Senior Counsel appearing on behalf of the writ petitioner in WPA 13457 of 2025 has supported the submission of the Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel that both the writ petitioners in WPA 13457 of 2025

are also aggrieved by the order under challenge but we permitted Mr. Mitra to argue on the limited issue as to whether the tainted candidates could be included in the notification dated 30th May, 2025 and would be eligible for consideration in the fresh selection process initiated pursuant to the order of the Hon'ble Supreme Court. Mr. Mitra has submitted that Hon'ble Supreme Court has consciously categorised the candidates into several heads for the purpose of granting or disallowing reliefs. The classification made by the Hon'ble Supreme Court is based on intelligible differentia meaning thereby the candidates who are parties to the fraud and are beneficiaries of the said fraud are segregated and separated from the candidates who are not tainted and disabled candidates. The other category of candidates is not the subject matter of the appeal and hence not argued. It is submitted that the General Clauses Act would apply in interpretation of statute and its rules and not in interpreting the judgment. Mr. Mitra has submitted that it is shocking that the appellants are trying to defend the tainted candidates who have given blank OMR sheets or are guilty of corrupt practices. Mr. Mitra submits that the tainted candidates if denied

would be against the principle enshrined in Article 20(2) of the Constitution of India being inherently and fundamentally flawed. Article 20 deals with “protection in respect of conviction for offences”. In the instant case, there has been no conviction for any offence.

27. In view of the egregious nature of the fraud, violations and illegalities, services of the tainted candidates were terminated. As a consequence thereof, direction was given for refund of salaries and payments. If it were to be treated as an offence for which tainted candidates have been convicted and for the self-same offence a fresh prosecution is initiated, on the principle that a person cannot be vexed twice, the benefit of Article 20(2) would come to the rescue of such tainted candidates.
28. Mr. Mitra has submitted that if the conclusion of the Hon'ble Supreme Court is read carefully, it would be clear that some candidates are found to be innocent and not tainted whereas others have obtained the job by fraudulent means. The victim of circumstances cannot be treated at par with the persons who have put the process of admission to shame and had jeopardised the life of so many disabled candidates and the students at large. For those persons a strict punishment is called for and

the Hon'ble Supreme Court has clearly segregated the tainted persons from the untainted persons with certain benefits and concessions in paragraph 49 of the judgement.

29. In the aforesaid background, we are required to decide whether the learned Single Judge was justified in excluding the tainted candidates from the said recruitment process.
30. Truth has the ugly habit of raising its head and when it raises its head firmly it engulfs and demolishes any system which is founded on deception and corruption. In the earlier round of litigation, we have noticed the detailed and elaborate recording of the nature and extent of corruption that has plagued the education system causing immense misery to the educational institutions and the students at large. A teacher is not only a mentor, educator, facilitator and a role model for a student but also the guiding light of wisdom and gratitude. Teachers are the backbone of the society. History would show how dedicated teachers have influenced students both during the struggle for independence and post-independence. By way of illustration we may refer to Beni Madhab Das an erudite Bengali Scholar, a renowned teacher and a great patriot who had left an indelible mark in the

mind of his young students which included Netaji Subhas Chandra Bose. It is also apposite to mention the name of great revolutionary Surya Sen (Masterda) who led the Chittagong Armoury Raid during independence movement along with his dedicated students. We may also mention the great Scientists Satyendra Nath Bose and Dr. Meghnad Saha who had contributed immensely towards the development of science and had produced students of extraordinary calibre. Bengal has a galaxy of teachers and students who have enriched the education in the State. However, these names are not exhaustive and only illustrative to show the kind of education the State had and it is really painful that causes of candidates with tainted hands are now being defended for recruitment in the higher education system of the state. A teacher is said to be a fraudster when he secures a job by unfair means which is completely inconceivable and unacceptable by any stretch of imagination. A teacher not properly appointed with the required knowledge, skills and values would be a disaster ruining the education system. Knowledge, wisdom and proper education are essential for the growth of the nation. Fraud vitiates everything. Fraud and

collusion vitiate the most solemn precedence in any civilised jurisprudence. Fraud and justice cannot dwell together. A litigant who is guilty of securing any benefit of public employment by unfair means and in collusion cannot seek a remedy under the writ jurisdiction which is discretionary in nature and the discretion must be exercised equitably and in promoting good faith.

31. In deciding the tall claim made on behalf of the tainted candidates we may refer paragraph 363(ii), (iv) and (xi) of the judgment of the Division Bench which reads as follows:

“(ii) All appointments granted in the selection processes involved being violative of Articles 14 and 16 of the Constitution of India, are declared null and void and cancelled.

(iv) Persons who had been appointed outside the panel, after expiry of the panel as also those who submitted blank OMR sheets but obtained appointments, must return all remunerations and benefits received by them to the State exchequer along with interest 273 calculated at 12 percent per annum, from the date of receipt thereof till deposit, within a period of four weeks from date.

(xi) SSC shall undertake a fresh selection process in respect the declared vacancies involved in these selection processes preferably within a fortnight from the date of declaration of results of the ensuing elections.

32. Paragraph 363(iv) has classified three categories of candidates who can be described as tainted candidates;
- (i) persons who have been tainted outside the panel;

(ii) persons tainted after the expiry of the panel;
and,

(iii) persons who have submitted blank OMR sheets to obtain appointments.

33. It is really shocking and baffling that the appellants are supporting the tainted candidates. None of the three categories of the candidates mentioned in the orders of the Hon'ble Division Bench and the Hon'ble Supreme Court deserve any consideration. The argument that these candidates should have a level playing field on the basis of Article 16 of the Constitution of India is clearly not acceptable as it would militate against the basic notion of justice and fairness. It cannot be the fundamental policy of State to encourage fraudsters in public employment. They have no place in the system. If someone gets any job by way of cheating then such appointment tantamounts to be fraudulent and illegal and he cannot be permitted to participate in the selection process initiated for filling up the vacancy which had resulted due to his unlawful and illegal conduct. Due to such fraudulent conduct the innocent candidates have lost their job. The judgment of the Division Bench as well as of the Hon'ble Supreme Court would show that the Board has

admitted its guilt and the entire selection process was set aside as it was vitiated by reason of fraud and collusion of tainted candidates with the members of the Board and other agencies. Paragraph 49 of the judgment of the Hon'ble Supreme Court protects the disabled candidates and the untainted candidates with age relaxation and other concessions in order to enable them to participate in the selection process. It thus excludes the tainted candidates from any benefit of participation in the fresh selection by necessary implication. The judgment of the Hon'ble Division Bench and conclusion of the Hon'ble Supreme Court, in our respectful reading unmistakably have excluded participation of such tainted candidates in the fresh selection process.

34. The judgments relied upon by Mr. Bandopadhyay and learned Advocate General are not applicable in the present facts and circumstances as we accept the submission of Mr. Anindya Mitra and Mr. Bikash Ranjan Bhattacharyya that the principle of double jeopardy is not applicable in the instant case. However, to be fair to Mr. Bandopadhyay learned Senior Counsel the reference and reliance on the principle of double jeopardy was

made to show that having regard to the fact that the services of the tainted candidates were terminated and they were directed to refund and return the salary and payments received during their employment and now if they are not allowed to participate in the said fresh selection process, it would be a double jeopardy for them as they would be losing on both counts.

35. However, the right of the tainted candidates are required to be decided on the anvil of the judgment of the Division Bench which merged with the judgment of the Hon'ble Supreme Court. Moreover, it is settled law that a candidate can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence [see. **Monica Bedi** (*supra*) paragraph 29].
36. In the instant case the tainted candidates were penalised and there was no fresh prosecution for the same offences. The direction for refund is consequential to termination as the job was obtained fraudulently. In a departmental proceeding if an employee is terminated on the ground of grave and serious misconduct he

may forfeit his right to participate in future selection process in a public employment.

37. There is another aspect in this matter. Even if we assume that these candidates are not excluded from the purview of the order of the Hon'ble Supreme Court they would still be ineligible as they would not be entitled to the benefit of the length of service before their termination. In this regard we are *ad idem* with the observation and findings of the learned Single Judge in paragraph 24 of the said judgment which reads as follows:

"24. This Court needs to advert to another issue as it is found from Schedule II of the said Rules of 2025 that ten marks are allotted for prior teaching experience out of total 100 marks. If Court accepts the submissions made on behalf of State respondents as well as WBCSSC that tainted candidates were not barred by the judgment dated 3rd April, 2025 from participating in the selection process in that event while appraising their candidature during interview those tainted candidates would be permitted to be awarded marks against their prior teaching experience which is found to be in teeth of the observations made by the Hon'ble Supreme Court in paragraphs 45 and 49 of the Judgment dated 3rd April, 2025. It was observed in paragraph 45 of the judgment dated 3rd April, 2025 that appointments of tainted candidates were result of fraud which amounts to cheating."

38. The very heading of Article 20 says it all and is enough to distinguish the decisions relied upon by Mr. Bandyopadhyay, Senior Advocate, which is not applicable in the instant case.
39. The argument of the appellants in favour of tainted candidates is not well-appreciated. The appellants knowing fully well that the tainted candidates have vitiated the entire selection process should not have espoused their cause. The state is not to aid the wrongdoers and it sends a wrong signal.
40. In view thereof, we are not allowing any application to be filed by the tainted candidates for the recruitment process initiated pursuant to the order of the Hon'ble Supreme Court.
41. In such circumstances, we dismiss both the appeals and the connected applications.
42. However, there shall be no order as to costs.
43. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)