

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Lapita Banerji**

**MAT 898 of 2022
with
IA No. CAN 1 of 2022**

**West Bengal Board of Primary Education and Ors.
-Versus-
Ramesh Malik and others.**

with

**MAT 912 of 2022
with
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022**

**Md. Hasen Ali and others
-Versus-
Ramesh Malik and others.**

**with
MAT 921 of 2022
with
IA No. CAN 1 of 2022**

**West Bengal Board of Primary Education and Ors.
-Versus-
Ramesh Malik and others.**

with

**MAT 924 of 2022
with
IA No. CAN 1 of 2022**

**Supriyo Sarkar
-Versus-
West Bengal Board of Primary Education and Ors.**

with

MAT 929 of 2022

with

IA No. CAN 1 of 2022

IA No. CAN 2 of 2022

Jayati Dutta alias Jayati Dutta Banerjee

-Versus-

Ramesh Malik and others.

with

MAT 938 of 2022

with

IA No. CAN 1 of 2022

IA No. CAN 2 of 2022

IA No. CAN 3 of 2022

Kuntal Pal and others

-Versus-

Ramesh Malik and others.

with

MAT 941 of 2022

with

IA No. CAN 1 of 2022

West Bengal Board of Primary Education and Anr.

-Versus-

Ramesh Malik with

MAT 942 of 2022

with

IA No. CAN 1 of 2022

The State of West Bengal and Another

-Versus-

Ramesh Malik and ors.

with

MAT 950 of 2022

West Bengal Board of Primary Education and Anr.

-Versus-

Soumen Nandy with

MAT 954 of 2022

**IA No. CAN 1 of 2022
IA No. CAN 2 of 2022**

**Subal Achanrjee
-Versus-
Ramesh Malik and others.**

with

**MAT 955 of 2022
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022**

**Sudeb Das
-Versus-
Ramesh Malik and others. with**

**MAT 956 of 2022
West Bengal Board of Primary Education and Anr.
-Versus-
Soumen Nandy & Ors.
with**

**MAT 957 of 2022
with
IA No. CAN 1 of 2022**

**Dr. Manik Bhattacharya
-Versus-
Ramesh Malik and ors.**

with

**MAT 963 of 2022
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022**

**Silu Giri and ors.
-Versus-
Ramesh Malik and others.**

with

**MAT 968 of 2022
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022**

**Sudip Mukhopadhyay and ors.
-Versus-**

State of West Bengal and others.

**with
MAT 969 of 2022
IA No. CAN 1 of 2022**

**The State of West Bengal & Anr.
-Versus-
Ramesh Malik and others.**

**with
MAT 973 of 2022
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022**

**Prasenjit Bhattacharjee & Ors.
-Versus-
Ramesh Malik and others.**

**with
MAT 990 of 2022
IA No. CAN 1 of 2022
IA No. CAN 2 of 2022**

**Arpita Saha & Ors.
-Versus-
Ramesh Malik and others.**

**with
MAT 993 of 2022
IA No. CAN 1 of 2022**

**Dr. Manik Bhattacharya
-Versus-
Ramesh Malik and others.**

For the appellant in
MAT 912 of 2022.

: Mr. Ekramul Bari
Sk. Imtiaz Uddin

For the appellants in
MAT 990 of 2022.

: Mr. Pintu Karar
Mr. Akashdeep Mukherjee
Mr. Badrul Karim
Mr. Tapas Kumar Mandal
Mr. Kuntal Ghosh

For the appellant in

: Mr. Ashis Kumar

MAT 929 of 2022.	Mr. Rajib Ghosh Mr. Rohan Pal
For the appellants in MAT 924 of 2022	: Mr. Sandip Kumar Bhattacharyya Mr. Suman Basu Mr. Aviroop Bhattacharya Ms. Debanwita Pramanik Mr. Gaurav Dutta
For the appellants in MAT 938 of 2022.	: Mr. Sarwar Jahan Mr. Maidul Islam Kayal
For the appellants in MAT 963 of 2022.	: Mr. Sarwar Jahan Mr. Abhijit Basu
For the appellants/applicants in MAT 973 of 2022.	: Mr. Pratik Dhar Mr. Ritwik Pattanayak
For the appellant in MAT 957 of 2022 & MAT 993 of 2022.	: Mr. Amales Ray Ms. Mousumi Bhowal
For the appellants in MAT 954 of 2022 & MAT 955 of 2022	: Mr. Srijib Chakraborty Mr. Subhashis Chakraborty Ms. Sayanati Sengupta Mr. Jamiruddin Khan Ms. Susmita Singh Mr. Anil Chowdhury
For the Respondent/ Writ Petitioner in MAT 950 of 2022 and MAT 956 of 2022.	: Mr. Bikash Ranjan Bhattacharya Mr. Firdous Samim Ms. Gopa Biswas
For the Respondent/ Writ Petitioner in MAT 898 of 2022, MAT 912 of 2022, MAT 921 of 2022, MAT 924 of 2022, MAT 929 of 2022, MAT 929 of 2022, MAT 938 of 2022, MAT 941 of 2022, MAT 942 of 2022, MAT 950 of 2022, MAT 954 of 2022, MAT 955 of 2022, MAT 957 of 2022,	: Mr. Bikash Ranjan Bhattacharya Mr. Sudipta Dasgupta Mr. Bikram Banerjee Mr. Arka Nandy Mr. Sutirtha Nayek

MAT 963 of 2022,
 MAT 968 of 2022,
 MAT 969 of 2022,
 MAT 973 of 2022,
 MAT 990 of 2022,
 MAT 993 of 2022.

For the State in all the matters. : Mr. S. N. Mookherjee, Ld. A.G.
 Mr. Sirsanya Bandopadhyay
 Mr. Arka Kumar Nag

For the Respondent No.10 in MAT 956 of 2022. : Ms. Mousumi Hazra

For the CBI in all the matters. : Mr. Billwadal Bhattacharyya
 Mr. Arijit Majumdar

For the Respondent No.12 in MAT 924 of 2022. : Ms. Deboleena Ghosh

Heard on : 19.07.2022

Judgment on : 02.09.2022

Subrata Talukdar, J.: This batch of appeals primarily arise from two writ petitions being WPA 7907 of 2019 (*Ramesh Malik and others vs. the State of West Bengal and others*) and WPA 9979 of 2022 (*Soumen Nandi Vs. the State of West Bengal and others*).

Several orders dated the 13th of June 2022, 15th of June 2022, 17th of June 2022, 20th of June 2022 and lastly the 21st of June 2022 as passed by the Hon'ble Single Bench in the aforesaid two writ petitions are under challenge in these appeals.

In their respective writ petitions, the writ petitioners, *inter alia*, claim to be candidates who appeared for the *Teachers Eligibility Test, 2014* (for

short *TET-2014*). The writ petitioners have alleged that although they appeared for *TET-2014* in 2015, no merit list containing the marks of candidates and indicating their respective *inter se* merit positions was ever published. The writ petitioners came to know of the further fact that an additional panel of 273 candidates had been prepared by the West Bengal Board of Primary Education (for short *the Board*). The first panel of the so-called successful *TET* candidates was published in 2016 and thereafter an additional panel was published on the 4th of December, 2017.

The writ petitioners contend that there is no provision in law for *the Board* to prepare an additional or second panel. The writ petitioners also contend that deep suspicion surrounds the appointments granted to only 269 candidates who were part of the so-called additional panel. The writ petitioners claim that they have reliably learnt of the fact that one additional mark was illegally granted to 273 candidates for the purpose of facilitating their appointments as primary teachers. The writ petitioners question the grant of one additional mark to only 273 candidates out of a total of 23,00,000 (Twenty Three Lakh) candidates who appeared for *TET-2014*, out of which 1.25 lakhs were declared qualified. It is contended that such appointments lack in transparency and therefore require to be investigated in view of the suspicious circumstances prompting the grant of one additional mark to only 273 candidates without any public announcement for the grant of such additional mark which purportedly resulted in the preparation of the second panel.

The Hon'ble Single Bench *proceeded to take the proverbial bull by its horns* and by a series of orders held as follows:

“13. 06. 2022 WPA 7907 of 2019

Ramesh Malik & Ors.

Vs.

The State of West Bengal & Ors.

1. The petitioners have alleged that some persons – names and other particulars of whom have been given in the writ application and in the supplementary affidavit affirmed on 9th June, 2022 filed today before this court - have been given appointment though they have not qualified in TET, 2014. For getting a service in a primary school as a teacher a candidate must have passed in Teacher Eligibility Test (TET in short). The petitioners have further alleged that 23 lacs candidates appeared in TET, 2014 and one panel was published for giving appointment of more or less 42,000 candidates as primary teachers. The petitioners have expressed serious suspicion about the legality and correctness of publication of such panel.

2. By filing the supplementary affidavit as aforesaid it has been submitted that though the panel was published in 2016 a further panel named - additional panel - was published on 04.12.2017 and the document annexed in the supplementary affidavit is only in respect of the said additional panel District Hooghly wherein not only one candidate Supriyo Sarkar who was not a qualified candidate in TET was named in the second panel and got appointment but also other candidates totaling to 68 candidates in the district of Hooghly have been given appointment by publishing the second panel or the additional panel.

3. In reply to a question asked by this court, learned advocate for the West Bengal Board of Primary Education ('the Board', for short) has submitted that though there is no provision in the relevant law for publishing another panel but if situation arises and if it is found necessary by the Board, it can publish a

second panel and such necessity was felt because of demand of large number of candidates demonstrating before the Board's office and the Board decided to send the question and answers of TET, 2014 to some expert and the expert found that one question and its answer in TET, 2014 was wrong. Therefore, the Board decided to give one mark to the agitating candidates who filed applications for reconsideration of their marks in TET 2014 with their testimonials including their training qualifications. This submission of training qualification is also a doubtful question keeping in mind the other TET qualified candidates.

It is an admitted position that there was no public announcement either in the website of the Board or in any newspaper that such application with testimonials can be made to the Board and the Board would consider such testimonials.

4. Therefore, I find that in the first place there was no provision in the relevant law for publication of a second panel and secondly the entire procedure for accepting the testimonials of the persons who filed their applications before the Board for reconsideration of their TET, 2014 examination paper, is wholly illegal and a surreptitious and clandestine exercise by the Board as there was no public announcement for other similarly situated candidates. There is no reply on the part of the Board as to why other similarly situated candidates were discriminated against in filing similar applications?

5. Learned advocate for the Board has submitted that after receiving such applications from the agitating candidates only 269 candidates out of 23 lacs candidates found eligible for getting one mark each in TET, 2014 and such mark was given to them and thus they qualified and were given appointment. As the exercise of giving appointment in such a manner as aforesaid which is wholly illegal for want of any public notice wherefor other similarly situated candidates could not file similar applications and the second panel published in respect of every district (may be by similar letter bearing memo no.

2884(40)/BPE/2017 dated 04.12.2017) is declared as wholly illegal and void ab initio for want of any such provisions of publishing a second panel these 269 candidates who have been given appointment through the said illegal and void second panel are to be immediately terminated by the Board by issuing letters intimating that they shall cease to be teachers of primary schools with immediate effect and the concerned District Inspector of Schools (Primary Education) shall not pay any salary to them from tomorrow onwards. Those 269 candidates shall not be allowed to enter into their respective school premises from tomorrow and shall not interfere in any manner whatsoever in running of the primary school concerned. The salary they have received in the meantime is to be refunded by them but for that separate order will be passed at a subsequent stage.

6. Learned advocate for the petitioners has raised a point that because of such illegalities and other irregularities of the Board they have no faith upon the West Bengal Board of Primary Education and they have prayed that the result of the TET, 2014 was sent to National Informatics Center ('NIC', for short) by the Board is to be kept in fully secured manner and it shall not be interfered or tampered with or altered in any manner whatsoever.

I hold that if such prayer is allowed none of the parties will be adversely affected and accordingly such prayer is allowed and NIC is directed to keep the database as referred above untouched and fully secured.

I direct the petitioner to add NIC as a party respondent in this proceeding in course of the day and to communicate this order to them.

7. Though the police force of this city and of this State is competent enough to investigate such corruption and though I am satisfied about their capability I cannot give the responsibility of investigation of this corruption, prima facie case of which has been established, upon Kolkata Police or State Police as because they are controlled by some politically and otherwise influential persons and it is impossible for them to investigate the corruption in

this matter in a fair and unbiased manner. This police force is under a department of the State government and as they do not have any free hand in the investigation of the corruption but their hands are tied by politically influenced persons of this State. I have to give the responsibility of investigation and interrogation of the related persons to such corrupt appointments to some other investigating agency and I decide to give this responsibility to Central Bureau of Investigation. Here the President of the West Bengal Board of Primary Education is an elected member of West Bengal Legislative Assembly who has returned from his constituency as a candidate of the political party which is the ruling party of this State.

8. In view of the illegality committed in respect of the second panel (termed as Additional Panel, by the Secretary of the Board), which is wholly illegal and giving illegal appointment to 269 candidates by a queer method unknown to law, I direct the Central Bureau of Investigation ('CBI', for short) to start investigation by registering a case immediately against the Board and start interrogating the President of the West Bengal Board of Primary Education, Dr. Manik Bhattacharya, and the Secretary of the said Board Dr. Ratna Chakraborty Bagchi, which shall start today itself. I direct the petitioners to add Dr. Manik Bhattacharya, the President of the West Bengal Board of Primary Education and Dr. Ratna Chakraborty Bagchi, the Secretary of the said Board as party respondents and they are to go to the CBI office at Nizam Palace by 5:30 p.m. today to face interrogation.

9. It is made clear that if they do not co-operate with CBI, CBI shall have every liberty to interrogate them after taking them into custody.

10. CBI shall contact NIC immediately to seize the database of the TET, 2014 candidates published by the West Bengal Board of Primary Education by tomorrow (14.06.2022) and to submit a short report in this court about the registration of the case, initiation of the interrogation of the two persons added today in this proceeding (named above) and

taking into custody of the database of the TET, 2014 candidates day after tomorrow at 2 p.m.

11. If CBI feels that in respect of this matter an independent case is not required to be registered apart from the other case involving the Board which has already been registered, as has been told by the petitioners, CBI need not register a new case.

12. I grant liberty to the petitioners to communicate this order immediately to the Joint Director of CBI having his office at Kolkata by email, over telephone and other modes of communication and I direct the learned advocate for the Board to communicate the President of the Board and the Secretary of the Board to present themselves before CBI by 5:30 p.m. today.

The matter is adjourned till 15th June, 2022 when it will be taken up at 2 p.m.

15.06. 2022

Ct. No.17

WPA 7907 of 2019

Ramesh Malik & Ors.

Vs.

The State of West Bengal & Ors.

With

WPA 9979 of 2019 Soumen Nandy

Vs.

The State of West Bengal & Ors.

Pursuant to the direction given by this court in WPA 7907 of 2019 on 13.06.2022, Central Bureau of Investigation (CBI) has filed a report, which is kept on record, which I have perused.

2. Dr. Upendra Nath Biswas, Ex-Additional Director of CBI and also Ex-Minister of State Government from 2011-2016 has appeared personally and has made certain suggestions as to proper conduct of the investigation by CBI. His suggestions are:

(i) A Special Investigation Team (SIT) is to be constituted by CBI for investigation.

(ii) The names of the members of the SIT are required to be submitted before this court in writing by CBI who should not be engaged in any other investigation except investigating the present crime

in the appointment of school teachers and others. This will expedite the investigation.

(iii) The members of the SIT shall not be transferred without the leave of this court during the course of investigation.

(iv) The investigation should be formally declared as court monitored investigation.

3. In this regard Mr. Billwadal Bhattacharyya, learned counsel for the CBI after taking instruction from his clients present in court has submitted that CBI does not stand in the way if the court accepts the suggestions given by the Ex-Additional Director of CBI, Mr. Upendra Nath Biswas.

4. Mr. Bikash Ranjan Bhattacharyya, learned senior advocate for the petitioners has submitted that for expeditious investigation in this matter and for booking the culprits and kingpins, this is the most acceptable way within the present framework and the petitioners actually welcome the suggestions.

5. Mr. L. K. Gupta, learned senior advocate for the Board of Primary Education has submitted that court has already expressed its mind by saying that the suggestions made by Dr. Upendra Nath Biswas are quite impressive. He could not submit any further in this regard because that will yield no result. However, he submitted that in the writ application there is no allegation of criminality. At the most there are allegations of violation of Article 14 of the Constitution of India which can be redressed and in such a situation in absence of any allegation as to criminal activities by the authorities in giving appointments CBI investigation is not at all required.

6. Mr. Gupta has also filed one report in the form of an affidavit which I have perused and which is totally silent about the legality of publishing the second panel and from the statements made in the said report I cannot but hold the circumstances leading to awarding 1(one) extra mark to some candidates only that there were some agitations after giving appointments from the panel and therefore the Board decided to send the questions of TET in the face of the allegations that some questions were wrong, to one expert body which body declared

that one question was wrong are all baseless and cock and bull stories. The report is wholly silent as to the necessary facts and particulars as to such statements. This is wholly unbelievable as there was no public announcement either of preparation of second panel or filing of representations for extra marks against wrong answers and appointments after the appointments were given from the original panel. The entire activity was done surreptitiously without intimating all other candidates and the report is totally silent as to any such public announcement. It was infact admitted on the last occasion that no such public announcement was made. In fact, such report of the West Bengal Board of Primary Education shows a conspiracy and an organized crime in respect of giving employment to some handpicked persons by way of publishing second panel otherwise such selective surreptitious and illegal appointments in different districts could not have been made. Beside the kingpin other helping hands must have been there in giving such appointments. This whole activity is also required to be investigated by CBI.

7. Learned advocate Mr. Bhattacharyya objected to such submission of Mr. Gupta submitting that in the writ application there are allegations of criminality and submitted that in the writ application it has been specifically pleaded that there are illegal activities for giving appointments to some persons who were not even passed in TET but granted one mark by way of a surprising and unknown procedure by the West Bengal Board of Primary Education. This is a crime in the realm of public employment.

8. I have heard and considered the submissions including the suggestions made by Dr. Upendra Nath Biswas. After hearing I pass the following orders:

(i) The investigation by CBI in this matter being WPA 7907 of 2019 and in the other matter being WPA 9979 of 2022 shall be a court monitored investigation. It was so earlier also but such formal declaration was not there. Now such formal declaration is made by this court.

(ii) CBI shall constitute a Special Investigation Team (SIT) of competent officers who will be the only members of the SIT and whose names will be supplied to this court on 17th June, 2022 when these two matters will appear under the heading "To Be Mentioned" at the top of the list. The Joint Director who is now heading the Anti-Corruption Bureau of CBI shall be the head of the SIT whose name also shall be intimated to this court by CBI on 17.06.2022. The members of SIT and the said Joint Director shall not be transferred from Kolkata till the investigation is complete in every respect.

In respect of CBI investigation is education employment scam upto now in some other matters the investigation by CBI is not very satisfactory in the opinion of this court. The above two matters have been entrusted to CBI only few days back, but some other matters in respect of investigation in Secondary Education were entrusted to CBI some months back regarding which I have not been intimated any substantial progress. However, today learned advocate for the present D. I. G. of Anti Corruption Bureau of CBI has submitted that CBI is doing its work according to its own speed which may always not be known or disclosed to the general public. However, any such development will definitely be intimated to this court. I accept this submission but at the same time I expect that CBI will conduct the investigation in all earnest and by its action, the court should not feel that CBI is not doing any real work in future because the court has given a very very important responsibility upon CBI relating to scam in education sector appointments including school teachers which has very serious ramification because if unscrupulous persons are appointed as teachers by purchasing the teaching jobs, this court does not believe that such persons will be able to impart any moral education and build the characters of the tender aged students.

These two matters are adjourned till 17th June, 2022 and these two matters are marked as "heard-in-part".

17. 06. 2022

SA/BP

Sl. 3

Court No. 17 WPA 7907 of 2019

Ramesh Malik & Ors.

Vs.

The State of West Bengal & Ors.

1. In the order dated 15.06.2022, the number of the writ applications have been wrongly typed. It should be WPA 7907 of 2019 (Ramesh Malik & Ors.) with WPA 9979 of 2022 (Soumen Nandy). WPA 9979 of 2019 typed in the order dated 15.06.2022 is a typographical mistake and it has always to be read as WPA 9979 of 2022. This order is to be read as a part of the order dated 15.06.2022 in the above two matters which have been taken up jointly.

2. Today is the date for intimation of the Special Investigation Team members of Central Bureau of Investigation. CBI has constituted the team of six officers and six names for this Special Investigation Team ('SIT' for short) has been intimated to this court. The members of the team are:

(i) Dharamveer Singh, Additional SP, CBI, ACB, Kolkata

(ii) Satender Singh, Deputy SP, CBI, ACB, Kolkata

(iii) K.C. Risinamol, Deputy SP, CBI, ACB, Kolkata

(Learned Senior Advocate Mr. Bikash Ranjan Bhattacharya for the petitioners have requested learned counsel for CBI Mr. Billwadal Bhattacharyya to reconsider the name of K.C. Risinamol for replacing her by some other officer of similar rank).

(iv) Somnath Biswas, Inspector, CBI, ACB, Kolkata

(v) Moloy Das, Inspector, CBI, ACB, Kolkata

(vi) Imran Ashique, Inspector, CBI, ACB, Kolkata

It has been intimated by CBI by its office order dated 17.06.2022 by which the Special Investigation Team has been constituted that the SIT would investigate the cases entrusted by the Hon'ble High Court of

Calcutta under the close supervision of Head of the Branch (HOB) and Joint Director (HOZ) of CBI, ACB, Kolkata. I have noted this intimation, however, I want to make it clear that the Joint Director Mr. N. Venugopal shall be the head of the SIT meaning thereby he will supervise the investigation of SIT for the purpose for which it has been constituted.

Learned counsel for CBI has stated that regarding the third named officer of CBI he would talk to Mr. Bhattacharya and will also talk to his client for taking appropriate decision in this regard.

3. I direct the West Bengal Board of Primary Education to produce:

(i) The applications, made by 2787 candidates who wanted their OMR sheets are to be reviewed/ re-examined as they alleged that there was one question which was wrong for which they should be given full marks.

(ii) The second panel of 273 candidates spread over the State under different district primary school councils as has been stated in paragraph 13 of the report filed before this court on 15.06.2022.

(iii) The Board's resolution to send the question and the answer key to the expert committee on School Education Department, Government of West Bengal to whom it was sent to ascertain whether the question / answer key provided in TET 2014 in respect of the said question was correct or not.

(iv) The names of the members of the expert committee and the date of constitution of the said expert committee by the School Education Department, Government of West Bengal.

(v) The resolution of the Board in the meeting dated 20.11.2017 to award one mark to the unsuccessful candidates who submitted their representations along with testimonials.

(vi) The view of the department of School Education, Government of West Bengal, accepting the recommendation of awarding one mark.

All such documents are to be produced in original on 20th June, 2022 at 3 p.m. when this matter will be taken up again for further hearing.

4. Learned senior advocate Mr. Gupta has submitted that in the meantime CBI has taken some papers from the Board's office and if the above documents in original are not taken by CBI in the meantime those will be produced.

List this matter on 20th June, 2022 and it will be taken up at 3 p.m.

20. 06. 2022

SA/GB Sl. 3 & 5

Court No. 17

WPA 7907 of 2019

Ramesh Malik & Ors.

Vs.

The State of West Bengal & Ors.

With

WPA 9979 of 2019 Soumen Nandy

Vs.

The State of West Bengal & Ors.

1. On 17.06.2022 I directed the West Bengal Board of Primary Education to produce

The applications made by 2787 candidates who wanted their OMR sheets are to be reviewed/reexamined as they alleged that there had been one question which was wrong for which they should be given full marks:-

Today no such application, not even a single one, has been produced before this court. I ask the counsel for the Board as to whether these applications have been seized by CBI in course of its investigation and I am told that perhaps CBI has not seized these documents. That CBI has or has not seized such documents is not known to be the Board? Such submission is nothing but a last ditch effort to suppress fact which, if comes to light, will go against the Board. Thus it is ruled out that there was any such application by any person for review/re-examination of the OMR answer sheet.

I hold that the Board's report in this regard and the submissions made earlier as to receiving applications are wholly untrue and baseless to say the least.

2. On that day I also directed the Board to produce

The second panel of 273 candidates spread over 3 the State under different district primary school councils as has been stated in paragraph 13 of the report filed before this court on 15.06.2022:- No second panel of 273 candidates spread over the State under different district primary school councils (as has been stated in paragraph 13 of the report of the Board filed before this court on 15.06.2022) has been produced before this court despite specific direction of the this Court. What has been produced is one letter signed by one R. C. Bagchi, Secretary of the Board dated 04.12.2017 with a computer generated list containing names and roll numbers of persons as a panel. I wholly disbelieve that this is a panel. Therefore, there is no existence of the said second panel. A panel in original without the signature of authorized person is not a panel. In such a case nobody takes the responsibility of the names of empanelled persons and several such lists of names can be shown as a panel. This is absurd.

3. In this regard learned advocate for one of the petitioners Mr. Dasgupta has drawn my attention to some Rules of West Bengal Primary School Teachers' Recruitment Rules, 2016 ('Recruitment Rules' in short). Under Rule 7 of the said Rules, he has submitted, there should be a selection committee for 4 the purpose of selection of eligible candidates and the preparation of panel. In such produced documents stating that it is a panel, there is no whisper of such selection committee or panel prepared by the Committee. Mr. Dasgupta also submitted from Rule 8 of Recruitment Rules that the selection committee makes the prima facie scrutiny of the duly filled application forms submitted by the candidates having qualifications which has not been done for preparation of the second panels; as it could not be done also because preparation of second panel was not at all permitted under the Recruitment Rules.

4. In this regard Mr. Gupta, learned senior counsel for Board has submitted that Board not only has the power but also has the duty to publish more than one panel if Board finds that for doing justice to the

candidates who have not been given appointment, such publication is required. However, from Rule 2 (f) which defines panel it is found that “panel means a list of names of the eligible and selected candidates for appointment as teacher in primary school, published by the Board, according to Rules”. Mr. Gupta has submitted that though expression is ‘a list’ in the definition clause, under the General Clauses Act singular includes plural and this ‘a list’ means several 5 lists and more than one list.

5. I am not ready to accept such submission because applying the golden Rule of interpretation of statute, which is also applicable for interpretation of Statutory Rules, there is no doubt that a list of names of the eligible and selected candidates for appointment would be published by the Board. There is no scope for holding that ‘a list’ in this Rule means more than one panel. Had that been so there was no impediment for the Rule makers to make such clarification. ‘A list’ is not an expression which can be interchangeably used with ‘list’. ‘A list’ means one list and only one list. From the Recruitment Rules no other meaning can be given to the expression ‘A list’.

6. On that day (17.06.2022) I also directed the Board to produce the Board’s resolution to send the question and the answer key to the expert committee of School Education Department, Government of West Bengal to whom it was sent to ascertain whether the question / answer key provided in TET 2014 in respect of one question was correct or not.

Some papers terming it as the Board’s Resolution have been produced before this court from which it appears that the documents prepared on those papers if at all created in the year 2017 would not have been so bright and also the hand writing of so-called experts including the Board’s proceedings would not have been so clean without any dust or sign of any dusting in last 5 (five) years. I direct CBI to take original of these papers as has been produced for sending it to Central Forensic Science Laboratory to know whether the page numbers one

to forty were actually prepared in the year 2017 (i.e. if those were five years old) or new.

(I have given direction to learned advocate Mr. Biswas for the Board to paginate those papers by ink and to hand it over to this court again after pagination, which has been done.)

7. Apart from the above it is found that there was existence of no such expert committee for examining the questions and its answers to opine whether it was wrong or right. One expert committee was constituted in the year 2011 consisting of 21 persons for the purpose of syllabus and curriculum etc. tenure of which committee was extended from time to time but this committee never was given any power or authority to examine the questions and answers of any examination to opine whether the question and answer was correct or not. Therefore, the story built up by the Board as to sending the question and 7 answer to an expert committee is wholly fabricated. There was no such committee at all. From the Gazette Notification dated 3rd August, 2011 it is found in another set of documents which have been handed over in respect of other requisition of documents made by this court in paragraph no. (iv) of order dated 17.06.2022. Apart from the above, it is found from the Board's so-called proceedings that except the President of the Board none of the members present in the said meeting dated 20.11.2017 has signed in the resolution taken. It is not understood why a proceeding of the Board will not be signed by the members present as members of the Board.

8. The names of the members of the Board present apart from the President are (i) Sister Emilia of Loreto RC, PTTI (ii) Sri Panchanan Roy, Sidhabari New Primary School, Jalpaiguri (iii) Sri Debojyoti Ghosh, Nilima Prathamik Vidyamandir, New Dum Dum Circle.

I direct the above named three persons to be added as party respondents in this matter is the address of the West Bengal Board of Primary Education. The above three persons are directed to file separate

affidavits stating why they did not sign the proceedings of the emergent meeting held on 20.11.2017. The petitioners are directed to add these 8 three persons as party respondents in the address as has been stated above immediately and after receiving their residential addresses from the Board the residential address would be put by way of amendment of cause title by the petitioners for which liberty is granted.

9. In my order dated 17.06.2022 I gave direction to produce the names of the members of the expert committee and the date of constitution of the said expert committee by the School Education Department, Government of West Bengal:-

10. In this regard I have found the names of only two persons: one is Mr. Abhik Majumder and the other is Ritwik Mallick. In the bunch of papers where the proceedings of the emergent meeting of the Board has been attached at the first page (pagination whereof has been done till page 40) I find that there is a date of 16.11.2017 signed by those two experts of the so-called expert committee but the said proceedings say that on 20.11.2017 a meeting was held in the chamber of the President (of the Board) and there is no reference that on 16.11.2017 some opinion was given by the said so-called expert-committee. However, one expert Mr. Ritwik Mallick has signed on a white paper without any date giving his opinion and another expert 9 Mr. Abhik Majumder has signed on two papers (his Letterheads) giving date as 23.11.2017. But these papers show that all those papers used by Mr. Ritwik Mallick and Mr. Abhik Majumder are very fresh and clean and without any sign of any dusting which raises a serious doubt in my mind as to whether these documents were signed contemporaneously in the month of November, 2017. There is no sign of natural aging of those papers for last 5 years or so.

I also direct the CBI to send these bunch of papers to Central Forensic Science Laboratory to obtain a report as to the age of the papers and the ink and signature thereon. In any event the expert committee

was constituted on 3rd August, 2011 by 21 persons. Thereafter the constitution of the committee was changed from time to time and extension was given on several times but this court and this matter do not have any relationship with such expert committee of 21 members or so and their functions as to curriculum, syllabus and text books for primary, secondary and higher secondary courses formulated by the respective Boards and Councils as appears from the said Gazette Notification dated 3rd August, 2011. Therefore, the so-called expert committee for giving an opinion or correctness of a question of question and answers is a 10 big hoax given to this court by the Board for clearly misleading the court which has not been possible as the fully untrue statements are fully exposed from produced documents. The said expert committee was constituted with 21 members for seeing syllabus etc. but the Board's story only speaks about the above named 2 (two) persons out of 21 persons and these two persons was not at all a two-persons-committee. The President of the Board is not only making those misleading and untrue statements but also there are a conscious effort on the part of the Board's President to hoodwink this Court-if possible.

This Court has taken very serious exception to this dishonest and sharp practice on the part of the Chairman of the Board. 11. On 17.06.2022 I directed the West Bengal Board of Primary Education to produce the resolution of the Board in the meeting dated 20.11.2017 to award one mark to the unsuccessful candidates who submitted their representations along with testimonials:-

In this regard I have already expressed my doubts as to the meeting where the members of the Board other than the President did not sign in the resolution and, therefore, I have called for affidavits from the three members who attended the said meeting and as of now 11 this court is not ready to believe that any such proceeding was at all held because of the prima facie observation that such resolution was not signed by the other members present as aforesaid and some documents have been shown which are

fresh, clean and without any sign of dust. A document or some documents of nearly five years old are so clean and so dustless that it is difficult to believe that it was created contemporaneously i.e. in the month of November, 2017. Those papers/documents are to be sent to CFSL for a report as indicated above.

12. By my order dated 17.06.2022 I directed also to intimate the view of the department of School Education, Government of West Bengal, accepting the recommendation of awarding one mark as has been stated in the report filed by the Board.

In this regard one note sheet has been produced before me with prominent signature of the President and the two identical signatures of one person and it is not understood who is he and one signature of J. S. (E.E.) dated 22.11.2017. Though the learned senior counsel for the Board has submitted that this is the signature of the then Education Minister of West Bengal and thus the Board wants to show that the Department of School Education 12 expressed its view in favour of giving one mark to the candidates in respect of whom the second panel (which is quite illegal) was published.

In this respect I am of the view that in the Government's note sheets of government departments if something is approved, the word "approved" is prominently written and thereunder the authorized officer including, where necessary, the Minister-incharge puts his signature. In this note sheet there is no such approval. I am not ready to believe that such an endeavor to give one mark to the 273 persons were at all approved by the Department of School Education, Government of West Bengal. The Board has clearly made one untrue statement as to government's approval for giving one mark to some candidates.

13. I directed the Board to produce all documents in original and only two documents purported to be original have been produced but I disbelieve it for the reasons stated. In respect of other four documents, two were not produced at all and in respect of other documents what has been produced are not original

documents but the Board tried to pass them off as the original documents and the panel which has been shown as the second panel is not a panel at all, first for the reason that there is no power of the Board to 13 publish a second panel and secondly a panel is prepared by a selection committee of the Board and not by the Board.

14. Learned advocate Mr. Firdous Samim has submitted that the marks obtained in TET by the candidates does not have a direct relationship with their selection because on the basis of the marks of TET only a percentage of marks is given and the 273 persons were unsuccessful candidates of TET and under no circumstances and under no law they were required to be given one mark for declaring them as successful and, therefore, appointment in different vacancies is wholly illegal.

15. In this regard though I invited the Board to make submissions, Mr. Gupta has submitted that in this regard Board would not make any submission. Mr. Gupta wanted to file one affidavit and in my view no affidavit is required in respect of failure to produce the original documents as the documents produced speak for themselves and some statements have already been filed as a report and today on the basis of the report some documents were to be produced as was directed by Court. This court does not require any further affidavit on the same facts and issues.

16. In the facts and circumstances as aforesaid I find that 14 the President of the West Bengal Board of Primary Education is responsible for filing the documents most of which are purportedly not original and those which are original are seriously doubtful and some documents are fully incoherent in the backdrop of the direction given by this Court to the Board on 17.06.2022.

I hold the President of the West Bengal Board of Primary Education is fully responsible for misleading the Court and making a dishonest and unscrupulous attempt in producing documents most of which were not original and some which are highly questionable and there is blatant lie in respect of the expert committee as no such committee was constituted at

all for giving opinion as to a question and answer whether it was right or wrong. There was no approval of the government in respect of awarding one mark to some candidates-this is another false statement by the President of the Board.

17. Section 20 of West Bengal Primary Education Act (the Act, in short) shows the power and duties of the Board. Sections 23,24,25,26 26A and 26B shows that in all of the committees named in those sections of the Act the President of the Board is the first number. Therefore I hold that the President of the Board responsible for 15 such dishonest Act and without the President's instruction the Secretary cannot work. The Secretary is fully controlled by the President. Therefore, I hold that the President of the Board is responsible for producing misleading statements, committed conspicuous illegality in preparing the illegal second panel and giving appointment, creating a hoax about the expert committee- which are all unscrupulous acts committed by the President of the Board. Such a person cannot remain the President of a statutory authority. He is wholly unfit for the post of President of the Board.

Therefore, this court removes Mr. Manik Bhattacharya from the post of President of the West Bengal Board of Primary Education forthwith and I direct the Government to appoint any other fit person as President of the Board and till the new President is appointed, the Secretary of the Board namely, Ratna Chakraborty Bagchi will perform the function of the President of the Board.

18. This Court shall not tolerate such an unscrupulous person as President of West Bengal Board of Primary Education.

19. I also direct said Manik Bhattacharya to appear before this court personally tomorrow (21.06.2022) at 2 p.m. for facing some questions from this court.

20. Learned advocate for the petitioners has prayed for copies of the documents which have been produced today which will be given to them later and all the documents handed over to this court today will be handed over to CBI for taking further steps by

Central Forensic Science Laboratory and for other purposes.

21. Learned advocate Mr. Gupta has submitted for the Board that when CBI is enquiring into the matter, the court should not enquire further in the some matter which, in my view, is wholly baseless submission because the aspect which is being seen by the court in respect of the documents were directed to be produced after going through the report filed by the Board and such action of production of original of same documents are not interfering with the investigation by CBI.

22. The matter will be heard further tomorrow at 2 p.m. and I direct the learned advocate for the Board to intimate Mr. Manik Bhattacharya to appear personally before this court tomorrow.

List this matter tomorrow at 2 p.m.

Court No. 17

21.06.2022

(AD 412 & 413)

(BP/ S. Banerjee)

WPA 7907 of 2019

Ramesh Malik & Ors.

Vs.

The State of West Bengal & Ors.

with

WPA 9979 of 2022

Mr. Manik Bhattacharya is present in court today.

He has been asked some questions which have been answered and recorded verbatim.

The court directs him to file affidavits of assets of moveable and immovable assets of him, his wife, his son and his daughter-in-law by two weeks from date, i.e., by 5th July, 2022. In respect of his daughter the cut off date will be up to the date of her marriage.

I asked him some questions under Section 165 of the Indian Evidence Act, 1872 and asked the parties to cross-examine the witness if they so desire.

Mr. L. K. Gupta, learned senior advocate for the Board: Mr. Billwadal Bhattacharyya, learned advocate for CBI and Mr. Sirsanya Bandyopadhyay, learned advocate for the State, have declined to cross-examine Mr. Manik Bhattacharya.

However, Mr. Bikash Ranjan Bhattacharya, learned senior advocate for the petitioners, has submitted that he will keep his right reserved to cross-examine Mr. Manik Bhattacharya and he will examine him after receiving the affidavits of assets, as has been directed by this court.

List this matter on 5th July, 2022 when it will be taken up at 2 p.m.”

In the backdrop of the narrative above, in these appeals the appellants challenge each and all of the successive orders passed by the Hon'ble Single Bench on several grounds, which are as follows:

Appearing for *the Board*, Mr. L.K. Gupta and Mr. Kishore Dutta, both Learned Senior Counsel, submit that the Hon'ble Single Bench was overzealous in suspecting a cash-for-jobs nexus in granting the 269 additional appointments. Learned Senior Counsel clarify that the results of *TET-2014* were evaluated on a logical basis. It is submitted that while 23,00,000 (Twenty Three Lakh) and odd candidates applied for *TET-2014*, only 20,00,000 (Twenty Lakh) candidates actually appeared for the examination.

Out of the 20,00,000 (Twenty Lakh) candidates who appeared for the examination, 1,25,000 (One Lakh Twenty five thousand) candidates were found to be qualified. Considering the vacancy position prior to 6th of September 2017, being the date notified by the Government of India for

henceforth appointing trained candidates only as primary teachers, 11,000 (Eleven Thousand) trained candidates and 29,358 (Twenty Nine Thousand Three Hundred and Fifty Eight) untrained candidates were appointed as primary teachers on the basis of *TET-2014*.

It is therefore submitted that as on the date of the Notification of the Government of India on 6th September, 2017 directing appointment of only trained candidates as primary teachers, *the Board* had already appointed a total of 40 thousand and odd trained and untrained candidates as primary teachers. Hence after 6th of September 2017, *the Board* was under an obligation to appoint only trained candidates as primary teachers. Out of a total of 42,949 (forty two thousand nine hundred and forty nine) vacancies advertised for intake in *TET-2014*, with 40,000 (forty thousand) and odd candidates already having been appointed - both trained and untrained - there remained 2,500 (Two Thousand Five Hundred) odd vacancies to be appointed from only out of the trained candidates.

Learned Counsel for *the Board* further submit that *the Board* thereafter took upon itself the task of segregating the trained and untrained candidates from the representations received from 2787 candidates. After the segregation, 273 candidates only were found to be trained but did not possess the qualifying mark. It was uniformly found by *the Board* that these 273 trained candidates needed only one mark to reach the qualifying mark fixed for *TET-2014*.

It is then submitted that *the Board* appointed an Expert Committee. The Expert Committee found that one question in *TET-2014* namely,

Question No. 6, had both Option B and Option A out of the 4 Options A, B, C and D, to be the correct answers. Accordingly, the Expert Committee decided that since two Options of the same question could be described as the correct answer to the said question, one additional mark was resolved to be awarded to the candidates who attempted Option A instead of the officially recognized Option B. *The Board* therefore takes the position that since it was mandatory to follow the instructions issued by the Notification dated 6th of September, 2017 to appoint trained candidates, the single mark was awarded in favour of candidates who were otherwise eligible being trained but fell one short of the qualifying mark. *The Board* accordingly decided to constitute the additional panel of 273 candidates who were granted the said one additional mark.

It would be now relevant at this juncture to take notice of the further submissions made by Learned Counsel for *the Board* that these 2787 candidates were agitating before the office of *the Board* for reconsideration of their marks position or, had filed representations. The said one additional qualifying mark was therefore granted to the agitating candidates and the foundation behind the grant of the said one additional mark stands as already discussed as above.

Learned Counsel for *the Board* therefore assert that by granting the single additional mark, an error which had crept into the question paper of *TET-2014* had been simply rectified. It is submitted that rectification of an error by the process as narrated above does not involve any criminality. It was therefore wholly unnecessary on the part of the Writ Court to supersede

the exercise conducted by *the Board* and order a criminal investigation. It is submitted that at the highest the case of the writ petitioners could be one of discrimination but, not one which involved a criminal motive on the part of *the Board* and its Officers. The Hon'ble Single Bench had thoroughly misdirected itself by holding, *inter alia*, that the entire exercise of appointments of the 269 candidates was in the nature of a public employment scam.

It is submitted that in none of the writ petitions before the Hon'ble Single Bench, the writ petitioners could claim that they were identically circumstanced as the 273 candidates and had fallen short of the one qualifying mark. None of the writ petitioners could claim to be eligible as trained candidates deserving of the appointments.

Learned Counsel for *the Board* further submitted that *the Board* had to take steps for the grant of one mark to the eligible candidates since a section of the candidates had filed representations and commenced an agitation demanding that steps be taken to rectify the anomaly arising out of two possible answers to Question No. 6 (*supra*). It is therefore submitted that no criminality or illegality can be imputed to the said action of *the Board* to carry out the necessary rectification. At the highest, arguably, the writ petitioners can cite a ground of discrimination but not of hostile criminal action.

Learned Counsel for the Board rely upon *2021 SCC Online Sc 1274 at Paragraphs 11 and 12* to demonstrate that a decision taken by a Selection Committee and/or experts to award marks in respect of any wrong question

or answer must be judicially assessed on the basis of well-known inputs. It is submitted that in 2018) 7 SCC 254 at Paragraphs 6 and 14, the Hon'ble Supreme Court did not interfere with the decision of the Hon'ble High Court which had declined to judicially review the findings of experts for award of marks.

It is argued on the strength of 2014) 4 SCC 513 at Paragraphs 16 to 18 that unless the affected party making allegations against a highly placed person approaches the Police with his complaint or, alternately, can produce incriminating documents before Court, the Writ Court would not step in to assist such a so-called affected party merely on the basis of bald pleadings. Also relying on 1994) 2 CHN 458 at Paragraphs 4 and 5, the Board submits that there can be no parallel investigation by the Court, once investigation has been handed over to the Police or CBI. It would be also improper for the Court to rely on isolated pieces of evidence for reaching a conclusion.

It is submitted that the parameters for an investigation by the CBI have been well-settled in 2002) 5 SCC 521 at Paragraphs 5 and 6, 2016) 7 SCC 597 at Paragraphs 9 and 12 and 2019) 6 SCC 777 at Paragraphs 14, 20, 21 and 22. It is thus argued that the orders of the Hon'ble Single Bench as impugned in these appeals are not sustainable.

Learned Counsel for the Board rely upon a chart showing that even if the writ petitioners were granted six marks and not one mark following the decision of the Hon'ble Single Bench in WP 23006(W) of 2017, they would not have qualified for TET-2014.

It is submitted by Learned Counsel for the Board by relying on MAT 1461 of 2018 along with its connected applications *In Re: Basir Ahmed vs. Prativa Mondal and others vide* a Judgement and Order of the Coordinate Hon'ble Division Bench dated 5th February 2019, that leave to appeal was not granted to the appellant in MAT 1461 of 2018 who challenged the order of the Hon'ble Single Bench granting six marks dated 3rd October 2018 in WP 23006 (W) of 2017, on the ground that the appellant, i.e. Basir Ahmed, was not a party to the original writ petition and the relief in the original writ petition, i.e. WP 23006 (W) of 2017, is confined to only the said writ petitioners.

However, by the order of the Hon'ble Apex Court dated 1st April 2019, the appellant in MAT 1461 of 2018, Basir Ahmed, who was denied the leave to appeal by the Coordinate Hon'ble Division Bench(*supra*) was permitted to pursue his remedy before the Hon'ble High Court in the appeal filed by the Board against the order dated 3rd October 2018 (*supra*). Accordingly, several writ petitions of similarly circumstanced candidates are pending for consideration along with the parent appeal of the Board to the order dated 3rd October 2018.

Mr. Milan Bhattacharyya, Mr. Pratik Dhar, Mr. Ekramul Bari, Mr. Sandip Bhattacharyya, Mr. Asish Kumar Choudhury, Mr. Gourab Das, Learned Senior Counsel and Learned Counsel respectively appearing on behalf of the said 269 candidates who were appointed on the basis of the said additional one mark and thereafter their services abruptly terminated by the Order of the Hon'ble Single Bench dated 13th June, 2022 (*supra*),

submit that the Hon'ble Single Bench granted reliefs which are over and beyond the pleadings in the writ petitions. The only prayer made in the writ petitions, if at all such prayer can be said to exist in law, is for cancellation of individual appointments of the said 269 candidates. It is submitted that the subject matter of the writ petitions lies purely in the realm of private law and no public law element can be deduced therefrom.

It is argued that the orders of the Hon'ble Single Bench have been passed even in the absence of the parties affected by such order, such as the 269 candidates. It is pointed out that the Hon'ble Single Bench ought to have first offered an opportunity of hearing to the affected parties. It is submitted that substantial adverse action in respect of the said 269 appellants were taken by the Hon'ble Single Bench on the first day of the hearing itself, i.e. on the 13th of June, 2022. The validity of the action of the Hon'ble Single Bench is questioned on the ground that even the Expert Committee claimed to have been nominated by *the Board* had not been impleaded as a party respondent. It is argued that it is not the responsibility of the Hon'ble Single Bench to manage school affairs.

It is submitted that the grant of the said additional one mark was a policy decision of the Government. Such policy decision was consciously taken by the State in view of the *mistake* committed by *the Board* apropos the grant of one mark in respect of the possible answers to Question No. 6.

It is argued that the policy decision of the State to grant the said additional one mark is not under challenge in the writ petitions. The writ petitioners have also not asserted their claim to be trained candidates and

more meritorious deserving of appointments over and above the 269 appointed candidates. It is submitted that the Hon'ble Single Bench could not have passed an order *in rem* in view of the nature of the individual prayers made in the writ petitions.

It is argued that the Hon'ble Single Bench abused the jurisdiction vested in it by law by granting a final relief to the writ petitioners at the interim stage. It is submitted that the said 269 candidates, being trained candidates, cannot be removed at the stroke of a pen. Each of the candidates has been continuing in service now for almost 3 to 4 years. There is a provision for *deemed confirmation* in service of candidates at the end of 2 years from the date of their substantive appointments.

The writ petitions are barred by time, having been first filed only in 2019 and fallen for consideration before the Hon'ble Single Bench in 2022, i.e. far beyond the period relevant to finalise the exercise of recruitment. It is argued that the writ petitions deserve to be dismissed at the threshold. The writ petitioners cannot claim themselves to be equally circumstanced as the trained candidates.

The appellants also argue that law provides that *the Board* can constitute an additional second panel. In this connection reliance is placed on the Notification dated the 13th of August 2012 issued by the State. It is submitted that the cause-of-action, if at all admitted to exist in favour of the writ petitioners, arose in 2015 when the *TET-2014* examination was actually held. It is submitted that no reason is made out for a direction upon the

National Informatics Centre (NIC) to block the computers of *the Board* 7 years after the holding of the examination.

The role of a former Minister of the State' ruling party, Mr. Upen Biswas, in giving evidence before the Hon'ble Single Bench at the end of 7 years of the holding of *TET-2014* cannot be justified. It is argued that the order of the Hon'ble Single Bench has resulted in a failure of natural justice. It is submitted that the functions of Courts and Police are distinguishable.

It is submitted, by relying on the example of one of the terminated candidates, Mr. Supriyo Sarkar, that the Hon'ble Single Bench ought to have distinguished the situation of *bona fide* trained candidates comprising the 269 appointed candidates, who ought to have been heard before their services were terminated. It is submitted that the Hon'ble Single Bench totally misapplied the provisions of Section 165 of the Indian Evidence Act, 1872. Section 165 of the Evidence Act permits a Court to record evidence subject to certain statutory conditions.

It is submitted that appointees like Supriyo Sarkar, whose services *were* terminated, are not either in the nature of ineligible candidates or, persons accused. Therefore, the Hon'ble Single Bench had little justification to snatch their service without giving them an opportunity of being heard. It is clarified that there can be no removal of confirmed teachers without following due process. The Hon'ble Single Bench has passed drastic orders moving from one date to another quick date, denying the appellants even the minimum window to respond. To the utter prejudice of the appellants, they were not even made parties to the writ petitions.

Learned Counsel for the appellants rely on 2008) 4 SCC 619 at Paragraph 56 to 66 to stress the point that a Writ Court cannot conduct a roving enquiry into all factual aspects. The High Court cannot engage itself into a fact finding exercise and, in a selection process where thousands of candidates are involved, the High Court should be cautious in relying upon the statements of unsuccessful candidates and thereby substitute itself for the Selection Committee.

Also relying on 2000) 5 SCC 262, the appellants submit that a *bona fide* action on the part of a Selection Board, though mistaken, cannot be a ground for interference by the Writ Court having the effect of striking down the selections already made.

Relying on 1995) 5 SCC 486 it is submitted that the results of a selection on merits cannot be challenged by candidates who took a chance to get selected and ultimately found themselves to be unsuccessful. It is argued that while deciding on an issue connected to such large scale selection exercise, the Writ Court cannot convert itself into an appellate body. It is further pointed out by the appellants on the strength of the authority reported in 2003) 7 SCC 285 that unless concrete and relevant materials disclosing widespread infirmities of a pervasive nature can be shown to have undermined the selection process as a whole, there can be no justification to cancel the appointments of the selected candidates. It is submitted that the *Doctrine of Proportionality* mandates that no unreasonable steps be taken which will affect and/or prejudice the

appointed candidates who have participated and emerged successful in the selection test and thereby altered their position.

Also relying on 1996) 3 SCC 587, 2010) 10 SCC 707 at Paragraphs 20, 30 and 32, 2014) 16 SCC 187 at Paragraphs 3, 4, 6, 8, 10 and 13 and 2016) 2 SCC 779 at Paragraphs 15, 21, 33.5 and 34, the appellants submit that no prejudicial order can be passed against the selected candidates who were not impleaded as parties to the writ petition and thereby not given the opportunity of being heard.

The appellants therefore submit that procedural law as well as the substantive law mandate that in the absence of a necessary party any order passed is a *nullity* and does not have binding effect. In this connection the appellants rely upon 2004) 1 SCC 317 at Paragraph 6. Reliance is also placed on the proposition that violation of natural justice at the first stage of hearing undermines the fairness of the trial. The observance of the principles of natural justice would include protection of a person's professional reputation and reliance is placed on 1986) 4 SCC 537 at Paragraphs 17 and 18.

It is submitted on the strength of the legal authority reported in 2003) 4 SCC 557 that conformity to the principles of natural justice would include the right of a litigant to present his defence upon granting adequate time to do so. The affected party must be definitively apprised of the case which it is required to meet. Hearing upon given adequate notice in a situation where absence of both would result in adverse civil consequences are facets of fair administration of justice. It is accordingly submitted that the Hon'ble Single

Bench failed to follow the law laid down in 1996) 6 SCC 587 at *Paragraph 4*, by upsetting the appointments of the selected candidates although the selected candidates were not parties to the writ petition.

Relying on *AIR 1963 SC 786 at Paragraphs 6, 7, 8 and 9*, the appellants submit that by the order dated 13th of June 2022, the Hon'ble Single Bench drastically proceeded to grant final reliefs to the writ petitioners in violation of the principles of natural justice.

Further relying on 1986) 4 SCC 646 at *Paragraphs 4 and 6*, the appellants submit that the award of one mark being in the nature of a policy of *the Board* which was duly ratified by the State, no relief could be granted to the writ petitioners who had not challenged the policy decision. Furthermore, without following due process, the selected candidates could not be deprived of their services after they were *deemed* to have been *confirmed* on expiry of two years of service.

Mr. S. N. Mookerjee, Learned Advocate General (AG), submits that the writ petitioners have been unsuccessful in answering their *locus standi* in the context of their eligibility to get the single additional mark. It is submitted that from the gamut of arguments advanced by the appellants connected to the grant of the one additional mark, the *locus* of the writ petitioners to be eligible for the said mark could not be established. Hence the orders impugned in these appeals are axiomatically not sustainable.

Second, Learned AG submits that it has been most unfair on the part of the Hon'ble Single Bench to cancel the appointments of 269 primary teachers without the appointees being given the benefit of a hearing. Relying

on the authority of *2002) 5 SCC 533 at Paragraph 19*, Learned AG submits that any person or persons appointed through a process of public employment are entitled to expect that due process is followed at the stage when the appointments are sought to be cancelled. It is pointed out that many of the 269 appointees have been serving in their present duties for now four years and above and no failure of duties on their part has been till date reported.

Learned AG argues that the newly formulated Right of Children to Free and Compulsory Education Act, 2009 (for short the *RTE Act*) makes the imparting of education at the primary level a constitutional duty of all the stakeholders. The State as a stakeholder is required to maintain a Teacher : Pupil Ratio in accordance with the *RTE Act*. There is no finding that criminality was behind the appointments. There is also no bar upon the State Respondents to declare a valid second panel. In support of his aforementioned arguments, Learned AG relies upon the authority of *2014) 6 SCC 644*.

It is further submitted that non-publication of the process of granting the additional one mark is not incurably bad although, arguably the same may not be ideal. In fact, to grant the single mark is not the subject-matter of the writ petitions at all. In any event the Hon'ble Single Bench could not have automatically deduced that the process of selection indicates one or several criminal minds. In support of his aforementioned arguments Learned AG places reliance on *2022 SCC Online 575 at Paragraph 18*.

Learned AG strongly submits that there must be an examination of issues by the Hon'ble Single Bench before ordering an investigation by the

CBI. It is submitted that the writ petitioners were never called upon by the Hon'ble Single Bench to discharge the onus cast upon them in terms of sufficient pleadings and burden of proof. Referring to the West Bengal Primary Education Act, 1973 (for short hereinafter referred to only as the 1973 Act), Learned AG submits that the removal of Dr. Manik Bhattacharyya (for short referred to as only *MB*) is against the provisions of the 1973 Act. The removal of *MB* as President of *the Board* can only take place following the provisions of Section 9 of the 1973 Act. The removal of *MB* as the President of *the Board* by the Hon'ble Single Bench by describing him as *unfit* and *corrupt*, casts a stigma on *MB* without granting him an opportunity to defend his reputation before the Hon'ble Single Bench.

Learned AG takes the further stand that the Hon'ble Single Bench could not take recourse to Section 165 of the Evidence Act at the *drop of a hat*. It is submitted that Section 165 is Part of Chapter X of the Evidence Act and Chapter X requires evidence to be taken from witnesses at a particular stage in the trial and by following a particular procedure. Section 165 cannot be used to draw a *sword from its scabbard* at the sweet will of the Hon'ble Single Bench and to put away the *sword* again at *its will*. It is submitted that persons, including *MB*, have been interrogated by the Hon'ble Single Bench at will. No protection has been granted to the witnesses purportedly examined by the Hon'ble Single Bench under Section 165 (*supra*) from self-incriminating themselves.

The Hon'ble Single Bench ordered investigation by the CBI on the first day of hearing of WPA 7907 of 2019, i.e. on 13th of June, 2022, at a stage where no features of corruption and/or influence of political leaders was

even made out by the writ petitioners. In support of his contention that the investigation ordered to be carried out by CBI cannot pass *legal muster*, In support, Learned AG relies on the authorities of 2010) 4 SCC 513 and 2020) 14 SCC 12 at Paragraphs 47 and 52. Learned AG also relies on the authority of 1981) 3 SCC 191 for the proposition that the Court cannot act in a manner so as to create evidence before it.

Arguing for MB, Mr. Jaydip Kar, Learned Senior Counsel, places the order of the Hon'ble Single Bench dated 13th of June, 2022 at Paragraph 8 and the order dated 20th June, 2022, in support of the argument that even taking MB to be arguably guilty, the Court has to follow *due process*. The Hon'ble Single Bench cannot carry on a parallel trial by referring the investigation to the CBI and, at the same time, describing MB as *unfit, unscrupulous, dishonest* with the rider that MB submit an affidavit of assets as well as that of his family members.

Mr. Kar submits that the Hon'ble Single Bench is stretching the limits of Article 226 Jurisdiction beyond compare. *Mandamus* is a remedy which is restricted to the *lis* between the parties. However, in the facts of this case, the Hon'ble Single Bench has extended the *lis* to every possible *nook and corner*, without the 269 candidates being impleaded as parties to the writ petitions. It is also submitted that no writ of *Quo Warranto* can lie in a situation where MB is not a *usurper* to his office. It is submitted that *Certiorari* is restricted to the order impugned alone, which is made part of the records.

Therefore, Mr. Kar raises the question as to the source of the power of the Hon'ble Single Bench to act in an *indiscriminate fashion* tearing through

careers, reputation, jobs, families, social identities, not only of *MB* but of several individuals simultaneously. In support of his arguments, Mr. Kar relies upon the authorities of 2022 5) SCC 179 at *Paragraphs 17, 18*; 2003 6) SCC 675 at *Paragraphs 21, 25* and 2020 9) SCC 356.

Arguing that the approach of the Hon'ble Singh Bench is contrary to Section 81 of the Evidence Act, Learned Counsel expresses concern that the Hon'ble Single Bench has presumed that the documents filed by *the Board* are false. It is submitted that the manner of *admitting and denying* documents is laid down in the Code of Civil Procedure and the Hon'ble Single Bench cannot introduce its own procedure.

Mr. Kar submits that *the Board* is trying to make out a case that the appointment of the 269 candidates has been done through a *bona fide* process. The decision making process of *the Board* may have not been arguably ideal. However, such decision making process is not illegal. It is submitted that *MB* as the then President of *the Board*, stands by all the decisions taken by *the Board*. Mr. Kar relies on the authorities of 2001) 1 SCC 596 on the manner and scope of the Court taking recourse to Section 165 of the Evidence Act and, also on 1996) 6 SCC 234 at *Paragraphs 6 and 7* thereof.

It is submitted by Learned Counsel that the decision making process was not the personal decision of *MB*. It was the decision of *the Board*. *The Board* ought to have been given a sufficient opportunity by the Hon'ble Single Bench to explain its decision making process by way of affidavits. It is argued that the limits of judicial review have been transgressed by the

Hon'ble Single Bench in the context of this case. In support, Mr. Kar relies upon the authority of *2004) 12 SCC 390*.

Learned Counsel for MB relies on *2001) 1 SCC 596 and 1996) 6 SCC 234* on the point that the Court must exercise caution while passing disparaging remarks against a litigant.

In support of the writ petitioners, who are all respondents in the several appeals filed by *the Board*, the State and the candidates whose services have been terminated, Mr. Bikash Ranjan Bhattacharyya, Learned Senior Counsel, replies to the arguments of the appellants by submitting that the *decision to award the single additional mark was a conscious administrative decision*. Questioning the justification behind awarding one mark to only a select group of 273 candidates, the further question is raised as to the *locus* of the experts who gave the opinion that the additional one mark should be awarded to the aggrieved candidates.

Mr. Bhattacharyya points out that the decision to award the additional one mark ought to have been therefore made public so that all intending candidates could apply for the benefit. The contention of *the Board* that the one mark was granted to the 273 candidates alone considering the fact that the said candidates were agitating and representing before the office of *the Board*, does not remove suspicion behind the motive of *the Board* to exclude other candidates. It is submitted that no resolution of the Expert Committee of *the Board* independently taken was placed before the Hon'ble Single Bench. Only an investigation carried out by an appropriate forensic agency such as the CBI may reveal what prompted *the Board* to

identify the so-called agitators for grant of the single mark. It is submitted that there is a deep suspicion as to how the *agitators* came to learn of the fact that *the Board* will grant them the one additional mark. It is pointed out that although the last date of submitting applications was 7th of October 2016, applications were received up to December, 2017.

Mr. Bhattacharyya clarifies that by filing several writ petitions the issue was brought to the notice of another Hon'ble Single Bench that six questions of *TET-2014* were found to be erroneous. Accordingly, the Hon'ble Single Bench directed *the Board* to grant six marks to each of the writ petitioners.

Being aggrieved, *the Board* approached the Hon'ble Division Bench of this Court and several other candidates who were not part of the original *lis* also approached the Hon'ble Supreme Court with the prayer that they should equally get the benefit of six marks *at par* with the writ petitioners as granted by the Hon'ble Single Bench *vide* its final Judgement and Order dated 3rd October, 2018. The Hon'ble Apex Court had directed that each of the petitioners claiming to be similarly circumstanced as the writ petitioners in WP 23006 (W) of 2017 and claiming the benefit of the additional six marks as granted by the order dated 3rd October, 2018(*supra*), be tagged along with the appeals of *the Board* pending before the Hon'ble Division Bench of this Court.

Mr. Bhattacharyya expresses surprise at the fact that although the appeals of *the Board* connected to grant of six marks have been under consideration since 2017, at no point of time before this Court or the

Hon'ble Apex Court, *the Board* took the stand that it was going to grant one additional mark to the said 273 candidates. Therefore there is a *hush-hush* approach adopted by *the Board* with regard to the grant of the additional one mark and such a *hush-hush* approach persuades any reasonable mind to take the view that the appointments are vitiated by fraud, nepotism and hence in the nature of a *scam qua* a public employment exercise.

Mr. Bhattacharyya submits that although the first of the writ petitions under appeal here, i.e. WP 7907 (W) of 2019 was filed in 2019, no affidavits have been filed by *the Board* in the writ petition till it came up for consideration in 2022, although opportunity was granted to *the Board* as well as the State respondents to file their respective affidavits-in-opposition in 2019 itself. Therefore the pleadings in WP 7907 (W) of 2019 must be treated to be uncontroverted.

It is clarified by Learned Senior Counsel for the writ petitioners that not all of the so-called agitating candidates who received the additional one mark filed Right to Information Act (for short *RTI*) queries seeking the position of their results and OMR sheets from *the Board*. It is submitted that not more than 10 candidates filed *RTI* queries. Therefore, it is questioned as to how the other beneficiaries of the single mark came to learn of the fact that *the Board* was willing to award one mark to the trained candidates for the purpose of helping them to qualify in *TET-2014*.

Mr. Bhattacharyya submits that the orders of the Hon'ble Single Bench provide adequate background for giving directions to the CBI. The legal position is clarified that since none of the writ petitioners are

contenders for the post of the President of *the Board*, the question of seeking a remedy through *Quo Warranto* does not arise. It is submitted that investigation by the CBI cannot prejudice any of the parties. It is submitted that the Hon'ble Single Bench has taken recourse at the appropriate stage to the provisions of Section 165 of the Evidence Act.

Having granted each of the parties ample opportunity to present their respective cases and upon examining the materials placed, the findings of this Court are summarized as follows:

- 1.** That the issue of the alleged underhand awarding of the qualifying marks to a section of *TET-2014* candidates and their subsequent appointments to primary schools has admittedly sprung to life under the watchful eyes of the Hon'ble Single Bench. By passing back-to-back orders between 13th of June 2022 and 21st of June 2022, the Hon'ble Single Bench has set the proverbial *cat among the pigeons*.
- 2.** That each of the said Orders of the Hon'ble Single Bench which stand narrated above in this Judgement have identified the *lacuna* in the *TET-2014* qualification process. Admittedly, through each of its Orders dated 13th of June 2022 to 21st of June 2022, the Hon'ble Single Bench has sought precise answers from the respondents, particularly *the Board*. The disclosures were sought by the Hon'ble Single Bench on a need-to-know basis by producing before the Hon'ble Court hard documents in the nature of the merit list, the views of the Expert Committee, the resolutions of *the*

Board, the OMR sheets and so on, which could form the basis for awarding the single qualifying mark to the trained candidates. Admittedly again, it is apparent from the Orders of the Hon'ble Single Bench (*supra*), that the respondents and, particularly *the Board*, failed to produce hard documents and supporting data to satisfy the questions arising in the mind of the Hon'ble Single Bench connected to the fairness of the *TET-2014* procedure.

Therefore, the Hon'ble Single Bench in its objective to ensure that justice is not ultimately denied to those who claim to have been unfairly left out of the selection process, had to issue drastic directions for securing protection of the necessary data and/or records connected to *TET-2014*. Such a step, in the exigencies of the circumstances pleaded before the Hon'ble Single Bench, could not have been obviated by simply calling for affidavits. The contention of the appellants that natural justice has been denied to them cannot be accepted as an absolute proposition having regard to the facts of this Case. In this connection this Court reiterates its views expressed on the adaptability of the principles of natural justice as discussed in the Judgement and Order of a coordinate Hon'ble Division Bench in *MAT 490 of 2022*, in *Dr. Santi Prasad Sinha Vs. Laxmi Tunga and Ors.* with other appeals and holds that the ratio on natural justice as held in *MAT 490 of 2022 (supra)* has *pari materia* application to the facts of this case.

- 3.** Notwithstanding the earnest arguments of Learned Counsel for *the Board* that the single qualifying mark was awarded to trained

candidates who brought their grievances before *the Board* and such process could not be arguably faulted and no criminality can be attached to such process, the Board's theory still has gaping holes. For instance, *the Board* has been unable to satisfactorily explain as to why the process of awarding the single mark was not made transparent in the public domain. Furthermore, the directions of the Hon'ble Single Bench requiring OMR sheets to be produced, could not be complied with by *the Board*. The views of the so-called two-member Expert Committee of *the Board* were found not to be in conformity with the regular constitution of a 21 - member Expert Committee as identified by the Hon'ble Single Bench.

It has also been brought to the notice of the Court by the Respondents/Writ Petitioners that several blank answer sheets filling up only personal details of the candidates in their OMR sheets have been submitted and, even such candidates have received appointments as primary teachers. It is also on record that although the Hon'ble Single Bench directed the production of the records, including the Complete Merit Panel and the OMR Sheets, none could be produced.

- 4.** The position of facts which emerges from the above scenario is that the borderline between an *incurably bad* or a not-so *ideal* situation which ought not to be compared to a *scam* in public employment, has become progressively thinner with every adjudication. For the above reasons, to the mind of this Court, the Hon'ble Single Bench was justified in rapidly seeking records, documents and factual

answers from *the Board* and handing the forensic investigation to the CBI. Even the CBI in its Status Report submitted to this Court has given certain specific instances of illegal appointments made in *TET-2014*. Excerpts from the Status Report are required to be quoted below:

“The petitioner Shri Saumen Nandy WPA 9979/2022, has been examined on the contents of the WPA 9979 filed by him on illegalities, irregularities and corruption involved in conducting the Teachers Eligibility Test 2014 (TET 2014) and appointment of primary teachers in the schools of Government of West Bengal. He has stated that in the year 2014 he has appeared for TET (Teachers Eligibility Test) a mandatory requirement for appointment as a primary teacher/assistant teacher in the government run schools of West Bengal Government.

.....
He had also stated that as per his knowledge one Ms. Papiya Mukherjee, daughter of Rathin Mukherjee had got illegal appointment in the year 2017 as assistant teacher and joined Junior Basic Primary School, Panpara, Habibpur, Nadia as smt. Papiya Mukherjee neither qualified in TET-2012 nor appeared in TET-2014. He stated that this is just one example and there are lots of such candidates who are ineligible and TET failed who got appointments.

.....
Based on the above revelation field investigation was carried out by the Investigating Officer of the case on the information provided by Shri Soumen Nandy and it could be ascertained that the said Ms. Papiya Mukherjee got married to one Shri. Jayanta Biswas of Kalyani, Distt. Nadia, West Bengal in the year 2011. The said Shri Jayanta Biswas was traced and examined during investigation. He had stated that that he belongs to Vill. Mama Bhagina, Bagdah, North 24 PGS and they have their ancestral house located at Vill. Mama Bhagina. However their family has been residing at Kalyani, Nadia for nearly last 35 years and occasionally they visit Vill. Mama Bhagina for agricultural activities.

He had further stated that he knows one 'Chandan Mondal' of Vill. Mama Bhagina, who used to arrange jobs of primary teacher/assistant teachers in different West Bengal Government Schools in lieu of money. He had also stated that his wife Smt. Papiya Mukherjee got the appointment as a primary teacher/assistant teacher in Raghampur converted Junior Primary School, Panpara, Habibpur, Nadia in the year 2017. He had further stated that his wife Smt. Papiya Mukherjee, had appeared in the TET 2012 but she could not qualify in that test. She had never appeared in TET 2014 or any other TET subsequently conducted by West Bengal Board of Primary Education.

He had further stated that in the year 2015 the said 'Chandan Mandal' was contacted to arrange a service of primary teacher/assistant teacher in West Bengal Government School for Smt Papiya Mukherjee and he had asked for Rs. 7.5 lacs for the same. Accordingly in the month of August 2015 an amount of Rs. 7.5 lacs was paid to Chandan Mondal to arrange a job of Ms. Papiya Mukherjee. The amount of Rs. 7.5 lacs was withdrawn from the pension account of his father Shri Dina Nath Biswas, a retired Govt. Employee, maintained in State Bank of India, Gandhi Memorial Hospital, Kalyani, Distt. Nadia, West Bengal and the same was paid to Chandan Mondal in cash. Subsequently in the year Ms. Papiya Mukherjee got her appointment in Raghampur converted Junior Primary School, Panpara, Habibpur, Nadia in the year 2017

.....
During the course of investigation Shri Ramesh Malik, the petitioner in W.P.A. 7907/2019 and two other co-petitioners namely Shri. Tanumoy Koley and Ms. Bithika Adak have been examined. All the three persons were examined and they have stated that in the year 2014 they had appeared for TET (Teachers Eligibility Test) and as per their own assessment his performance was satisfactory. Out of these petitioners, the statement of Shri. Ramesh Malik was recorded as the other two co-petitioner Shri. Tanumoy Koley and Ms. Bithika Adak confirmed the contents of the petition and statement of Shri. Ramesh Malik.

Shri Ramesh Malik had stated that he along with 08 others filed the W.P.A. No. 7907 of 2019 in the Hon'ble High Court of Calcutta. He has further stated that in the said petition one Shri Subhas Kumar

Mondal, was cited as private respondent at sl. No. 05. He has stated that the result of TET 2014 was published in the month of August 2016 in the website of WBBPE but he could not get the opportunity to see the result immediately due to poor computer network signal. After few days he and other petitioners had tried to see the result in the website of WBBPE but found that the result was not available in the website. He has stated that subsequently he and other petitioners along with the private respondent, as mentioned above, had visited the office of the West Bengal Board of Primary Education several times but except Shri Subhas Kumar Mondal, the Pvt. Respondent, who could not qualify the TET-2014, the result of none of them were shown by the Board.

He had further stated that in the month of September 2016 an advertisement was published by West Bengal Board of Primary Education for recruitment of Primary Teachers wherein it was mentioned that the candidates who had qualified TET-2014 could only apply. Since his result as well result of other petitioners were not published they could not apply for that recruitment.

He had stated that the subsequent to this recruitment process, in the year 2017, it had come into his knowledge that the private respondent of our petition Shri Subhas Kumar Mondal got appointment as Primary Teacher in South Jharpardaha Girls Primary School, Distt. Hooghly whereas the said Shri Subhas Kumar Mondal could not qualify TET-2014. Besides, in a Writ Petition W.P. No. 3129 (W) of 2017 filed by the said Shri Subhas Kumar Mondal had mentioned that he could not qualify in TET-2014.”

5. Although, the Status Report of the CBI (*supra*) fails to meet the cutting edge standards attached to a premier investigating agency, from the limited excerpts quoted from the said Status Report for the purpose of this discussion, this Court does not find the approach of the Hon’ble Single Bench to gather all facts by directing a responsible forensic investigation, to be flawed. The wealth of facts thrown up in the several orders of the Hon’ble

Single Bench as impugned in these appeals, stands confirmed from the Status Report of the CBI (*supra*). It has been also stated in the Status Report of the CBI that the personalities named in the Orders of the Hon'ble Single Bench, upon being interrogated on their involvement, have adopted a posture of denial. Naturally therefore the denial itself is subject to further forensic examination.

6. Next, comes the issue of the personalities connected to the investigation as well as named in the judicial orders and called before the Hon'ble Single Bench who claim to have been *shamed*, *defamed* and *condemned* even before they were heard. Learned Counsel for the appellants and particularly for the said Supriyo Sarkar and MB, have been vocal in their arguments on the alleged summary nature of the procedure adopted by the Hon'ble Single Bench.

It is submitted that the Hon'ble Single Bench acted in a manner which violates the appellant MB's fundamental rights under Article 21 of the Constitution of India and his right to be protected against self-incrimination as guarded by Article 20(1) of the Constitution of India. MB has also assailed the direction to furnish affidavits of assets of not only himself but also that of his family members.

7. On the issue of preservation of reputation being an inseparable facet of Article 21 of the Constitution of India, this Court refers to the discussion *In Re: Om Prakash Chauthala vs. Kanwar Bhan and ors.* reported in 2014) 5 SCC 417, which stands in the following words:

“1. Leave granted. Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on the posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the down trodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. The memory of nobility no one would like to lose; none would conceive of it being atrophied. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of [Article 21](#) of the Constitution. No one would like to have his reputation dented. One would like to perceive it as an honour rather than popularity. When a court deals with a matter that has something likely to affect a person’s reputation, the normative principles of law are to be cautiously and carefully adhered to. The advertence has to be sans emotion and sans populist perception, and absolutely in accord with the doctrine of audi alteram partem before anything adverse is said.

2. We have commenced with aforesaid prefatory note because the centripodal question that has eminently emanated for consideration in this appeal, by special leave, is whether the judgment and order passed by the learned single Judge of the High Court of Punjab and Haryana at Chandigarh in CWP No. 12384 of 2008 commenting on the conduct of the appellant and further directing recovery of interest component awarded to the employee, the first respondent herein, from the present appellant and also to realize the cost and seek compensation in appropriate legal forum, including civil court, though the appellant was not arrayed as a party to the writ petition, and denial of expunction of the aforesaid observations and directions by the Division Bench in L.P.A. No. 1456 of 2009 on the foundation that the same are based on the material available on record and, in any case, grant of liberty to claim compensation or interest could not be held to be a stricture causing prejudice to the appellant who would have full opportunity of defending himself in any proceeding

which may be brought by the respondent for damages or recovery of interest, is legally defensible or bound to founder on the ground that the appellant was not impleaded as a respondent to the proceeding. Be it noted, the Division Bench has also opined that the observations made by the learned single Judge are not conclusive and no prejudice has been caused to the appellant, the then Chief Minister of the State of Haryana.

5. Grieved by the observations and inclusive directions made in the judgment the appellant preferred LPA No. 1456 of 2009. The contentions raised by the appellant in the intra-court appeal that the adverse remarks were not at all necessary to adjudicate upon the issue involved in the matter, and further when he was not impleaded as a party to the writ petition recording of such observations was totally impermissible, as it fundamentally violated the principles of natural justice, were not accepted by the Division Bench as a consequence of which the appeal did not meet with success.

7. As has been indicated earlier, the appellant was not a party to the proceeding. It is manifest that the learned single Judge has made certain disparaging remarks against the appellant and, in fact, he has been also visited with certain adverse consequences. Submission of Mr. P.P. Rao, learned senior counsel, is that the observations and the directions are wholly unsustainable when the appellant was not impleaded as a party to the proceeding and further they are totally unwarranted for the adjudication of the controversy that travelled to the Court.

8. In State of Bihar and another v. P.P. Sharma, IAS and another, this Court has laid down that the person against whom mala fides or bias is imputed should be impleaded as a party respondent to the proceeding and be given an opportunity to meet the allegations. In his absence no enquiry into the allegations should be made, for such an enquiry would tantamount to violative of the principles of natural justice as it amounts to condemning a person without affording an opportunity of hearing.

9. In Testa Setalvad and another v. State of Gujarat and others the High Court had made certain caustic observations casting serious aspersions on the

appellants therein, though they were not parties before the High Court. Verifying the record that the appellants therein were not parties before the High Court, this Court observed: -

“It is beyond comprehension as to how the learned Judges in the High Court could afford to overlook such a basic and vitally essential tenet of the “rule of law”, that no one should be condemned unheard, and risk themselves to be criticized for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics.” And again: -

“Time and again this Court has deprecated the practice of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons.”

10. In State of W.B. and others v. Babu Chakraborty the principle was reiterated by stating that the High Court was not justified and correct in passing observations and strictures against the appellants 2 and 3 therein without affording an opportunity of being heard.

11. In Dr. Dilip Kumar Deka and another v. State of Assam, after referring to the authorities in State of Uttar Pradesh v. Mohammad Naim, Jage Ram v. Hans Raj Midha[6], R.K. Lakshmanan v. A.K. Srinivasan[7] and Niranjana Patnaik v. Sashibhusan Kar[8], this Court opined thus: -

“7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard

was a complete negation of the fundamental principle of natural justice.”

12. At this juncture, it may be clearly stated that singularly on the basis of the aforesaid principle the disparaging remarks and directions, which are going to be referred to hereinafter, deserve to be annulled but we also think it seemly to advert to the facet whether the remarks were really necessary to render the decision by the learned single Judge and the finding recorded by the Division Bench that the observations are based on the material on record and they do not cause any prejudice, are legally sustainable. As far as finding of the Division Bench is concerned that they are based on materials brought on record is absolutely unjustified in view of the following principles laid down in Mohammad Naim (supra): -

“It has been judicially recognized that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.”

13. On a perusal of the order we find that two aspects are clear, namely, (i) that the appellant was not before the court, and (ii) by no stretch of logic the observations and the directions were required to decide the lis. We are disposed to think so as we find that the learned single Judge has opined that the order of suspension was unjustified and that is why it was revoked. He has also ruled that there has been arbitrary exercise of power which was amenable to judicial review and, more so, when the charges were dropped against the employee. Commenting on the second charge- sheet dated 15.3.2004 the learned single Judge, referring to the decisions in State of Andhra Pradesh v. N. Radhakishan[9], State of Punjab and others v. Chaman Lal Goyal[10], The State of Madhya Pradesh v. Bani Singh and another[11] and P.V. Mahadevan v. M.D. T.N. Housing Board[12], thought it

appropriate to quash the same on the ground of delay. The conclusion could have been arrived at without making series of comments on the appellant, who, at the relevant time, was the Chief Minister of the State.

14. At this juncture, we think it apt to point out some of the observations made against the appellant: -

“Arrogance of power by the Chief Minister seems to be at play in this case”

“The petitioner is also justified in making a grievance that first the Chief Minister had suspended him on the basis of a loose talk in the press conference and thereafter the officials of the Government have attempted to justify their own mistakes on the one pretext or the other. The petitioner would term this case to be “a proof of worst ugly look of Indian democracy”. He may be an aggrieved person but his anger is justified to refer this treatment to be an ugly face of democracy. Is not it dictatorial display of power in democratic set up? Final order is yet to be passed regarding this charge sheet. It is orally pointed out that the charge sheet is finalized on 16.9.2009. It is done without holding any enquiry or associating the petitioner in any manner. How can this be sustained in this background?”

“The Chief Minister was bound to inform himself of the well known maxim “be you ever so high, the law is above you”.

“The respondents, thus, have made themselves fully responsible for this plight of the petitioner on account of the illegalities that have been pointed out and which the respondents have failed to justify in any cogent or reasonable manner. They all are to be held accountable for this. This would include even the then Chief Minister, who initiated this illegal process and did not intervene to correct the illegality ever thereafter.”

“The interest awardable shall be recovered from all the officers and including the Chief Minister, who were either responsible for placing the petitioner under suspension or in perpetuating the illegality and had unnecessarily charged and harassed the petitioner.”

“Liberty is, therefore, given to the petitioner to seek compensation for the harassment caused to him by approaching any appropriate Forum, including Civil Court, where he can seek this compensation even from the then Chief Minister.”

15. On a studied scrutiny of the judgment in entirety we have no hesitation in holding that the observations made by the learned single Judge were really not necessary as an integral part for the decision of the case as stated in Mohammad Naim’s case. Needless to say, once the observations are not justified, as a natural corollary, the directions have to be treated as sensitively susceptible.

16. In this context, it is necessary to state about the role of a Judge and the judicial approach. In State of M.P. v. Nandlal Jaiswal[13], Bhagwati, CJ, speaking for the court expressed strong disapproval of the strictures made by the learned Judge in these terms:

“We may observe in conclusion that judges should not use strong and carping language while criticising the conduct of parties or their witnesses. They must act with sobriety, moderation and restraint. They must have the humility to recognise that they are not infallible and any harsh and disparaging strictures passed by them against any party may be mistaken and unjustified and if so, they may do considerable harm and mischief and result in injustice.”

17. In A.M. Mathur v. Pramod Kumar Gupta the Court observed that judicial restraint and discipline are necessary to the orderly administration of justice. The duty of restraint and the humility of function has to be the constant theme for a Judge, for the said quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary. Further proceeding the two-Judge Bench stated thus: -

“Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. Respect to those who come before the court as well to other co-ordinate branches of the State, the executive and the legislature. There must be mutual respect. When these qualities fail or when litigants and public believe that the judge has failed in these

qualities, it will be neither good for the judge nor for the judicial process.”

18. In Amar Pal Singh v. State of Uttar Pradesh and another, it has been emphasized that intemperate language should be avoided in the judgments and while penning down the same the control over the language should not be forgotten and a committed comprehensive endeavour has to be made to put the concept to practice so that as a conception it gets concretized and fructified.

19. It needs no special emphasis to state that a Judge is not to be guided by any kind of notion. The decision making process expects a Judge or an adjudicator to apply restraint, ostracise perceptual subjectivity, make one's emotions subservient to one's reasoning and think dispassionately. He is expected to be guided by the established norms of judicial process and decorum. A judgment may have rhetorics but the said rhetoric has to be dressed with reason and must be in accord with the legal principles. Otherwise a mere rhetoric, especially in a judgment, may likely to cause prejudice to a person and courts are not expected to give any kind of prejudicial remarks against a person, especially so, when he is not a party before it. In that context, the rhetoric becomes sans reason, and without root. It is likely to blinden the thinking process. A Judge is required to remember that humility and respect for temperance and chastity of thought are at the bedrock of apposite expression. In this regard, we may profitably refer to a passage from Frankfurter, Felix, in Clark, Tom C.

“For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians – those impersonal convictions that make a society a civilized community, and not the victims of personal rule,”

The said learned Judge had said: -

“What becomes decisive to a Justice's functioning on the Court in the large area within which his individuality moves is his general attitude towards law, the habits of mind that he has formed or is capable of unforming, his capacity for detachment,

his temperament or training for putting his passion behind his judgment instead of in front of it.

20. Thus, a Judge should abandon his passion. He must constantly remind himself that he has a singular master “duty to truth” and such truth is to be arrived at within the legal parameters. No heroism, no rehtorics.

21. Another facet gaining significance and deserves to be adverted to, when caustic observations are made which are not necessary as an integral part of adjudication and it affects the person’s reputation – a cherished right under Article 21 of the Constitution. In Umesh Kumar v. State of Andhra Pradesh and another[18] this Court has observed: -

“Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others.

26. In view of the aforesaid analysis, we have no hesitation in holding that disparaging remarks, as recorded by the learned single Judge, are not necessary for arriving at the decision which he has rendered, the same being not an integral part and further that could not have been done when the appellant was not a party before the court and also he was never afforded an opportunity to explain his conduct, and the affirmation of the same by the Division Bench on the foundation that it has not caused any prejudice and he can fully defend himself when a subsequent litigation is instituted, are legally unacceptable. Accordingly, we expunge the extracted remarks hereinbefore and also any remarks which have been made that are likely to affect the reputation of the appellant. Since, the appeal is confined only to expunging of adverse remarks, the same is allowed. There shall be no order as to costs.”

8. Having regard to the proposition of law on Art. 21 of the Constitution as elucidated above, this Court finds the test as to whether the Orders impugned of the Hon'ble Single Bench in this batch of appeals were offensive of the protection granted under Article 21 or not, requires to be appreciated in the light of the ratio laid down in *State of U.P. vs. Mohd. Naim*, AIR 1964 SC 703 = 1964 1) CrilJ 549, as already referred to in *Re: Om Prakash Chauthala vs. Kanwar Bhan and ors.* (*supra*). The tests are as follows:-

- a)** Whether the defendant is before the Court and has had an opportunity of explaining himself;
- b)** Whether there is evidence on record bearing on the conduct of the defendant justifying the remarks; and
- c)** Whether censure of the conduct of the defendant is necessary for the decision of the case, as an integral part thereof.

9. Applying the tests laid down in *Re: Mohd. Naim* (*supra*), this Court is of the view that although the Board and, particularly MB, were granted the opportunity to produce documentary evidence before the Hon'ble Single Bench and were found to be completely lacking in such respect, at the same time before pejoratively labelling an individual impinging on his rights under Art. 21, the Hon'ble Single Bench ought to have given the affected defendants, including MB, a meaningful opportunity to exercise their right of defence.

To the mind of this Court, the anxiety of the Hon'ble Single Bench to protect the records, data and so on pertaining to TET-2014 from

tampering by placing them in the custody of forensic experts such as CBI and NIC, cannot detract from the obligation cast upon a Court of law to safeguard the requirements of Art. 21. Therefore, the Hon'ble Single Bench, although could have expressed dissatisfaction at the state of affairs presented before it, was required to stop short of using disparaging remarks without applying the tests laid down *In Re: Mohd. Naim* and without extending an adequate opportunity of defence.

10. In connection with the above discussion, this Court must now notice the line of argument which has emerged from the Learned Counsel for the appellants on the procedure of taking evidence by the Hon'ble Single Bench applying Section 165 of the Evidence Act. As discussed earlier in this Judgement, Learned Counsel for the appellants have strenuously urged that evidence in the manner required to be taken under Section 165 of the Evidence Act by a Court has not been so done. The powers of the Court to take evidence under Section 165 have been discussed *In Re: Ram Chander vs. State of Haryana* reported in 1981 3) SCC 191, at Paragraphs 1, 2 and 3 in the following words:-

"1. What is the true role of a judge trying a criminal case ? Is he to assume the true role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland point out, the question 'How is that', or, is he to, in the words of Lord Kenning 'drop the mantle of a judge and assume the role of an advocate ? Is he to be a spectator or a participant at the trial ? Is passivity or activity to mark his attitude ? If he desires to question any of the witnesses, how far can

he go ? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave ? These are some of the questions which we are compelled to ask ourselves in this appeal on account of the manner in which the judge who tried the case put questions to some of the witnesses.

2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past.

"Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may 'ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172 (2) [of the Code](#) of Criminal Procedure enables the Court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."

3. With such wide powers, the Court must actively participate in the trial to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena, as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses.

The danger inherent in a judge adopting a much too stern an attitude towards witnesses has been explained by Lord Justice Birkett:

"People accustomed to the procedure of the Court are likely to be over-awed or frightened, or confused, or distressed when under the ordeal of prolonged questioning from the presiding Judge. Moreover, when the questioning takes on a sarcastic or ironic tone as it is apt to do, or when it takes on a hostile note as is sometimes almost inevitable, the danger is not only that witnesses will be unable to present the evidence they may wish, but the parties may begin to think, quite wrongly it may be, that the judge is not holding the scales of justice quite eventually"

In Jones v. National Coal Board Lord Justice Denning observed:

"The Judge's part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been over looked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of the judge and assumes the role of an advocate; and the change does not become him well."

- 11.** In the teeth of the above stated elucidation of the law which, *albeit* flows from the manner of conducting a criminal trial and may not be wholly *apropos* to Writ Proceedings which are not controlled but guided by statutory procedure, at the same time this Court finds the summary application of Section 165 by the Hon'ble Single Bench to be offensive of statutory procedure and constitutional safeguards. While recognising the jurisdiction of the Hon'ble Single Bench to choose the manner of exercise of its prerogative

jurisdiction, it requires no emphasis that *Justice must not only be Done but also Seen to be Done*.

12. Next, on the issue of restoration of service of the 269 candidates, who were the beneficiaries of the said one mark and consequentially granted employment in primary schools, although an arguable case has been presented by Learned Counsel for the appellants that the termination of their services at the end of three to four years of their joining without affording them an opportunity of hearing is highly arbitrary, at the same time this Court cannot lose sight of the fact that the origins of their services allegedly lie in a fraud to which the complicity of the individual candidates requires investigation. Before the Hon'ble Single Bench the alleged fraud surrounding the grant of one mark to a select list of 273 candidates could not be satisfactorily explained by the Board. In the Status Report of the CBI clear reference has been made to the appointment of named candidates who not even appeared in *TET-2014* and, who by their own admission, paid huge sums of money to middlemen for becoming TET qualified and securing appointments in primary schools.

13. Therefore, this Court reiterates its findings as reported in *MAT 490 of 2022* that the claim to absolute violation of natural justice by the appellants cannot come to their assistance in the context of the existing state of the facts and circumstances. This Court further reiterates the position that since the Hon'ble Single Bench is in the process of gathering further facts connected to *TET-2014* and such

facts are now to be gathered on a mass scale, no single person among the appellants can claim an absolute right of a prior opportunity to be heard. This Court reiterates the ratio of *In Re: Nagendra Nath Bora vs. the Commissioner of Hills Division*, reported in *AIR 1958 398, inter alia*, holding that natural justice is an adaptable principle which can be adjusted, harmonised and tailored according to the exigencies of a situation. This Court finds it therefore necessary not to impede the exercise undertaken by the Hon'ble Single Bench to gather full facts and, based on the flow of such facts, open appropriate windows of hearing to any of the appellants genuinely prejudiced.

- 14.** Accordingly, *prima facie*, the appellants who stand terminated from their services in terms of the order of the Hon'ble Single Bench cannot be granted reinstatement until the results of the investigation are available and adjudicated before the Hon'ble Court. The related issues such as the legal permissibility of declaring a second panel and/or an additional panel by the Board with the approval of the School Education Department as well as the methodology claimed to have been adopted by the Board to award the one mark to the said 273, candidates are also subject to the outcome of the forensic investigation and adjudication by the Hon'ble Court. It stands to reason that the Hon'ble Single Bench found justification in seeking a forensic investigation by the CBI considering the fact that the rationale offered by the Board for

awarding one mark to the 273 candidates could not be supported by hard evidence before the Hon'ble Single Bench.

The Hon'ble Single Bench was therefore constrained to record that *the Board* has failed to produce the merit panel as well rebut the solid allegation that candidates were declared successful even after submitting blank OMR Sheets.

15. In the conspectus of the above facts and circumstances, it would be contextual to this discussion to refer to the fact that a writ petition being *WP 23006 (W) of 2017* was earlier filed before the Hon'ble Court also connected to the manner of marking in the *TET-2014* examination. *WP 23006 (W) of 2017* was finally decided by another Hon'ble Single Bench by Judgement and Order dated 3rd of October, 2018, whereby the said Hon'ble Single Bench, *inter alia*, directed *the Board* to grant six marks in respect of six purportedly wrong questions and their wrong answer Keys. The benefit of six marks was granted by the said Hon'ble Single Bench to the writ petitioners alone of *WP 23006 (W) of 2017*.

16. *The Board* is contesting the decision in *WP 23006 (W) of 2017* by way of an intra-Court appeal which is pending. At the same time the *Board* has complied with the Judgement and Order of the Hon'ble Single Bench dated 3rd October, 2018 whereby the six marks have been already allotted in favour of the original writ petitioners. In its appeal the Board questions the grant of six marks being now claimed by other candidates who appeared in *TET 2014* and have been added to the appeal of the Board by a

direction of the Hon'ble Apex Court directing analogous consideration of the fresh writ petitioners with the appeal of the Board on the question whether the six marks granted in favour of the original petitions in *WP 23006 (W) of 2017* should be treated as an exercise *in personam* or, *in rem*.

17. It would be noteworthy to point out that throughout the adjudication connected to the grant of the six marks (*supra*), *the Board* never raised the issue before the Hon'ble Court of its endeavour to grant the single qualifying mark to a select group of candidates paving the way for appointment of the 269 candidates. The silence on the part of *the Board* to bring the process of grant of one mark before the competent Court at a stage when an identical question connected to awarding of six marks of the same *TET-2014* examination was under adjudication, shrouds the entire exercise conducted by the Board in suspicion, which requires to be appropriately dealt with in the pending adjudication.

18. It would be *apropos* at this point of the discussion to quote *in extenso* the final order in a Public Interest Litigation (*PIL*) dated 12th of July, 2022 passed in *WPA (P) 203 of 2022 with CAN 1 of 2022* by the first Hon'ble Division Bench of this Court. The said order dated 12th July, 2022 has been produced at the hearing before this Court by the Learned Counsel appearing for the CBI and, its contents are self-explanatory. The said Order reads as follows:-

“July 12, 2022 WPA (P) 203 of 2022

with
CAN 1 of 2022

Tapas Ghosh

vs.

The State of West Bengal and
others

1. By way of this public interest petition, petitioner, a social worker and stated to be a public spirited person attached to several social organizations and a resident of West Bengal has made allegation of irregularities, illegalities and corruption in the recruitment of Assistant Teacher in Primary Schools of the State on the basis of Teacher Eligibility Test (TET), 2014
2. A preliminary objection has been raised by the learned Advocate General by filing affidavit on behalf of the respondent no. 1 questioning the maintainability of the writ petition.
3. Learned Advocate General, pressing the preliminary objection, has submitted that the matter relates to the recruitment process of 2016-17 and there is a delay of five years in filing the present PIL and that question of delay is relevant even in PIL, therefore, petition needs to be dismissed on this ground. In support of his submission, he has placed reliance upon judgment of the Hon'ble Supreme Court in the matter of **Bombay Dyeing & Mfg. Co. Ltd. vs Bombay Environmental Action Group and Others** reported in **(2006) 3 SCC 434** and judgment of the Bombay High Court in **Public Interest Litigation No. 68 of 2006** in the matter of **Breach Candy Residents Association and Others vs. Municipal Corporation of Greater Mumbai and Others**. He has further submitted that in WPA 265 of 2019, same issue was raised and the petition was dismissed, therefore, it cannot be reagitated again. He has also submitted that the petitioner has no interest in primary education, therefore, he has no locus. He has also

submitted that the order passed by another Division Bench of this Court on 17th of January, 2022 in MAT 899 of 2021 does not suffer from any jurisdictional error because the matter was assigned to the concerned Bench. He has also objected to filing the supplementary affidavit and has submitted that petitioner cannot be permitted to raise new plea in supplementary affidavit.

4. Learned counsel for the respondent no. 7 has also opposed the petition by submitting that the prayers made in the petitions do not survive.

5. Opposing the preliminary objection, learned Counsel for the petitioner has submitted that the appointment on the basis of TET, 2014 are still going on, therefore, there is no delay and that the learned Single Judge, finding the gross irregularities, had already entertained the writ petition and referred the matter to the Hon'ble Chief Justice treating it to be PIL, therefore, another Bench of this Court which had no roster to hear PIL could not have dismissed the petition which was treated as PIL. He has also submitted that the appointments made are non est and void ab initio, therefore, they have no right to continue and that it is a very big scam which needs to be enquired into by this Court. He has also referred to various documents enclosed with the petition and supplementary affidavit in support of his submission that the issue raised is a live issue and it is not a belated petition.

6. We have heard the learned counsel for the parties on the preliminary objection.

7. In the writ petition, a serious allegation has been made that in the Teacher Eligibility Test (TET), 2014 Examination, no merit list and list of empanelled candidates was published and those candidates who did not even participate or had not qualified TET, 2014 have been appointed as primary teacher and the qualified candidates have been left out. An incident has been mentioned wherein on 30th of April, 2022, one of the Member of Parliament had made statement before the media pointing out the irregularities in TET

panel and also about the complaint alleged against one of the MLA of the ruling party for taking crores of rupees from job aspirants with the promise to give government jobs in schools and arrest of one of the person in that incident. It is further alleged that one of the leaders of the ruling party had stated in public meeting that only the members of the ruling party will get jobs. Further allegation on record is that in TET, 2014, 42,897 candidates were stated to have been selected till date but no merit list of 42,897 candidates was ever published by the Board by disclosing the numbers obtained in written, in interview nor any reserved category-wise list was published. It is alleged that candidates were informed through SMS without publishing the merit list. It is also alleged that, many of the candidates have not been issued TET, 2014 qualified certificates.

8. West Bengal Primary School Teachers Recruitment Rules, 2001 were framed exercising the powers under the West Bengal Primary Education Act, 1973 for appointment as primary teacher. These Rules were amended vide notification published on 13th of August, 2012 and amended Rule provides that persons who will score 60 % or above in the TET Examination shall be considered as TET passed provided relaxation up to 5 % marks shall be allowed to the candidates belonging to the reserved categories such as SC/ST/PH/EC. The amended Rules further provides for the manner of awarding marks under different heads in TET. The amended Rules provided for TET qualified candidates to appear in viva- voce/interview and their overall assessment based upon the marks prescribed under different heads such as academic performance, training, TET, extra-curricular activities, viva-voce, interview, etc. and thereafter, Selection Committee is required to prepare a district-wise merit list of unreserved and reserved category candidates in the manner prescribed therein for appointment to the post of Primary School Teacher.

9. New Rules, namely, the West Bengal

Primary School Teachers Recruitment Rules, 2016 were notified on 2nd of March, 2016. Under this new Rules also, passing of TET is one of the essential qualification and the procedure of selection also provides for taking into account the percentage of marks obtained by a candidate in the TET Examination. On the basis of TET, 2014 Examination, appointment notification for Primary Teachers inviting applications from TET, 2014 qualified candidates was published on 26th of September, 2016. It is alleged that 42,897 candidates have been appointed as Assistant Teachers without publishing any transparent merit list.

*10. Record reflects that **WPA 265 of 2019** in the matter of **Swadesh Das vs. State of West Bengal and Others** was filed earlier, wherein an issue was raised that*

12 candidates were given appointment who were not having requisite documents relating to TET, 2014 qualification and participation in the recruitment process of TET. Learned Single Judge, taking note of this fact, by order dated 27th of August, 2021 had converted the Writ Petition No. 265 of 2019 into PIL and directed for placing the matter before the then Hon'ble Chief Justice (Acting). The Division Bench of then Hon'ble Chief Justice (Acting) had taken up the petition on 9th of September, 2021 in WPA 265 of 2019, had directed the learned counsel for the Board to produce the entire list of selected candidates as Assistant Teachers in the Primary School in the State of West Bengal.

11. On 22nd of September, 2021, the Board had produced 20 envelopes containing the record pertaining to selection of 42,000 candidates for the post of Assistant Teachers in Primary School in WPA 265 of 2019 and those envelopes were taken on record by the Division Bench headed by the then Hon'ble Chief Justice (Acting) and by order dated 15th of November, 2021, counsel for the petitioner was permitted to inspect the record in terms of the earlier order by this Division Bench.

12. Meanwhile, the order of the learned

Single Judge dated 27th of August, 2021 passed in WPA 265 of 2019 was challenged in appeal in MAT 899 of 2021. The Division Bench No. 4, by order dated 17th of January, 2022, not only disposed of the appeal setting aside the order dated 27th of August, 2021 but also dismissed WPA 265 of 2019 which was being regularly taken up by the DB No. 1, i.e., the Bench of the Hon'ble Chief Justice. The DB No. 4, while disposing of WPA 265 of 2019, held as under:

“Both the parties uniformly submitted before us that there is no purpose of keeping the Public Interest Litigation pending as the grievance of the petitioner is sufficiently been taken care of in terms of the order passed in the instant appeal and, therefore, this Court can dispose of the said writ- petition as well.

The office is directed to tag WPA 265 of 2019 with the instant appeal. We further finds that any alleged infraction does not invite the Public Interest Litigation to be instituted. There must be a fundamental element for maintaining the Public Interest Litigation.

*Since we do not find any element of public interest, the order impugned dated **August 27, 2021** cannot be withstand. The same is hereby **set aside**. The instant appeal is accordingly **disposed of**.*

*In view of the findings recorded hereinabove, the writ-petition being **WPA 265 of 2021 is also disposed of**.*

Office is directed to record disposal of the writ-petition being WPA 265 of 2021 as well in terms of this order.

(Harish Tandon, J.)

(Rabindranath Samanta, J)”

13. In view of the above development, when the WPA

265 of 2019 came up before the DB No. 1 on 15th of March, 2022, no one appeared for the petitioner and the petition was dismissed in default.

14. The learned counsel for the petitioner, placing reliance upon the judgments of the Hon’ble Supreme Court in the matter of **State of Rajasthan vs. Prakash Chand and Others** reported in (1998) 1 SCC 1, in the matter of **Union of India vs. Alapan Bandyopadhyay** reported in (2022) 3 SCC 133, in the matter of **Jagmittar Sain Bhagat and Others vs. Director, Health Services, Haryana and Others** reported in (2013) 10 SCC 136 and in the matter of **Campaign For Judicial Accountability and Reforms vs. Union of India and Another** reported in (2018) 1 SCC 196, has submitted that the order passed by the Division Bench No. 4 of this Court dated 17th of January, 2022 in MAT 899 of 2021 is non est and void as the said Bench was not having the jurisdiction to hear the PIL and that WPA 265 of 2019 was not listed before that Bench but it was listed and being heard by the Division Bench No. 1 of the Hon’ble Chief Justice (Acting) which had the roster to hear the public interest petition, therefore, another Division Bench could not have dismissed WPA 265 of 2019 even without having the record of the WPA and even without listing the WPA.

15. The record reflects that MAT 899 of 2021 was assigned as per roster to the Division Bench No. 4 but WPA 265 of 2019 was not assigned to that Bench. WPA 265 of 2019 was being listed and taken up regularly by the Bench of the Hon’ble Chief Justice (Acting) which had the roster to hear the public interest petition. Hence, submission of

learned counsel for the petitioner is not sans substance. Hence, on the basis of dismissal of WPA

265 of 2019, present public interest petition cannot be held to be not maintainable.

16. It is also worth noting that the entire list of candidates pertaining to selection of about 42,000 candidates for the Assistant Teachers in Primary Schools produced as per the direction of the DB No.1 is already available in WPA 265 of 2019, the record of which has been attached to this petition.

17. It is also worth mentioning that meanwhile, another writ petition being WPA 7907 of 2019 in the matter of Ramesh Malik and Others vs. The State of West Bengal and Others was filed before the learned Single Bench raising the issue that some persons (whose names were disclosed before the learned Single Bench) were given appointment though they had not qualified TET, 2014. Learned Single Judge by the order dated 13th of June, 2022 in WPA 7907 of 2019 has found that 269 such candidates were given illegal appointment by a queer method unknown to law and has directed the CBI to start investigation by holding as under:

“8. In view of the illegality committed in respect of the second panel (termed as Additional Panel, by the Secretary of the Board), which is wholly illegal and giving illegal appointment to 269 candidates by a queer method unknown to law, I direct the Central Bureau of Investigation (‘CBI’, for short) to start investigation by registering a case immediately against the Board and start interrogating the President of the West Bengal Board of Primary Education, Dr. Manik Bhattacharya and the Secretary of the said Board Dr. Ratna Chakraborty Bagchi, which shall start from today itself. I direct the petitioners to add Dr. Manik Bhattacharya, the President of the West Bengal Board of Primary Education and Dr. Ratna Chakraborty Bagchi, the Secretary of the Board as party respondents and they are to go to the CBI office at Nizam Palace by 5:30 p.m. today to face interrogation.

9. It is made clear that if they do not co-operate with CBI, CBI shall have every liberty to interrogate them after taking them into custody.

10. CBI shall contact NIC immediately to seize the database of the TET, 2014 candidates published by the West Bengal Board of Primary Education by tomorrow (14.06.2022) and to submit a short report in this court about the registration of the case, initiation of the interrogation of the two persons added today in this proceeding (named above) and taking into custody of the database of the TET, 2014 candidates day after tomorrow at 2p.m.

11. If CBI feels that in respect of this matter an independent case is not required to be registered apart from the other case involving the Board which has already been registered, as has been told by the petitioners, CBI need not register a new case.”

18. The above order of the learned Single Judge is the subject matter of challenge in appeal before the Division Bench.

19. The writ petitions have been filed by individual candidates highlighting the malpractices in appointment whereas in the present PIL, entire process has been questioned.

20. It is also worth noting that the supplementary affidavit filed by the petitioner indicates that the appointments are being made on the basis of the TET, 2014 results even in the year 2021 and 2022.

21. In the above background, if the petitioner's allegation is found to be correct and if it is established that the Primary School Teachers have been appointed without having the requisite eligibility qualification, then there will be a serious question-mark on their appointment and on the issue of continuance in service. Hon'ble Supreme Court in the matter of **Pramod**

Kumar vs. U.P. Secondary Education Services Commission and Others reported in **(2008) 7 SCC 153** has held that illegality of lack of essential qualification is incurable and for want of it, initial appointment itself would be a nullity. Any appointment in violation of the qualification prescribed in the statute would be a nullity. Hon'ble Supreme Court in the matter of **National Fertilizers Ltd. and Others vs. Somvir Singh** reported in **(2006) 5 SCC 493** by taking note of the earlier judgment on the point has held that if the appointment is made without following the rules, the same being a nullity, the question of confirming the employees would not arise. In the matter of **State of Bihar and Others vs. Kirti Narayan Prasad** reported in **2018 SCC OnLine SC 2615**, in a case where the petitioners were appointed by illegal order made by the Civil Surgeon-cum-Chief Medical Officer, the Hon'ble Court had agreed with the finding of the State Committee holding the appointment to be illegal and void ab initio and had further opined that since the appointments were ab initio void, they cannot be said to be civil servants of the State. Thus, if it is found that on the basis of TET, 2014, the appointments have been made contrary to rules and without fulfilling the minimum eligibility condition, then those candidates may not have any right to continue their appointments being void ab initio.

22. That apart, it is also worth noting that the matter relates to the appointment of Primary Teachers and if persons without minimum prescribed eligibility conditions and lacking merit are appointed, then the interest of the primary school students, who are future of the nation, will suffer. Hence, the allegation made by the petitioner in the writ petition cannot be taken lightly and ignored on the technical plea.

23. So far as the objection of the petitioner about the impermissibility to raise new plea by way of supplementary affidavit is concerned,

we find that it is a public interest petition and the materials placed on record by way of supplementary affidavit is relevant to the issue raised in the petition, therefore, the said supplementary affidavit filed by the petitioner cannot be rejected.

*24. Having regard to the above circumstances, the plea raised by the State for rejection of petition on the ground of delay on the basis of the judgments in the case of **Bombay Dyeing & Mfg. Co. Ltd. (supra)** and **Breach Candy Residents Association and Others (supra)** cannot be accepted, hence, hereby rejected.*

25. We also find that the petitioner, being a public spirited person and resident of the State, has locus to raise the issue involved in the petition.

26. Thus, in the aforesaid circumstances, the preliminary objection raised by the State is rejected and the writ petition filed in public interest is held to be maintainable.

27. Learned counsel for the State is granted four weeks time to file affidavit-in-opposition on merit.

28. List on 16th of August, 2022.”

19. It would be thus evident that not only the writ petitions being WPA 7907 of 2019 and WPA 9979 of 2019 connected to TET-2014 are under the scanner of the Hon’ble Single Bench but, also a PIL being WPA (P) 203 of 2022, dealing with the entire selection under TET-2014 is demonstrative of an additional fact finding exercise by a Hon’ble PIL Bench of this Court.

20. It would be now profitable to discuss the limits of exercise of jurisdiction under Article 226 of the Constitution of India. It is well-established in law that when an authority decides a question

of fundamental or legal rights of a person by taking into consideration extraneous matters and does not apply its mind to relevant matters, then a person aggrieved can apply to the High Court under Article 226 to compel the authority concerned to disclose the reasons for the decision. If the reasons advanced by the authority are found to be extraneous or are not germane to the object, the High Court can compel the authority to act within the scope of its power (*In Re: Kishan Chand vs. Commissioner of Police, AIR 1961 SC 705; M.P. Industries vs. ITO, 1970) 2 SCC 32*).

In Re: Jaisinghani vs. Union of India, AIR 1967 SC 1427, the Hon'ble Apex Court held as follows:-

"..... that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that the decision should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law."

- 21.** The abuse of absolute discretion by the administrative authority stands remarkably dealt with *In Re: Padfield Vs. Minister of Agriculture, 1968) 1 All ER 694*. It was held in no unqualified terms by the English Court that no discretion can be exercised to frustrate the object of the statute. If the object is frustrated then

the Court will be entitled to extend protection to the prejudiced individual or class of individuals.

In Re:Maneka Gandhi vs. Union of India, 1978) 1 SCC 248 had in unequivocal terms pronounced as follows:-

“Every action of the executive Government must be informed with reason and must be free from arbitrariness. That is the very essence of rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.

The above question was answered by saying:

It must, therefore, be taken to be the law that where the Government is dealing with the public whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other form of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant.”

In Common Cause, A Registered Society (Petrol Pumps matters) vs. Union of India 1996) 6 SCC 530 (553), the arbitrary allotment of petrol pumps/ gas agencies by one Captain Satish Sharma was struck down by the Hon’ble Apex Court in the following words:-

“As already stated a Minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth, which the Government must distribute in a bona fide manner and in conformity with law. Capt. Satish Sharma has betrayed the trust reposed in him by the people under the Constitution. It is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of their functions as public servants.”

22. The exercise of powers under Article 226 mandates that such exercise can be done *for any other purpose*. The expression *for any other purpose* would include within its scope, protection of any fundamental or legal right of a person including enforcement of public duties by public bodies (*In Re: Common Cause, A Registered Society vs. Union of India*, 1999) 6 SCC 667 (701). Both the Calcutta High Court in *Carlsbad Manufacturing Company vs. Jagtiani*, AIR 1952 Calcutta 315 and *The Allahabad High Court in Union Construction Company vs. C.E.* AIR 1960 Allahabad Page 74 expressed *pari materia* views to the effect that the expression *for any other purpose* must mean *for any other purpose* for which any of the writs mentioned would, according to well-established principles, issue. The views of both the High Court's (*supra*) were quoted with approval by the Hon'ble Apex Court in *G. Bassi Reddy vs. International Crops Research Institute*, 2003) 4 SCC 225 (237).

It is to be therefore assessed and/or examined having regard to the facts of each case, as to whether such facts warrant the exercise of powers under Article 226 or not. Therefore, the language used under Article 226 extends to the powers of the High Court's to issue orders, writs or directions as may be considered necessary for enforcement of the fundamental rights and *for any other purpose* as well (*In Re: Basappa vs. Nagappa* AIR 1954 SC 440).

23. In *Roshan Deen vs. Preeti Lal*, 2002) 1 SCC 100, the Hon'ble Supreme Court held that the role of the High Court under article 226 is not merely to correct errors of law but also to erase injustice

whenever brought to its notice. As a Court of plenary jurisdiction the power to do complete justice inheres in every Constitutional Court (*B. C. Chaturvedi vs. Union of India, 1995*) 6 SCC 749).

For the above reasons, this Court holds as follows:-

- A.** The forensic investigation directed to be handled by the CBI deserves no interference.
- B.** The Hon'ble Single Bench shall be also entitled to monitor investigation into any money trail, as considered necessary.
- C.** The entire investigation shall be Court Monitored and the Hon'ble Single Bench shall be entitled to call for periodic reports from the investigation agencies.
- D.** The disparaging remarks reflected in the Orders impugned of Hon'ble Single Bench shall be treated to be *Obiter* at this stage. However, at the same time, this Court does not interfere with the Order of the Hon'ble Single Bench removing *MB* from his official position, in view of the visible proximity of *MB* to the evidence so far before the Court and also directed to be marshalled in the forensic investigation.
- E.** The 269 terminated candidates cannot severally or jointly claim at this stage a prior right to be heard considering the *prima facie* materials which point to a fraudulent exercise connected to their

appointments and, without also completely eliminating their several or joint complicit roles, if any, in abetting the fraud.

F. The Hon'ble Single Bench shall apply the ratio *In Re: Mohd. Naim (supra)* as well as extend a meaningful right of defence to the Respondent(s) maintaining their due constitutional and statutory safeguards, before subjecting any of them to, any other or further adverse civil consequences.

With the above observations and directions, MAT 898 of 2022 with IA No. CAN 1 of 2022 with MAT 912 of 2022 with IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 921 of 2022 with IA No. CAN 1 of 2022 with MAT 924 of 2022 with IA No. CAN 1 of 2022 with MAT 929 of 2022 with IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 938 of 2022 with IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 and IA No. CAN 3 of 2022 with MAT 941 of 2022 with IA No. CAN 1 of 2022 with MAT 942 of 2022 with IA No. CAN 1 of 2022 with MAT 950 of 2022 with MAT 954 of 2022 with IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 955 of 2022 with IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 956 of 2022 with MAT 957 of 2022 with IA No. CAN 1 of 2022 with MAT 963 of 2022 with IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 968 of 2022 with IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 969 of 2022, IA No. CAN 1 of 2022 with MAT 973 of 2022, IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 990 of 2022, IA No. CAN 1 of 2022, IA No. CAN 2 of 2022 with MAT 993 of 2022, IA No. CAN 1 of 2022 stand accordingly disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Lapita Banerji, J.)

(Subrata Talukdar, J.)