

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SLP (CIVIL) NO(S). 16325-16326 OF 2022

DR. MANIK BHATTACHARYA

.....PETITIONER(S)

VERSUS

RAMESH MALIK AND OTHERS

.....RESPONDENT(S)

WITH

SLP (CIVIL) NO(S).17649-17650/2022

SLP (CIVIL) NO.17412/2022

SLP (CIVIL) NO. 17137/2022

SLP (CIVIL) NO(S). 17044-17045/2022

SLP (CIVIL) NO.17208-17209/2022

SLP (CIVIL) NO.17756/2022

ORDER

1. The present set of petitions except SLP(C)Nos.17649-17650/2022 arises out of a judgment of a Division Bench of the High Court at Calcutta delivered on 2nd September 2022,

sustaining, in substance a set of orders passed by a Single Judge directing investigation by the CBI into the allegations of irregularities in the recruitment process of Assistant Primary Teachers. Such recruitment took place through the Teachers Eligibility Test (TET) examination 2014 which was held in the year 2015. A slew of other directions has also been issued by the Single Judge and we shall refer to them to the extent necessary later in this order. Altogether 23 lakh candidates participated in the selection process for filling up approximately 43,000 vacancies and about 40,000 candidates were appointed. SLP(C)Nos.17649-17650/2022 has been filed by the petitioner in SLP(C)Nos.16325-16326 of 2022 directly assailing the order of the Single Judge passed on 27th September, 2022 (in WPA No.2005 of 2022 and WPA No.15010 of 2022) by which the Central Bureau of Investigation (CBI) was directed to register a case and take certain steps in relation to OMR sheets of the candidates who took part in the said examination.

2. The Division Bench considered in the impugned judgment/ orders passed in two writ petitions brought by unsuccessful candidates. In the first writ petition (registered

as WP No. 7907 of 2019) applicants were Ramesh Malik and eight other aspirants for the said posts and this writ petition was filed in the year 2019. The petitioners in this proceeding sought cancellation of appointment of the private respondent impleaded therein, inter-alia, on the ground that appointments were made through corrupt process and not on the basis of merit and performance of the successful candidates. In the other writ petition filed by one Soumen Nandy, registered as WPA No. 9979 of 2022, complaint was non-disclosure of certain informations with regard to the 68 candidates pertaining to their answer scripts. These were in OMR sheets. From the prayers of the petitioner in the said writ application, a copy of which has been annexed to SLP (C) No. 17137 of 2022, we do not find particulars of the information he has asked for. In both the writ petitions, however, Court monitored CBI investigation had been asked for.

3. There are also certain other writ petitions filed questioning legality of the recruitment process, but orders passed in these proceedings do not appear to have been appealed against before the Division Bench in the judgment

which has been assailed before us. In the judgment impugned in this batch of proceedings, the Division Bench dealt with a set of orders passed on 13th June, 15th June, 17th June, 20th June and 21st June, 2022. The next series of orders, as we find from the materials available before us, were passed on 19th July, 20th July, 22nd July, 25th July, 29th July and 1st September 2022. These orders were not under appeal before the Division Bench but they are linked with the first set of orders.

4. The orders and directions passed by the Single Judge in the month of June can be categorized under three heads:-

(i) Investigation by Central Bureau of Investigation

Direction has been issued by the Single Judge on CBI to start investigation by registering a case against the Board and start interrogating the President of the Board of primary education, Dr.Manik Bhattacharya as also the Secretary of the said Board. Said Manik Bhattacharya is the petitioner of SLP(C) Nos. 16325-16326 of 2022 and SLP(C)Nos.17649-17650 of 2022. A Special

Investigation Team (SIT) has also been directed to be constituted by the CBI for investigation. The SIT constitutes of senior officers from the CBI.

(ii) Invalidation of appointment of 269 candidates

The Single Judge has also, by the order passed on 13th June 2022, invalidated appointment given to 269 candidates (these candidates were not parties in either of the two writ petitions). 58 of these candidates have approached us with SLP (C) No. 17412 of 2022. The background in which this order was passed is that after publication of the regular panel of successful candidates, a second or additional panel was also published. In this panel, the 269 candidates were found to be successful. The stand of the Board on this count is that there was agitation and several representations by several unsuccessful candidates over the selection process. An expert committee was formed which found the model answer in respect of one question actually had two correct answers. Thus, that question had two

correct answers but the model answer had ignored the other one. One mark was recommended to be added to all the candidates who had opted for the other correct answer. The Single Judge found this exercise was done without any public announcement and there was arbitrary selection of candidates for undue favour.

(iii) Removal of the Board President

The President of the Board, Dr. Manik Bhattacharya was added as party respondent in WPA No.7907 of 2019. He, alongwith Dr. Ratna Chakraborty Bagchi (who was also added as a party respondent) was directed to cooperate with the CBI. The Single Judge in the order passed on 20th June 2022 opined that the President of the Board was responsible for misleading the Court and made dishonest and unscrupulous attempt in producing documents. In the same order, the Court removed Dr. Manik Bhattacharya from the post of President of the West Bengal Board of Primary Education forthwith and

directed the State Government to appoint any other fit person as President of the Board. We are apprised in course of hearing that the State Government has already removed Dr. Manik Bhattacharya from the post of President of the Board and engaged another person as President thereof. Dr. Manik Bhattacharya was also directed to file affidavits of assets of moveable and immovable assets of his own as also in respect of his wife, son and daughter in law by two weeks. It has transpired in course of hearing that such exercise has also been undertaken. In the judgment under appeal certain adverse comments were also made against Dr. Manik Bhattacharya.

5. The Division Bench in the operative part of the judgment held:-

“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."

(quoted verbatim from the paperbook)

6. Special leave petitions have been filed by, apart from Dr. Manik Bhattacharya, the State of West Bengal SLP (C)Nos.17208-17209 of 2022, West Bengal Board of Primary Education SLP (C) No.17044-17045, SLP (C) No.17137 of 2022 and SLP (C) No.17756 of 2022. The Main case, so far as Dr. Manik Bhattacharya is concerned, is that his removal could not be directed by the Board as the statutory provisions under Section 9 of the Primary Education Act, 1973 vests such power with the State Government only. It has been submitted on his behalf that he was never given adequate opportunity of hearing and in the writ petitions also there was no specific allegation against him in any event. It is argued that he ought to have been given opportunity of filing

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affidavit before such drastic action was ordered against him. It has also been asserted that drastic orders were being passed directing the course of investigation and the nature of the orders passed projected him as guilty before he had the opportunity to give his side of the case.

7. All the petitioners have questioned legality of the orders directing investigation to the CBI by the Single Judge. In this regard reliance has been placed on the case of **State of West Bengal and Others vs. Sampat Lal and Others** [(1985) 1 SCC 317]:-

“15. As already pointed out, power vests in the police authorities of the State Government for conducting investigation into allegations relating to an offence. However, the stand taken by the respondents was that the State Government and the police authorities had not acted properly and the investigation was not being conducted as required by law. As appears from the order of June 7, 1983, Borooah, J., directed notice to issue to the State of West Bengal as also to the other authorities concerned to show cause against the issue of a writ. No hearing was, however, afforded to the State Government or its officers when direction to appoint the Special Officer in whom power of inquiry was to be vested, was made. There could be no scope for appointing a Special Officer unless the statutory channel of investigation was found not to have functioned properly. There was no basis at that stage to assume that the contents of the letters as also the facts stated in the columns of the newspaper had not been contradicted. It was the State Government or its officers who alone could have authoritatively indicated the facts showing whether the allegations contained in the letters or the newspaper reports

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were true and if so, to what extent, or how the investigation was being carried on and what stage it had reached so as to enable the Court to come to a *prima facie* conclusion that the State Government and the police authorities were not discharging properly their statutory obligation to carry out an investigation. But when no notice was given to the State Government and no opportunity was offered to them, it is difficult to see how an *ex parte* order could be made on such an assumption. When we say this, we do not wish to be understood to say that in no case an *ex parte* order can be made by the Court. If the facts stated in the letter or the writ petition are credible and there is such urgency that the ends of justice might be defeated by not making an *ex parte* order or giving of notice without *ex parte* order might lead to aggravation of oppression or exploitation or removal or elimination of evidence, the Court would certainly be justified in making an *ex parte* order. But here there were no such circumstances at all and the Court could have very well issued notice to the respondents and tried to find out whether there was any necessity for directing the appointment of DIG, CBI to act as a Special Officer and requiring the police authorities of the State to extend all possible help as may be required by him. We are of the view that Borooah, J., should have issued notice to the State Government, afforded a reasonable opportunity to it and its officers who were already in seisin of the investigation to make a report in regard to the action taken by them and after making an overall judicial assessment of the situation, the need for appointing a Special Officer should have been considered.

16. The appointment of a Special Officer with a direction to inquire into the commission of an offence can only be on the basis that there has not been a proper investigation. There is a well-defined hierarchical administrative set-up of the police in the State of West Bengal as in all other States and to have created a new channel of inquiry or investigation is likely to create an impression that everything is not well with the statutory agency and it is likely to cast a stigma on the regular police hierarchy. We are inclined to agree with Mr Chatterjee for the appellant that in the facts and circumstances of the case and keeping the nature of

the order made in view, the direction to appoint a Special Officer with powers to inquire should not have been made until the appellants had been given a hearing and the Court had the papers of investigation laid before it for being prima facie satisfied that the investigation had either not been proper or adequate.”

On the same point the cases of **State of West Bengal and Others vs. Committee for Protection of Democratic Rights, West Bengal and Others** [(2010) 3 SCC 571], **Sakiri Vasu vs. State of Uttar Pradesh and Others** [(2008) 2 SCC 409] and **Kunga Nima Lepcha and Others vs. State of Sikkim and Others** [(2010) 4 SCC 513] were also referred to by the learned counsel for the parties.

8. As regards the 269 candidates, whose appointments were directed to be dismissed by the Single Judge, the reasoning of the Division Bench can be found in subparagraph E of the operative part of the order which we have quoted above. It has been pointed out by the learned senior counsel representing the petitioners that they were serving for a period beyond four years and that they had acquired permanent status in the said posts. In such circumstances, it is their submission that in a case they were not even

impleaded as parties, their abrupt termination from service would be unsustainable in law.

9. Petitioners have asked us to set aside investigation by the CBI and also revoke all termination orders as according to them, these orders were passed without adhering to the basic requirement of procedural fairness.

10. Mr. S. V. Raju, learned Additional Solicitor General has appeared on behalf of the CBI and his submission is that his clients are in the process of uncovering a recruitment scam of extraordinary dimension and the investigation at this stage prima-facie reveals exchange of monetary considerations for giving appointments. He has argued that investigation ought to be allowed to continue under these circumstances. The Learned Senior Counsel appearing for the writ petitioners/respondents in effect echoes the submission of the CBI to sustain their main plea that the investigation ought to go on. Further argument of the respondents/writ petitioners is that having regard to the nature of the allegations and the materials which have surfaced during hearing of the case investigation ought not to

be scuttled at this stage. It has been emphasised that the writ petitioners represent all the genuine candidates and all they want is recruitment in a fair and transparent manner.

11. In our opinion, under normal circumstances, it would not be appropriate to straightaway direct CBI investigation in a recruitment related controversy unless, of course the allegations are so outrageous and the perpetrators of the alleged offences are so powerful that investigation by the State police would be ineffectual. The reasons given by the learned Single Judge in directing investigation by the CBI at such an early stage of the proceeding may fall short of the standards laid down in the case of **Sampat Lal** (supra). But considering the submission of learned counsel for the CBI and the fact that investigation by the said agency has substantially progressed, we do not want to stall such investigation at this stage and wait to see if the State Police can carry on the same investigation impartially. We accordingly decline the plea of the petitioners to stay that part of the order impugned, by which continuance of the investigation by the CBI has been directed. Before we issue

further order in this matter, we direct the CBI to file a comprehensive report as regards the scope and nature of illegalities they have found in the subject-recruitment process.

12. Now, we shall turn to that part of the order by which cancellation of appointment of 269 candidates have been effected. Such cancellation has not been interfered with by the Division Bench. The Division Bench has referred to prima-facie materials which point to a fraudulent exercise connected with their appointments. On behalf of the respondents, however, no material has been shown to us through which these candidates' direct complicity in the process of appointment has been shown. What weighed with the learned Single Judge in directing their termination in a case where they were not even the parties appears to be materials that was revealed in response to orders of the Court. Such orders reflect some kind of investigative role that was being undertaken by the Court itself in obtaining documents from the recruiting bodies. It was also not a case the respective appointments were of very recent origin.

13. The duty of the judiciary to follow the principles of natural justice has been highlighted in the case of **Divine Retreat Centre vs. State of Kerala and Others** [(2008) 3 SCC 542]. In this case it has been held:

*“51. The order directing the investigation on the basis of such vague and indefinite allegations undoubtedly is in the teeth of principles of natural justice. It was, however, submitted that the accused gets a right of hearing only after submission of the charge-sheet, before a charge is framed or the accused is discharged vide Sections 227 and 228 and 239 and 240 CrPC. The appellant is not an accused and, therefore, it was not entitled for any notice from the High Court before passing of the impugned order. We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. **No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation.** In our view, the impugned order of the High Court directing enquiry and investigation into allegations in respect of which not even any complaint/information has been lodged with the police is violative of principles of natural justice.*

52. It is unnecessary to go into the question as to whether the Divine Retreat Centre is not a “person” contemplated by Article 21 of the Constitution and express any opinion as to whether any right guaranteed by Article 21 of the Constitution has been infringed. Suffice it to note that, the Director of the

appellant institution has been impleaded as a party respondent in the criminal petition and the whole of the allegations in the anonymous petition are levelled against the appellant and in such a situation it was imperative for the High Court to put the appellant on notice before passing the impugned order.”

(emphasis supplied by us)

14. We are of the opinion that the part of the order of the Single Judge by which appointment of 269 candidates was terminated ought to be stayed and they also should be impleaded as party respondents in WPA No.7907 of 2019. Upon giving them opportunity of filing affidavits and hearing them, the Single Judge shall take appropriate decision, depending on the defence that may be taken by those candidates in the writ petition. In the event the Single Judge wants the investigation as regards their appointment to be conducted through the SIT already formed, he may direct so.

15. As regards the case of President of the Board, our view is that the order of his removal by the High Court was flawed, not fulfilling the requirement of procedural fairness that is necessary to direct removal of a person from a public post. We are not observing here that the High Court cannot at all direct removal of any person from a public post. But

ordinarily, such a course shall be taken in a *quo warranto* proceeding. Even otherwise, if the Court finds that an incumbent has appropriated a public post through deceit, the Court may hold him to be unfit for the post. But in this case the Court found him to be responsible for misinformation and for relying on questionable documents before the Court. In a case like this he should have been given appropriate opportunity to defend his position. At best, the Court could have directed him, pending his explanation, not to discharge his duties in the said post. The order of the Single Judge directing his removal accordingly shall stand stayed alongwith the order of the Division Bench which has confirmed the removal order. But at this stage, we are not directing his reinstatement in the same post. We have been apprised that the State Government itself has already engaged someone as the President of the Board. We accordingly hold that the present incumbent to the post of President, West Bengal Board of Primary Education shall continue to remain in the said post till final outcome of the writ petition before the Single Judge in which the directions of the said petitioner's removal was passed. Dr. Manik

Bhattacharya shall be entitled to file affidavits to the writ petitions as also any additional affidavit taken out in connection with the said writ petitions which may contain allegations against him. The Single Judge shall take decision on this aspect as also on other points which may be urged in the pending writ petitions. Till then, the present incumbent to the post of President, West Bengal Board of Primary Education shall continue to discharge his duties in the said post and Dr. Manik Bhattacharya's position shall be dependent upon the outcome of the pending writ petition.

16. We accordingly direct:-

(a). The CBI under the SIT shall continue their investigation as directed by the Single Judge and file a comprehensive report before this Court within a period of four weeks as regards progress of the investigation.

(b) (i). The order passed directing cancellation of 269 candidates by the Single Judge on 13th June 2022 and the part of the order of the Division Bench confirming that order shall stand stayed and remain in abeyance.

(ii). Each of these 269 individuals are directed to be added as a party respondent in WPA No.7907 of 2019 and they shall be entitled to file affidavits to defend their appointment to the said posts, if so advised. The appointing authority will proceed in accordance with law and take appropriate decision after the writ court adjudicates on legality of their appointments. This direction would be subject to any order that may be passed by this Court at a subsequent stage of this proceeding.

(c) (i). The order removing Dr. Manik Bhattacharya passed by the Single Judge and confirmed by the Division Bench shall remain stayed until further order of this Court. We, however, are not directing his reinstatement for the reason already disclosed in earlier part of this order. Dr. Manik Bhattacharya shall be entitled to defend his position in the writ petition by filing affidavits in respect of allegations made against him.

(ii). We have protected Dr. Manik Bhattacharya from any coercive steps that may have been taken by the CBI in course of the investigation. There was no allegation from the CBI in course of hearing of these matters that he was not cooperating with the investigation. It was, however, mentioned before us on 12th October 2022 that he has been arrested by the Enforcement Directorate. So far as CBI is concerned, let the order protecting him from coercive steps continue until further order.

17. Notice be issued in SLP(C)No.17756 of 2022.

Let counter-affidavits be filed within two weeks. Rejoinder thereto within one week thereafter. List the matters after four weeks.

..... **J.**
(ANIRUDDHA BOSE)

..... **J.**
(VIKRAM NATH)

NEW DELHI;

18th October 2022