

ITEM NO.10+15+16+17+18+19 COURT NO.1

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).9586/2024

(Arising out of impugned final judgment and order dated 22-04-2024 in WPA No. 30649/2016 passed by the High Court at Calcutta)

THE STATE OF WEST BENGAL

Petitioner(s)

VERSUS

BAISHAKHI BHATTACHARYYA (CHATTERJEE) & ORS.

Respondent(s)

(WITH IA No. 99896/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 109747/2024 - INTERVENTION/IMPLEADMENT, IA No. 109527/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 9614/2024 (XVI)

(WITH IA No. 100244/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 18994/2024 (XVI)

(WITH IA No.102194/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.102195/2024-PERMISSION TO FILE SLP)

SLP(C) No. 9637/2024 (XVI)

(WITH IA No. 100744/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 100751/2024 - PERMISSION TO FILE LENGTHY LIST OF DATES)

SLP(C) No. 10617/2024 (XVI)

(WITH IA No.110036/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 19672/2024 (XVI)

(WITH IA No.111707/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.111706/2024-PERMISSION TO FILE SLP)

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 19377/2024

(WITH IA No. 109303/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 109301/2024 - PERMISSION TO FILE SLP)

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 19607/2024

(WITH IA No. 108025/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 108024/2024 - PERMISSION TO FILE SLP)

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 19653/2024

(WITH IA No.110226/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.110225/2024-PERMISSION TO FILE SLP)

WITH

SLP(C) No. 10603-10607/2024 (XVI)

(WITH IA No. 109774/2024 - ADDITION / DELETION / MODIFICATION PARTIES, IA No. 109739/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 19671/2024 (XVI)

(WITH IA No.110121/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.110122/2024-PERMISSION TO FILE SLP)

Diary No(s). 19679/2024 (XVI)

(FOR ADMISSION and I.R. and IA No.109389/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.109388/2024-PERMISSION TO FILE SLP)

Diary No(s). 19681/2024 (XVI)

(WITH IA No.109148/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.109149/2024-PERMISSION TO FILE SLP)

SLP(C) No. 10485/2024 (XVI)

(WITH IA No. 108492/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 20729/2024 (XVI)

(WITH IA No. 110059/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 110060/2024 - EXEMPTION FROM FILING O.T., IA No. 110065/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 110058/2024 - PERMISSION TO FILE SLP)

Diary No(s). 19665/2024

Diary No(s). 19917/2024

(WITH IA No.108190/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.108189/2024-PERMISSION TO FILE SLP)

Diary No(s). 19535/2024 (XVI)

(WITH IA No.109633/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.109631/2024-PERMISSION TO FILE SLP)

SLP(C) No. 10552/2024 (XVI)

(WITH IA No.109048/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.109636/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Diary No(s). 19922/2024 (XVI)

(WITH IA No.108852/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.108851/2024-PERMISSION TO FILE SLP)

SLP(C) No. 10599/2024 (XVI)

(WITH IA No.109557/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 10545/2024 (XVI)

(WITH IA No.108984/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 07-05-2024 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE MANOJ MISRA

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**UPON hearing the counsel the Court made the following
O R D E R**

- 1 Permission to file the Special Leave Petitions is granted.

- 2 This batch of Special Leave Petitions under Article 136 of the Constitution arises from a final judgment and order dated 22 April 2024 of a Division Bench of the High Court at Calcutta.
- 3 In 2016, the School Service Commission¹ in West Bengal conducted selections for recruitment to four categories of posts :
- (i) Assistant Teachers for Classes IX and X;
 - (ii) Assistant Teachers for Classes XI and XII;
 - (iii) Non-teaching Staff of the Group 'C' category; and
 - (iv) Non-teaching staff of the group 'D' category.
- 4 A notification for the State level selection test was issued on 16 February 2016. An OMR based written examination was held on 27 November 2016. The final panel for candidates for Classes IX and X was published on 12 March 2018. The merit list of empanelled candidates was published on 28 August 2018. The candidates joined as Assistant Teachers in or about January and February 2019.
- 5 A batch of petitions was instituted before the High Court challenging the selection process of 2016.
- 6 The selection process for Assistant Teachers was governed by the West Bengal
- 1 "SSC"

School Service Commission (Selection for Appointment to the Post of Teachers for Classes IX and X in Secondary and Higher Secondary Schools) Rules, 2016. Likewise, there are rules governing the selection to Assistant Teachers for Classes XI and XII, also of 2016. The selection for Group 'C' and Group 'D' non-teaching posts is governed by the West Bengal School Service Commission (Selection of Persons for the appointment to Non-Teaching Staff) Rules 2009.

- 7 The Writ Petitions before the High Court were instituted in 2021.
- 8 From time to time, interim orders were passed by the High Court annulling the appointments on the ground that the appointments were made illegally. The appointments were assailed initially before the Division Bench of the High Court and ultimately the dispute travelled to this Court.
- 9 By its order dated 9 November 2023, this Court held that the direction of the High Court for the termination of the services of candidates at the interim stage, even before the final disposal of the petitions, ought to have been avoided.
- 10 This Court, while dealing with a batch of petitions, directed in ***Achinta Kumar Mondal & Ors Etc Vs Laxmi Tunga & Ors Etc***² that all the issues relating to the appointment of 2016 should be examined by a Division Bench of the High Court and accordingly an order of remand was passed. The issue of maintainability of the petitions was also kept open to be decided by the High Court.

- 2 SLP (C) Nos 4078-4079 of 2023

- 11 The order of remand has resulted in the impugned judgment of the High Court. The High Court has held, *inter alia*, that all appointments made in the selection processes involved were violative of Articles 14 and 19 of the Constitution and are, therefore, null and void. As a consequence of the judgment of the High Court, approximately 25 thousand appointments would stand to be set aside.
- 12 During the course of the hearing of the cases before the High Court, there was a direction to the Central Bureau of Investigation³ to conduct an investigation in regard to the alleged acts of criminal wrongdoing arising from the selection process. The order dated 9 November 2023 directed the CBI to complete its investigation within two months and to submit a report to the High Court. In the meantime, this Court directed that the appointments which have been made shall stand protected for a period of six months to enable the Division Bench to adjudicate upon the matter.
- 13 Before the High Court, as indeed before this Court in the earlier proceedings, a fundamental issue which arose for consideration was in regard to the admissibility of the OMR sheet images which have been recovered by the CBI. The Court noted that the investigation by the CBI was yet to be completed. The admissibility of the OMR sheet images being in question, this Court observed that the question of the exercise of power in relation to the discovery of electronically stored OMR sheets implicated serious allegations in regard to the manipulation of records. Having regard to the number of persons who are likely to be affected by the outcome of the proceedings, it was considered appropriate

3 “CBI”

to remand the proceedings back to the High Court for a final decision on the Writ Petitions.

- 14 Before dwelling further on the ultimate directions which have been issued by the High Court, it would be necessary to note at this stage that three reports were filed by the CBI after the remand of the proceedings. The impugned judgment of the High Court has dealt with the reports of the CBI. It would be necessary at this stage to make a brief reference to the report dated 5 February 2024 which is the final report which was filed before the High Court.
- 15 The report of the CBI notes that the West Bengal School Service Commission had awarded a work order to a company by the name NYSA Communications Private Limited for scanning and evaluation of the OMR sheets pertaining to the selection test for each of the four categories. The scanning of OMR sheets was undertaken by the aforesaid company at the office of the SSC. It further emerged during the investigation that the company which was awarded the contract by the SSC had further assigned the work of scanning the original OMRs to an entity by the name of DATA Scantech Solutions, NOIDA which was present at the premises of SSC for completing the scanning work. According to the CBI, after completing the scanning, the processed data in the form of scanned images of the OMR was handed over by DATA Scantech Solutions to NYSA Communications Private Limited in the digital form leaving the original hard copies of the OMR sheets in the office of the SSC. According to the CBI report, the SSC handed over the answer keys for all subjects to NYSA Communications Private Limited for evaluation of the OMR responses. CBI seized the server data

base of the SSC during the course of the investigation.

- 16 On 15/16 September 2022, three hard disks were recovered from the residence of a person by the name of Pankaj Bansal, a former employee of NYSA Communications Private Limited at Ghaziabad. Certificates dated 19 September 2022 under Section 65B of the Evidence Act were obtained from Pankaj Bansal. During the course of the investigation, data files containing scanned OMRs, among other things, were seized from Data Scantech Solutions. The report of the CBI contains the following observations in paragraphs 12 and 13 of the report :

- “12 That, a similar exercise of matching the data available on the hard disks of Pankaj Bansal with the data seized from the Commission was done during the course of investigation and it was found that there were mismatch between the two, in as much as, the written marks awarded to candidates as available on the server of the commission had been increased to qualify underserving candidates. This mismatch establishes that manipulation in marks of written examination in the case of many candidates was resorted to and such candidates were identified. The comparison of these actual/genuine OMR marks with the OMR marks available in WBCSSC Server shows that there is manipulation in 952 nos of candidates of IX-X, 907 nos of candidates of XI-XII, 3481 nos of Gr C candidates and 2823 nos of Gr D Candidates.
- 13 That, during the course of investigation, several emails were found to have been exchanged between the accused officials of the Commission, certain private persons and officials of NYSA. These emails contained lists of candidates, whose OMR marks were found to be increased in the server of the Commission. Besides this, emails have been exchanged between the staff of NYSA themselves containing manipulated data of candidates. This shows the complicity of officials of M/s NYSA in this conspiracy.”

- 17 The above investigation by the CBI indicates that it has found a manipulation in respect of 952 candidates for the selection process of Assistant Teachers for Classes IX and X; in the case of 907 candidates for classes XI and XII; 3481 candidates for Group 'C' and 2823 candidates for Group 'D'. Apart from the above report of the CBI, the impugned judgment of the High Court contained in paragraph 240, a reference to the fact that the SSC had submitted a statistical report of the four selection processes tabulating the alleged irregularities. The tabulation is reproduced below for convenience of reference :

"SI No	Post Name	Class Level	Total Recommendation	OMR Issue	Rank Jumping	Alleged Irregularity	Alleged Irregularity in percentage
1	Assistant Teacher	IX-X Level	11610	808	185	993	8.50%
2	Assistant Teacher	XI-XII Level	5596	771	39	810	14.47%
3	Group C (Clerk)		2037	783		783	38.43%
4	Group D		3880	1741			44.87%"

- 18 The High Court has also noted that in response to its queries, the SSC had submitted details of the recommendations which were made by it in respect of the four categories and the number of appointments issued by the Board. The figures submitted by the SSC indicated that the actual number of persons who were appointed by the Board was in excess of the recommendations made by the SSC to the following extent :

- (i) Assistant Teachers for Classes IX and X - 1539 persons;

- (ii) Assistant Teachers for Classes XI and XII - 199 persons;
 - (iii) Group 'D' posts - 669 persons; and
 - (iv) Group 'C' posts - 416 persons.
- 19 On the basis of the data which was submitted before it by the SSC, the High Court has observed in paragraph 241 that the illegalities admitted by the SSC cannot be said to be within tolerable margins in a selection process of a large magnitude and that the SSC itself did not discount the fact that the possibility of the existence of further illegalities may still exist.
- 20 The High Court further noted in paragraph 273 that the SSC had not been in a position to state that it had checked all the records so as to be definitive about the number of illegalities and the State Government had also accepted that there were widespread illegalities in the selection process.
- 21 On 19 May 2022, the Government of West Bengal in the School Education Department issued an order creating 6,861 supernumerary posts of teachers and non-teaching staff for absorbing the wait-listed candidates and directed that appointments letters to such wait-listed candidates shall be issued in terms of the recommendation of the SSC subject to the outcome of the pending litigation before the High Court.
- 22 During the course of the hearing, this Court has been informed that Petitions under Article 226 of the Constitution (WPA Nos 250-256 of 2022)

have been instituted before the High Court to challenge the order of the Government creating the supernumerary posts to accommodate the wait-listed candidates. By an interim order, the Government order creating the supernumerary posts have been stayed.

23 It is common ground that the above Petitions are pending before the High Court.

24 In this backdrop, the High Court by its impugned order, has, while setting aside the appointments, directed that :

- (i) The OMR sheets available in three hard disks must be uploaded on the website of the SSC;
- (ii) Persons who had been appointed (a) from outside the panel; (b) after the expiry of the panel; and (c) against the submission of blank OMR sheets, must return all the remuneration and benefits received by them to the State exchequer together with interest @ 12% per annum failing which the outstandings would be recovered as arrears of land revenue;
- (iii) The CBI shall interrogate all persons who had received appointments beyond the panel, after expiry of the panel and after submitting blank OMR sheets, if necessary, by undertaking custodial interrogation;
- (iv) CBI shall undertake a further investigation with regard to the persons

involved in the State Government who had approved the creation of supernumerary posts to accommodate the illegal appointments, if necessary, by conducting custodial interrogation; and

- (v) The SSC shall undertake a fresh selection process as a consequence of the vacancies which are declared on the setting aside of the appointments;

Other consequential directions have been issued.

25 The primary submissions which have been urged during the course of the hearing by counsel appearing on behalf of the petitioners, fall under four broad heads :

- (i) The data on the basis of which the High Court has set aside the appointments of nearly twenty-five thousand persons, including Assistant Teachers and those appointed to non-teaching Group 'C' and Group 'D' posts is suspect. The foundation of the exercise is the certificates under Section 65B issued by Pankaj Bansal, a former employee of NYSA Communications Private Limited from whose possession the three hard disks were seized;
- (ii) In a selection process having such a large magnitude, cancellation of the entirety of the selected list should be a matter of last recourse. Where a segregation of the tainted candidates is possible, only such appointments should be directed to be discontinued;

- (iii) The above consideration must apply to *a fortiori* in a situation where the petitions were filed nearly three years after the appointments were made. The direction to set aside the entirety of the appointments would have serious repercussions to employees who have served the State; and
- (iv) Where the appointments which are tainted are capable of being identified, it was manifestly unjust for the High Court to set aside the entire process.
- 26 On the other hand, it has been urged on behalf of the respondents who have supported the judgment of the High Court that both the SSC and the State Government were not in a position to state that the possibility of further illegalities can be ruled out. When a systemic fraud has vitiated the entire process, the High Court was justified in setting aside the entirety of the selection process.
- 27 The submissions which have been raised on behalf of the petitioners would merit further consideration. The certificates under Section 65B of the Evidence Act were issued, as the CBI report notes, by Pankaj Bansal who is a former employee of NYSA Communications Private Limited. The legitimacy of the certificate which have been obtained from the above individual would *prima facie* go to the root of the data which forms the basis of the judgment of the High Court to set aside the entirety of the appointments.
- 28 From the material which has been placed on the record before the High Court by

the SSC and by the CBI during the course of its investigation, a further issue which would merit closer analysis is as to whether appointments which suffer from taint can be specifically segregated. If such an exercise is possible, it would be unfair to set aside the entirety of the selection which extends to approximately twenty-five thousand appointments. The Court cannot be unmindful of the impact of setting aside of a large complement of Assistant Teachers who have been recruited for both Class IX-X and Class XI-XII students, which would be the consequence if the impugned judgment were to be upheld as it stands. Assuming that a segregation is possible, this Court would have to determine the modalities which would be followed for that purpose.

- 29 At this stage, the Court must be guided by the fact that by its order dated 9 November 2023, this Court had protected the appointments which had been made subject to the direction to the High Court to expeditiously dispose of the writ petitions.
- 30 Bearing in mind the present stage of the matter, we are of the view that an early disposal of these proceedings would be in the interest of justice.
- 31 Issue notice.
- 32 Notice to the private parties shall be published in the English and Bangla newspapers widely circulated in the State at the cost and expense of the State.
- 33 List the Petitions for hearing and final disposal on 16 July 2024.

- 34 In the meantime, the ad interim protection which was granted by this Court by its order dated 9 November 2023 is continued subject to the express stipulation that any person who is found to have been appointed illegally and is continued as a consequence of the present order shall undertake to refund the entire amount of the salary which may be paid between the date of this order and the final judgment of this Court. This would cover illustratively the four categories of individuals noted in paragraph 240 of the impugned judgment which has been reproduced above.
- 35 The investigation by the CBI which has been ordered by the High Court in clause (vii) of its operative directions shall continue but no coercive steps shall be taken.
- 36 The High Court has, by its impugned order, directed the CBI to investigate the creation of supernumerary posts at all levels of the State Government. This Court by its previous order directed that that no precipitate action would be taken in pursuance of the direction contained in clause (viii) of the operative directions of the High Court which is reproduced below :
- “(viii) CBI will undertake further investigations with regard to the persons involved, in the State Government approving creation of supernumerary post to accommodate illegal appointments. If necessary, CBI will undertake custodial interrogation of such persons involved.”
- 37 Mr Rakesh Dwivedi with Mr Neeraj Kishan Kaul, senior counsel appearing on behalf of the State of West Bengal stated that no appointment whatsoever has been made in pursuance of the order of the State Government dated 19 May

2022 which, in any event, forms the subject matter of a pending Writ Petition before the High Court where the creation of supernumerary posts has been stayed.

38 The earlier order of the this Court in regard to the above direction of the High Court shall continue to remain in force.

39 Subject to the above stipulations, the judgment of the High Court dated 22 April 2024 shall remain stayed till the disposal of the present proceedings.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(POOJA SHARMA)
COURT MASTER