

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Jyotirmay Bhattacharya

AND

The Hon'ble Justice Tapash Mookherjee

**M.A.T. 2143 of 2014
(CAN 11966 of 2014)
(CAN 11967 of 2014)**

Sreemayee Bandhopadhyay.

-Versus-

Kabita Addya & Ors.

For the Appellant : Mr. Ekramul Bari,

For the Writ Petitioner/
Respondent No.1. : Mr. Subrata Mukhopadhyay.

For the S.S.C. : Mr. Avijit Gangopadhyay.

For the Headmaster
Pearah Teghoria High
School : Mr. Ranajit Chatterjee.

Heard on: 18th December, 2014.

Judgement on: 18th December, 2014.

Jyotirmay Bhattacharya, J. :-

Re: CAN 11967 of 2014 (Leave to prefer an appeal)

The applicant has filed an application seeking leave to prefer an appeal against the judgement and/or order passed by a Learned Single Judge of this Court on 12th November, 2014 in W.P. No. 27778(W) of 2014 as a person adversely affected by the impugned order.

It is contended by the applicant that after being selected for appointment as an Assistant Teacher in Geography (H/PG), she was recommended by the West Bengal Central School Service Commission for her appointment as an Assistant Teacher in Geography (H/PG) in Kaste Kumari

High School (HS) in the District of South 24-Parganas. She has already joined the said post and her appointment was subsequently approved by the concerned District Inspector of Schools (SE), South 24-Parganas on 21st July, 2014 with effect from 30th April, 2014.

It is further contended by her that the respondent No.1 viz. Smt. Kabita Addya filed a writ petition being W.P. No. 27778(W) of 2014 without joining the applicant herein as a party, by complaining that the writ petitioner was illegally excluded from the selection process by the West Bengal Central School Service Commission.

It was contended by the writ petitioner therein that though she obtained more marks than the applicant, still then the writ petitioner was not called upon to appear in the counselling by the concerned School Service Commission. The Learned Trial Judge while considering the writ petition found that the writ petitioner obtained more marks than the applicant. It was also detected that apart from the writ petitioner, four other candidates viz. Saheli Ghosh, Sagufta Parvin, Moumita Ojha and Pushpendu Prodhan also secured equal marks as that of the writ petitioner.

Accordingly, the Learned Trial Judge disposed of the writ petition with the following directions:-

1. Steps for withdrawal of the recommendation made in favour of Smt. Sreemoyee Bandyopadhyay (applicant) may be taken in accordance with law within a month from date;
2. The petitioner as well as 4(four) other candidates viz. Saheli Ghosh, Sagufta Parvin, Moumita Ojha and Pushpendu Prodhan shall be called upon to participate at the interview within the aforesaid period of one month;
3. Whosoever secures the highest marks at the interview shall be called upon to participate in the process of counselling, which shall be conducted not beyond 2(two) weeks from the date of such interview.

His Lordship further directed that if at all the writ petitioner is found successful in proving herself to be the most suitable candidate amongst 5(five) candidates who are to be interviewed in terms of the said order, the Regional Commission shall proceed to issue recommendation letter in her favour with this rider that if the writ petitioner does not turn out to be the most suitable candidate, the Regional Commission shall issue recommendation in favour of the most suitable candidate.

The applicant felt aggrieved as withdrawal of her recommendation was directed by the Learned Trial Judge without giving her any opportunity of hearing. Fact remains that the applicant was neither made a party in the said writ petition nor she was given any opportunity of hearing.

Besides, the other important fact which has now been disclosed before us by Mr. Bari, learned advocate appearing for the applicant cannot be lost sight of. The applicant was in a confirmed service as an Assistant Teacher in Geography in Pearah Teghoria High School, even before she was recommended for appointment as an Assistant Teacher in Geography subject in the present school viz. Kaste Kumari High School.

Since she appeared for the second time in the subsequent selection process and was ultimately recommended by the concerned School Service Commission for her appointment as an Assistant Teacher in the present school viz. Kaste Kumari High School, she accepted such offer of appointment in the present school after tendering her resignation before her erstwhile employer. Her resignation was accepted by her erstwhile employer and as such, presently there is no scope for sending her back to the post which she relinquished.

In such a situation, we feel that the writ petition is required to be reconsidered after joining the applicant as a party therein as the right which has already been accrued in her favour to remain in service in the present post cannot be taken away without giving her an opportunity

of hearing, particularly when her service has been approved by the concerned D.I. of Schools (SE).

Accordingly, we not only grant leave to the applicant to file this appeal before this Court but also set aside the order passed by the Learned Trial Judge and remand the writ petition back to the Learned Trial Judge for re-hearing after joining the applicant as a respondent therein. If the added respondent wants to file any affidavit in the said writ petition, she may seek appropriate direction from the Learned Trial Judge for filing such affidavit to the writ petition.

Before parting with we also like to mention her that Mr. Mukhopadhyay, learned advocate appearing for the writ petitioner/respondent No.1 submits that apart from the irregularity which was pointed out by his client in the writ petition, some other irregularities committed by the concerned School Service Commission have subsequently been discovered by his client and had those irregularities been pointed out before His Lordship, then she could have been placed at a much higher position in the panel than the position where she might have been placed in terms of the impugned order passed by the Learned Trial Judge.

He thus, prays for leave to amend the writ petition for bringing those facts on record before the Learned Trial Judge.

After considering such submission of Mr. Mukhopadhyay, we grant leave to his client to file appropriate application for amending her pleading in the writ petition suitably before the Learned Trial Judge within one week after reopening of the Court after X'mas vacation.

The application for leave to appeal is thus, allowed.

The appeal is also allowed with the above direction.

We direct that until the writ petition is finally decided, the appointment of the applicant/appellant i.e. Mr. Bari's client in the present post should not be disturbed.

In view of the disposal of the appeal itself, no further order need be passed on the stay application which is deemed to be disposed of.

The application for stay being CAN 11966 of 2014 is thus, deemed to be disposed of.

Urgent Photostat certified copy of this order, if applied for, be supplied to the learned advocate for the appellant immediately.

(Jyotirmay Bhattacharya, J.)

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(Tapash Mookherjee, J.)