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ct no. 13
Sl. 2-3
sp/pk

M.A.T. 870 of 2024

With

CAN 1 of 2024

With

CAN 2 of 2026

Maheswar Malo Das

-Versus-

Gopal Krishna Jha & Ors.

With

M.A.T. 1488 of 2024

Maheswar Malo Das

-Versus-

Ashim Kr. Biswas & Ors.

Mr. Arunangshu Chakraborty.

...for the appellant.

Mr. Samrat Mukherji,

Mr. Subhranil Ray.

..for the State in MAT 870 of 2024.

Mr. Soumya Majumder, ld. Sr. Adv.,

Mr. Chiranjib Sinha.

..for the respondent no. 1 in MAT 870 of 2024.

Mr. Soumya Majumder, ld. Sr. Adv.,

Mr. Soumajit Majumder.

..for the respondent no. 1/writ petitioner in MAT
1488 of 2024.

Mr. Amitava Chaudhuri,

Mr. Pradipta Siddhanta.

..for the University.

1. The appeal is directed against judgment and order dated 22nd April, 2024 passed by a Single Bench of this Court.

2. The order was passed in two writ petitions being WPA 1425 of 2024 (Gopal Krishna Jha Vs. State of West Bengal & Ors.) and WPA 1527 of 2020 (Ashim Kr. Biswas Vs. State of West Bengal & Ors.). In Gopal Krishna Jha (supra) writs of certiorari and writ of quo warranto were prayed for. In WPA 1527 of 2020, Ashim Kr. Biswas (supra) prayers were made for a writ of mandamus and quo warranto.

3. The subject matter of the two writ petitions was the appointment of respondent no. 7/appellant before this Court, in the post of Development and Planning Officer at the Kaji Nazrul University located at Asansol, Paschim Bardhaman.

4. The brief facts relevant to the case are that the University advertised the post of Development and Planning Officer vide advertisement dated 13th January, 2019. The essential qualification for the post were, inter alia, as follows:-

“i. Uniformly good academic record with a Master’s Degree with minimum 55% marks or its equivalent grade in the point scale wherever a grading system is followed.

ii. At least 10 years’ experience in a position involving supervision, control

and planning of administration of Colleges, Universities/Institutes of Higher Learning or Government or Quasi Government organization.

iii. Age not below 35 years. Relaxable in the case of exceptionally qualified candidates.”

5. As many as 56 candidates applied for the post including the writ petitioner Ashim Kr. Biswas. The Single Judge found based on the affidavits of the appellant and the University that there were gross irregularities in the appointment of respondent no. 7. He possessed Master's Degree but did not have 60% marks therein. It is also found that the appellant was shortlisted with 20.4 marks against a Ph.D qualification which he did not possess. He was awarded 9 out of 10 marks for knowledge in domain of Information, Communication and Technology.

6. The appellant admittedly did not possess such experience, qualification or training in Information, Communication and Technology. Under the heading domain, knowledge and interview performance, he was given 36 out of 40. It was also found by the Single Bench that the appellant actively participated in short listing process

conducted by the selection committee and had himself had forwarded the names of the short listed candidates to the Vice Chancellor of the University.

7. Based on the above infirmities, the Single Bench found that the recruitment process of the appellant was riddled with corruption and nepotism. The selection of the appellant was set aside by the Single Bench.

8. Learned counsel for the appellant has taken great pains to argue that the Single Bench has firstly not issued a writ of quo warranto such writ cannot be issued against a person not holding a public office. In support of his argument he has relied upon the decisions of the Supreme Court in the case of ***University of Mysore vs. C.D. Govinda Rao and others*** reported in **1963 SCC Online SC 15** and the decision of the ***B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association*** reported in **(2006) 11 SCC 731 (II)**. He also relied upon paragraphs 80 and 82 of the decision in the case of ***B.R. Kapur v. State of Tamil Nadu and others*** reported in **(2001) 7 SCC 231**.

And the DB decision of the Allahabad High Court, in ***Dr. Neetu Singh v. State of U.P. & Ors.*** reported in **2019 AHC – LKO 28384.**

9. Indeed it is settled law for the purpose of issuing a writ of quo warranto it must be determined as to whether the appointment challenged was to a public office. One of the vital ingredients of the public office as defined in Black's Law Dictionary adopted by the Supreme Court in ***B. Srinivasa Reddy decision (supra)*** was that the appointment must be made in exercise of sovereign function and that the person appointed must be discharging sovereign powers. The said person must also be the last authority for exercise of such powers and not within the control of any authority above him.

10. It is equally well-settled that a person seeking a writ of quo warranto need not have any locus of being an affected party for challenging the appointment in question.

11. This Court is however of the view that discretionary relief under Article 226 of the Constitution of India is not circumscribed by any pleading or prayer. A Court under Article

226 of the Constitution of India can definitely mould relief.

12. This Court notices that in the **C.D. Govinda Rao and others** decision (supra), the Supreme Court notwithstanding the observations on the scope of a writ of Quo Warranto, went on to analyse the merits of the case. It found that the decision of the Board of the University to treat the Foreign Master's Degree obtained by the appointee as equivalent to a 2nd Division Master's Degree in India cannot be faulted.

13. In the **B. Srinivasa Reddy** case (supra) while elucidating on the scope of a writ of Quo Warranto, by reference to "Black's Law Dictionary", the Supreme Court went on to merits of the case. It was held that the Karnataka Urban Water Supply Department and the State were empowered to appoint a Director on contractual basis, either for a fixed term or indefinitely even beyond the age of superannuation.

14. What follows from the above is that even if a writ of Quo Warranto cannot be maintained, a writ Court under Article 226 can look into a fraudulent and defective or

illegal appointment process. It can mould relief in larger public interest.

15. One need not go so far since in the writ petition filed by Ashim Kr. Biswas (*supra*), a prayer for writ of mandamus has been made. Ashim Kr. Biswas himself participated in such selection process, but was unsuccessful.

16. The argument of the learned counsel for the appellant that his client was not allowed a prayer for adjournment by the Single Bench, cannot be accepted. The appellant had filed affidavit-in-opposition in the first writ petition filed by Gopal Krishna Jha. An adjournment is not a matter of right. It is within the exclusive domain of the Court in question as to whether adjournment will be granted or not. The same has not been urged formally as a ground of memorandum of appeal.

17. None of the arguments or case laws cited before this Court has been cited before the Single Bench. In any event this Court is not inclined to entertain the argument that the writ petition was not maintainable since the first writ petitioner who was an advocate

attached to the Asansol Court had no interest whatsoever in the selection process. He had sought quo warranto in respect of the appointment of the appellant to a non-public post.

18. That argument, however, cannot be made in respect of second writ petition filed by Ashim Kr. Biswas who himself was a candidate in the selection process and had specifically sought a writ of mandamus. The decisions cited by learned counsel for the appellant, therefore, do not have application in so far as the writ petition filed by Ashim Kr. Biswas is concerned.

19. In the light of the above and the findings of the irregularities in the selection process of the appellant, the conclusion of the trial Court that the selection process was vitiated by corruption and nepotism cannot be brushed aside. This Court has considered the pleadings of the appellant before this Court and the Single Bench threadbare. The finding of the Single Bench of gross impropriety in the selection process is supported by the documents on record.

20. Accordingly, the impugned order, therefore, calls for no interference.

21. Hence, MAT 870 of 2024 and MAT 1488 of 2024 shall stand dismissed. Consequently, all connected pending applications, shall also stand dismissed.

22. There shall be no order as to costs.

23. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Anuj Singh, J.)