

**19.04.2024**

FRIDAY

Court : 04  
Item : JPD-1-2  
Matter : MAT  
Status : OP  
Bench ID : JCB-1378  
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**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
(From PRINCIPAL BENCH)**

**MAT 47 of 2024**

**CAN 1 of 2024**

**CAN 2 of 2024**

**&**

**MAT 44 of 2024**

**CAN 1 of 2024**

State of West Bengal

Vs.

Jashimuddin Mondal & Ors.

**Mr. Kishor Datta, Ld. Advocate General**  
**Mr. Sirsanya Bandopadhyay, Ld. Jr. Standing Counsel**  
**Mr. Piyush Agarwal, Advocate**  
**Ms. Shrivalli Kajaria, Advocate**  
**Mr. Debjyoti Das, Advocate**

.....for the Appellants

**Mr. Bikash Ranjan Bhattacharyya, Senior Advocate**  
**Mr. Samim Ahmed, Advocate**  
**Mr. Arka Maity, Advocate**  
**Ms. Ambiya Khatun, Advocate**

.....for the Respondent Nos. 1 to 15/Writ-Petitioners

**Mr. Dhiraj Trivedi, Ld. Deputy Solicitor General of India**  
**Mr. Arijit Majumdar, Advocate**  
**Ms. Supriti Sarkhel, Advocate**

.....for the CBI

**Dr. Sutanu Kumar Patra, Advocate**  
**Ms. Supriya Dubey, Advocate**

.....for the School Service Commission

**Mr. B.P. Subba, Advocate**  
**Ms. Silpi Thapa, Advocate**

.....for the GTA

1. The aforesaid two appeals are at the behest of the State and its Department assailing the selfsame order dated 09.04.2024 passed in WPA 1089 of 2023 by the Single Bench directing the Central Bureau of Investigation (CBI) to make preliminary examination and/or analysis of the allegations made in the letters and submit the report regarding the outcome of the said exercise on the next date. There are other directions passed in the said order but the learned Advocate General, appearing for the Appellant/State

in both the appeals, is critical on the aforesaid directions and has squeezed his argument for the purpose of an interim order of stay to the directions relating to preliminary examination and/or analysis of the allegations by the CBI.

2. The writ-petition was filed raising several issues concerning the recruitment and the regularization of the Voluntary Teachers in Gorkha Territorial Administration (GTA) and declaration to the effect that the orders passed in several writ-petitions directing the regularization of those Voluntary Teachers is null and void and does not confer any right into a person in whose favour those orders were passed.
3. In *stricto sensu* the entire writ-petition is aimed against the illegal and wrongful act of the GTA in concurrence with the State Administration, more particularly, the School Education Department in regularizing the Voluntary Teachers who were not appointed in conformity with the statutory rules and/or norms applicable in this regard. In course of hearing of the said writ-petition, letters were received by the Hon'ble Judge manning the Single Bench where several illegalities and/or infirmities in the action of the GTA as well as the State were flagged which persuaded the learned Single Judge to direct the preliminary examination and/or analysis of the allegations by the CBI.
4. The learned Advocate General is very critical on the portion of the impugned order by which the directions were passed upon the CBI to make preliminary examination and/or analysis of the allegations by the CBI and according to him, the scrutiny of the public order and/or the consequential

steps to be taken, is within the realm of the State List which cannot be diverted either through an executive fiat or by a judicial order, more particularly, when it relates to cognizance of an offence, arrest, search and seizure followed by the registration of the report of the offences and placed his reliance upon a judgment of the Apex Court in ***Government (NCT of Delhi) Vs. Union of India***, reported in ***(2020) 12 SCC 259***. Learned Advocate General further submits that the Voluntary Teachers appointed by the GTA requires a concurrence and/or approval of the State and the letters as relied upon would indicate that such approval was accorded in principle which cannot be said to be a final decision taken thereupon. It is further submitted that subsequently, the State Government after finding several illegalities and irregularities having committed, constituted a Special Investigation Team (SIT) and a report is submitted which lead to registration of an FIR and on the basis thereof, the investigation is going on and, therefore, the directions to make preliminary examination and/or analysis of the allegations by the CBI is in effect transgressing the authority of the State enshrined in the Constitution and is liable to be interfered with. It is arduously submitted by the learned Advocate General that the directions to conduct an investigation by the CBI is a last resort and can only be directed in exceptional cases as held by the Apex Court in ***State of Punjab Vs. Davinder Pal Singh Bhullar & Ors.***, reported in ***(2011) 14 SCC 770***. It is thus submitted that the State has not shown dormant attitude nor interested in protracting the issue, having activated the criminal law in motion upon registration of an FIR and a proper investigation

to be taken thereupon.

5. Per contra, Mr. Bikash Ranjan Bhattacharrya, learned Senior Advocate, appearing for the respondents/writ-petitioners, submits that there is illegality and/or infirmity in the directions passed by the learned Single Judge in making preliminary examination and/or analysis of the allegations made in the aforesaid complaints as the truth has to come out in order to uphold the majesty of law. He strenuously submits that the State has ratified and/or approved the illegal action of the GTA who was continuously appointing Voluntary Teachers in different Educational Institutions within its territorial jurisdiction without following the principles of law nor the mandate provided under Articles 14 and 16 of the Constitution of India was strictly adhered to. He further submits that merely directing the CBI to make preliminary examination and/or analysis of the allegations is intended to ascertain the cognizance of an offence having committed and, therefore, registration of an FIR or investigation by the Police Administration has no bearing thereupon. He thus submits that there is a clear distinction between a preliminary examination and/or analysis of the allegations and the investigation done in terms of the provisions contained under the Code of Criminal Procedure and, therefore, the State cannot stand in the way of such exercise to be undertaken. He thus submits that the issue is still under consideration by the Single Bench and, therefore, no interim order need be passed at this stage.
6. The Counsel for the GTA submits that they have been entrusted to discharge their duties and functions appointing the Voluntary Teachers to mitigate the

situation arisen because of the retirement and/or resignation by various teachers with an avowed object of providing education to the children of those Schools taking into account that their education is not hampered. It is further submitted that there has been series of orders passed by this Court approving the steps taken by the GTA in encouraging the Voluntary Teachers which were subsequently ratified by the State.

7. Learned Deputy Solicitor General of India, appearing for CBI, have taken an impartial stand before us in contending that being an Investigating Agency, they are creature of the directions and/or orders passed by the Court and if the Court has directed the preliminary examination and/or analysis of the allegations to be made, they are bound to obey the said directions without any demur. It is further submitted that whenever the order that would be passed by the Court shall be strictly observed and obeyed by the CBI as an Investigating Agency whose primary duty is to conduct the investigation/enquiry in a fair and impartial manner.
8. On the conspectus of the aforesaid facts and the submissions advanced before us, we squeeze our consideration to the solitary point as to whether the appellant has been able to make out a case for stay of the operation of the portion of the impugned order by which the CBI was directed to make preliminary examination and/or analysis of the allegations made in the aforesaid several complaints.
9. The record would reveal that the Voluntary Teachers were appointed in the Educational Institution situated within the territorial jurisdiction of the GTA. There is no iota or piece of evidence produced before us in

relation to any norms or procedures adopted for appointment of such teachers, more particularly, after coming into force of the West Bengal School Services Examination Act, 1997. The aforesaid Act was promulgated in order to streamline not only the appointment of the teachers within the State but also the procedures and mechanism in relation thereto.

10. Though it is sought to be contended before us that such Voluntary Teachers were appointed in order to mitigate the extraordinary situations faced by the different Educational Institutions within the Hill area but we are unable to accept the contention that the course adopted for appointment or engagement of such teachers can be made without following the statutory provisions contained in the Act.
11. The record would reveal that letters were written to the Minister-in-Charge for regularization of several Voluntary Teachers at par with the other Voluntary Teachers whose engagement/appointment were regularized on the approval of the Education Department of the Government. The record would further reveal that the steps were taken for regularization of the engagement/appointment of those Voluntary Teachers and the parameters in this regard was also indicated therein which *ipso facto* leads to an inescapable conclusion that the State proceeded to give sanction and/or regularization of their services whose appointments were made through an unknown recruitment process.
12. Several letters which forms part of the record would reveal that positive steps have been taken to regularize those Voluntary Teachers though in one of the letters it is indicated that such approval for regularization is accorded in principle which shall not

be treated as final decision.

13. The fact remains that those Voluntary Teachers are continuing to impart teaching and obviously drawing salary from the Government Exchequer. It is no doubt true that List-II of Entry-I of the 7<sup>th</sup> Schedule imbibe within itself the Public Order and we have no hesitation in our mind that it is a State subject.
14. The Apex Court in case of Government (NCT of Delhi) (supra) held that the public order engulfed within itself the cognizance of an offence, arrest, search and seizure followed by the registration of an FIR. Obviously, the moment the FIR is lodged the consequential steps of an investigation; prosecution trial is inhered and/or inbuilt within the aforesaid exercise.
15. We have no hesitation in our mind on the exposition of law laid down in the aforesaid report but the point which falls for consideration is whether the preliminary examination and/or analysis of the allegations can be directed despite the fact that the FIR was subsequently lodged when the whistle was blown by the writ-petitioner. All the steps appears to have been taken after filing of the writ-petition and even the documents produced by the learned Advocate General in course of the hearing would also reveal that the steps were taken after the impugned order was passed.
16. Though the learned Advocate General has contended that the Constitutional Court can only direct the investigation by the CBI after examining the allegations but we find a clear distinction between an investigation and the preliminary examination and/or analysis of the allegations in pursuit of ascertaining the commission of a cognizable offence. The

distinction is real and does not overlap each other. Even the Apex Court in ***Davinder Pal Singh Bhullar & Ors.*** (supra) have held that the Constitutional Court is not denuded of its power to direct the investigation by the CBI if the Court is of the view that the exception should be made against a person who could influence the investigation because of his position or post he held in the following:-

*“75. Thus, in view of the above, it is evident that a constitutional court can direct the CBI to investigate into the case provided the court after examining the allegations in the complaint reaches a conclusion that the complainant could make out prima facie, a case against the accused. However, the person against whom the investigation is sought, is to be impleaded as a party and must be given a reasonable opportunity of being heard. CBI cannot be directed to have a roving inquiry as to whether a person was involved in the alleged unlawful activities. The court can direct CBI investigation only in exceptional circumstances where the court is of the view that the accusation is against a person who by virtue of his post could influence the investigation and it may prejudice the cause of the complainant, and it is necessary so to do in order to do complete justice and make the investigation credible.”*

17. As the facts indicated hereinabove, so unfurled here, letters were written to the then Minister-in-Charge seeking regularization of the several Voluntary Teachers and the consequential steps having taken thereupon, there is no fetter on the part of the Court to make a preliminary examination and/or analysis of

the allegations through an independent agency when a person holding high position in the Government appears to have been involved. Apart from the same, the State registered the FIR and activated the criminal law in motion after the impugned order is passed in order to shed the portion of the said order by which the preliminary examination and/or analysis of the allegations was directed to be made and the report to be filed by the CBI.

18. We thus do not find that there is any necessity to stay the operation of the portion of the impugned order.
19. The prayer for an interim order is thus refused.
20. Let the affidavit-on-opposition be filed by the respondents to the application being CAN 1 of 2024 within three weeks from date. Reply thereto, if any, be filed within two weeks thereafter.
21. Let the appeal and the application be listed five weeks hence.

**(Harish Tandon, J.)**

**(Madhuresh Prasad, J.)**