

C.A.N. 5883 of 2018
in
M.A.T. 803 of 2018
(The West Bengal Madrasah Service Commission
Vs. Naimouza Sub-Hania Jr. Girl's
High Madrasah & Ors.)

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
.....For the appellant

Mr. Bikash Ranjan Bhattacharya
Mr. Khairul Alam
Ms. Nahida Parvin
.....For the writ petitioner/respdt.
no. 1

Mr. T. P. Halder
.....For the respdt. nos. 4 & 5

Mr. T. M. Siddiqui
Mr. Nilotpai Chatterjee
.....For the respdt. Nos. 2, 3, 6 & 7

This *intra-court* writ appeal is directed against an interim order dated 30th July, 2018 passed by a learned Judge of this Court in W. P. 12029 (W) of 2018. C.A.N. 5883 of 2018 is an application praying for stay of such order.

We have heard Mr. Mukherjee, learned advocate for the appellant, Mr. Bhattacharya, learned senior advocate for the writ petitioner/respondent no. 1, Mr. Siddiqui, learned advocate for the respondents 2, 3, 6 and 7, and Mr. Halder, learned advocate for the respondents 4 and 5.

It appears that considering a report submitted by the Secretary of the West Bengal Madrasah Service Commission (hereafter the commission), the learned Judge took serious exception and while directing that the incumbent secretary should be replaced, has proceeded to pass the impugned interim order which, in effect, grants the final relief claimed in the writ petition. Not only that, while keeping the writ petition pending, His Lordship directed the commission to report compliance of the order.

We are of the considered view that the situation was not of such a nature, which called for an order as the one under appeal. There are arguable points which are required to be examined on affidavits. One of such points is that the vacancies in the concerned madrasah were reported to the commission only in May, 2015, whereas the selection test was conducted in 2013. The said vacancies in the madrasah were, thus, not included in the advertisement. Whether a selection process initiated to fill up an identified number of vacancies could be extended to vacancies reported after the process had been initiated is a substantial question of law which the Court has to answer while hearing the appeal or the writ

petition. *Prima facie*, we are of the view that the commission was right in not accepting the request of the madrasah to sponsor candidates for appointment on such vacancies in terms of the decision of the Supreme Court dated 17th May, 2018 in Civil Appeal No. 5808/2017 which, we are inclined to hold at this stage, would apply to vacancies included in the selection process initiated in 2013.

We, accordingly, stay the operation of the order under appeal. Further proceedings before the learned Judge shall also remain stayed.

Let affidavit-in-opposition to the stay application be filed within a week from date; reply thereto, if any, may be filed within a week thereafter.

Put up the application for stay on **3rd September, 2018** under the same heading.

(Asha Arora, J.)

(Dipankar Datta, J.)