

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 11520 of 2025

Prokash Mandal & Anr.

Vs.

The State of West Bengal & Ors.

With

WPA 12010 of 2025

Sisir Biswas & Ors.

Vs.

The State of West Bengal & Ors.

With

WPA 12011 of 2025

Somenath Mondal & Ors.

Vs.

The State of West Bengal & Ors.

For the writ petitioners :- Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Sudipta Dasgupta, Adv.
Mr. Bikram Banerjee, Adv.
Mr. Baibhav Roy, Adv.
Mr. Arindam Sit. Adv.
(in WPA 11520 of 2025)

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Firdous Samim, Adv.
Ms. Gopa Biswas, Adv.
Ms. Payel Shome, Adv.
Ms. Swati Dey, Adv.
Mr. Saikat Mallick. Adv.
(in WPA 12010 of 2025 & WPA
12011 of 2025)

For State :- Mr. Kishore Datta, Ld. AG.
 Mr. Somnath Ganguly, AGP.
 Ms. Pratiti Das, Adv.
 Mr. Debanjan Mondal, Adv.
 Mr. Sandip Dasgupta, Adv.
 Ms. Mahima Cholera, Adv.
 Mr. Deepan Sarkar, Adv.
 Ms. Deepti Priya. Adv.
 (in WPA 11520 of 2025)

Mr. Kishore Datta, Ld. AG.
 Mr. Swapan Banerjee, AGP.
 Ms. Sumita Shaw, Adv.
 Mr. Diptendu Narayan Banerjee, Adv.
 Mr. Debanjan Mondal, Adv.
 Mr. Sandip Dasgupta, Adv.
 Ms. Mahima Cholera, Adv.
 Mr. Soumen Chatterjee. Adv.
 (in WPA 12010 of 2025 &
 WPA 12011 of 2025)

Heard on :- 09.06.2025 (WPA 11520 of 2025)
 13.06.2025 (WPA 12010 of 2025 &
 WPA 12011 of 2025)

Judgment on :- 20.06.2025

Amrita Sinha, J.:-

1. West Bengal Livelihood Social Security Interim Scheme, 2025 is under challenge in all the three writ petitions. The grounds of challenge and the defence of the State are more or less the same in all the cases. The petitioners pray for interim order. Their prayer for interim order is disposed of by this common judgment.

2. Notification being no. Labr-58/2025/(LC-LW/MW) dated 15th May, 2025 by the Secretary, Government of West Bengal, Department of Labour lays down the Scheme.

3. The recitals of the Scheme mention that the same is meant to provide limited livelihood support and social security on humanitarian grounds on purely temporary basis to the distressed families of non teaching staff in Group C and Group D categories recruited through the 2016 selection process conducted by the West Bengal Central School Service Commission and who lost their jobs and salaries consequent to the Court proceedings.

4. The Scheme benefits the distressed family which means the immediate family of any non teaching staff in Group C or Group D category recruited through the 2016 selection process conducted by the West Bengal Central School Service Commission.

5. As per the Scheme an eligible non teaching staff in Group C and Group D category, belonging to a distressed family, shall be entitled to receive cash assistance of rupees twenty-five thousand and twenty thousand per month respectively as livelihood support for the family due to sudden unemployment and/or on humanitarian grounds with effect from 1st April, 2025.

6. The Scheme mentions that consequent to the judgment dated 3rd April, 2025 passed by the Hon'ble Supreme Court in Civil Appeal No. 4800 of 2025 (State of West Bengal vs. Baishakhi Bhattacharya & Ors.) several thousand persons have been rendered jobless overnight which has affected their right to life and livelihood.

7. The notification mentions that the Group C and Group D staff were employed by the State but terminated under order of Court. The State considered it to be its duty to take appropriate measures to ensure that such persons are not deprived of their right to preservation of life overnight and such persons have a minimal amount of time to make suitable alternative arrangements to ensure their livelihood.

8. The Scheme mentions about pendency of the review petitions filed by the State Government along with the Central School Service Commission before the Hon'ble Supreme Court seeking review of the judgment dated 3rd April, 2025 passed in Civil Appeal No. 4800 of 2025.

9. The State formed an opinion to provide support by way of interim relief until final adjudication of the review petition or appropriate application filed before the Hon'ble Supreme Court or any further petitions as may be filed in accordance with law and till the proceedings attain finality. The Scheme mentions about Constitution of a Screening Committee for determining the eligibility of the distressed families under the Scheme.

10. The petitioners have averred in the writ petition that they have the requisite qualification for being appointed in Group C and Group D post in any non-Government aided/ financed educational institution in the State. Pursuant to the advertisement published by

the West Bengal Central School Service Commission for conducting their regional level selection test for appointment in the post of Group C and Group D on 8th August, 2016, the petitioners applied for being appointed and also participated in the recruitment process. They were placed in the waiting list. Appointment letters were not issued to them.

11. The 2016 recruitment process was challenged before this Court and vide judgment dated 22nd April, 2024 the Hon'ble Division Bench declared the appointments granted in the said selection process null and void and cancelled the same being violative of Articles 14 and 16 of the Constitution.

12. The order of the Hon'ble Division Bench was carried in appeal by the State of West Bengal and vide judgment dated 3rd April, 2025 the Hon'ble Supreme Court was pleased to affirm the judgment passed by the Hon'ble Division Bench of this Court and also upheld the termination of service of the tainted candidates and further affirmed the direction of the Hon'ble Division Bench for refund of any salary/payment received by such candidates.

13. A miscellaneous application being no. 709 of 2025 was filed by the West Bengal Board of Secondary Education before the Hon'ble Supreme Court in Civil Appeal No. 4805 of 2025 and vide order dated 17th April, 2025 the Hon'ble Supreme Court was pleased not to accept the prayer made on behalf of the the non-teaching staff in Group-C

and Group-D posts seeking permission to go to school and receive salary.

14. By the impugned notification the State Government seeks to grant benefit to the non-teaching staff in the Group-C and Group-D category whose appointment stood terminated by the order of the Hon'ble Court.

15. Specific case of the petitioners is that the Scheme has been published with the sole intention to frustrate the order passed by the Hon'ble Court. Once the Court has passed order terminating the service of the candidates with further direction to refund all remunerations and benefits received by them to the State exchequer along with interest calculated at 12% p.a. from the date of receipt thereof till deposit, the State ought not to have provided further financial benefit to such candidates.

16. It has been submitted that the impugned Scheme, in the teeth of the order passed by the Hon'ble Court, cannot be treated to be a valid one and is liable to be quashed.

17. It has been argued that the money which will be provided to the candidates whose service stood terminated, will be paid from the tax paid by the citizens of the State and public money ought not to be squandered in such a manner.

18. It has been submitted that the State ought not to come up with any scheme which is directly in conflict with the order passed by the Court.

19. According to the petitioners the Scheme is violative of the provisions of Articles 14, 16, 21, 144, 162 and 282 of the Constitution of India. The State ought to act in aid of any order passed by the Court and not contrary thereto. The Scheme is meant to bypass and overreach the order passed by the Court. The Scheme is absolutely contrary to the direction passed by the Court and the same is liable to be set aside.

20. The petitioners rely on the judgment delivered by the Hon'ble Supreme Court in the matter of **NHPC Limited vs. State of Himachal Pradesh, Secretary & Ors.** reported in **(2023) 17 SCC 1** in support of their submission that the legislature cannot directly set aside a judicial decision.

21. Reference has been made to the order dated 23rd May, 2025 passed by the Hon'ble Supreme Court in **Misc. Application Nos. 1002-1004 of 2025 in Civil Appeal Nos. 4818-4820 of 2025 in the matter of Rupak Chanda & Ors. -vs- Babita Sarkar & ors.** wherein the Court was pleased to dismiss the application purportedly filed for clarification of the judgment and order dated 3rd April, 2025 in Civil Appeal No. 4800 of 2025 (State of West Bengal -vs- Baishakhi Bhattacharya (Chatterjee) & Ors.).

22. Interim order has been prayed for to restrain the State respondents from taking any step and/or further step in furtherance of the impugned Scheme till the writ petition is finally decided by the Court.

23. Learned Advocate General enters appearance on behalf of the State respondents and opposes the prayers of the petitioners. Locus standi of the petitioners in proceeding with the instant writ petition has been challenged. It has been submitted that the petitioners do not have any locus to challenge the subject Scheme. The instant writ petition has not been filed as a Public Interest Litigation but has been filed with a specific direction for issuance of a writ of Mandamus upon the respondents. Such a petition ought not to be entertained.

24. The petitioners are wait-listed candidates. Their case was considered by the Hon'ble Court and no relief was granted in their favour. At this stage the petitioners do not have any right to question the validity of the Scheme which has been floated as a welfare measure to provide life and livelihood to the several thousand persons who have been rendered jobless overnight by the order of the Court.

25. It has been submitted that mere framing or floating of the Scheme does not give rise to any cause of action for which the instant writ petition could have been filed. The Scheme is a mere temporary arrangement and the same is subject to the final order to be passed by the Hon'ble Supreme Court in the review petitions filed in connection

with Civil Appeal No. 4800 of 2025 (State of West Bengal –vs- Baishakhi Bhattacharya & Ors.).

26. It has been submitted that the Scheme may be discontinued upon occurrence of any of the events mentioned in the said Scheme.

27. It has been argued that none of the beneficiaries who may be put into a disadvantageous position if the Scheme is interfered with by the Court, has been impleaded as party respondent in the instant writ petition. If the petitioners contend that the order of the Court has been violated, then the petitioners ought to approach the Supreme Court in the contempt jurisdiction. Writ petition challenging the validity of the Scheme ought not to be the subject matter of challenge in the writ petition.

28. It has been submitted that the State has the legislative competence to frame the Scheme and the State has rightly done so only to protect the livelihood of several thousand of persons. According to the State, as review petitions filed by the State and the Commission are still pending consideration before the Supreme Court, the lis has to be treated as sub-judice. Fresh writ petition challenging any action of the State during the pendency of the review application, ought not to be entertained.

29. In support of the submission that the matter before the Hon'ble Supreme Court is still pending adjudication in review and the Supreme Court is in seisin of the matter, the learned Advocate

General refers to the judgment dated 7th May, 2025 passed by the Hon'ble Division Bench of this Court in special jurisdiction in a contempt matter being **CPAN 261 of 2025 (Baishakhi Bhattacharya (Chatterjee) & Ors. -vs- Vinod Kumar, the Principal Secretary, Department of School Education & Ors.)** wherein the Hon'ble Court was pleased to infer that in view of the direction contained in the order dated 17th April, 2025 where some of the parties to the Civil Appeals were directed to file affidavits by 31st May, 2025, the Hon'ble Supreme Court is still in seisin of non-compliance of the directions, if there be any.

30. The State respondents rely on the judgment delivered by the Hon'ble Supreme Court in the matter of **Union of India -vs- Jaiswal Coal Co. Ltd. & Ors.** reported in **(1999) 5 SCC 773** wherein the Hon'ble Supreme Court observed that judicial discipline required the High Court not to entertain any petition in connection with a dispute which was pending before the Hon'ble Supreme Court in respect of the subject matter. The parties should have been asked to approach the Supreme Court, if so advised. The High Court had no jurisdiction to entertain the writ petition in the said facts.

31. Reference has also been made to the judgment delivered by the Hon'ble Supreme Court in the matter of **Ms. Mayawati -vs- Union of India & Ors.** reported in **(2012) 8 SCC 106** wherein the Court concluded that in the absence of any specific direction from the Supreme Court, it was improper for the CBI to lodge complaint.

32. Prayer has been made not to entertain the writ petition and to dismiss the same as being not maintainable. Interim relief prayer has also been opposed. Prayer has been made not to interfere with the Scheme.

33. The Court has heard and considered the submissions made on behalf of both the parties. The writ petition is at a very preliminary stage. Validity of the Scheme has to be decided upon affording the respondents an opportunity of hearing after filing affidavit. The writ petition is considered only for the purpose of issuance of interim order.

34. As the respondents have raised an issue of maintainability of the writ petition at the instance of the petitioners, the Court intends to decide the said issue first.

35. It appears that the petitioners participated in the subject recruitment process and their names were included in the list of the wait-listed candidates. No appointment letter was issued in their favour. The candidates for whose benefit the Scheme has been floated, also participated in the same recruitment process and on being found successful, appointment letter was issued in their favour. Subsequently their appointment stood terminated by the order passed by the Court with a direction to refund all remunerations and benefits received by them in the State exchequer within a stipulated time

period. On termination of the service of the appointed candidates they have been rendered jobless.

36. At present there are two sets of candidates; one is the appointed candidates since terminated and the other is the wait-listed candidates. Right now, both sets qualify as unemployed jobless candidates. By virtue of the Scheme the State intends to provide succour to the tainted terminated candidates.

37. Whether it is proper for the State to create a class of favoured candidates out of a bigger class of unemployed jobless candidates, is a matter to be decided after hearing both the parties. Whether such novel indigenous Scheme for welfare of a particular group of persons described as tainted and whose job stood terminated because of cheating and fraudulent activity can be adopted by the State, has to be scrutinized by the Court.

38. Locus standi of the petitioners in challenging the Scheme by way of a writ petition has been questioned. Giving out financial benefit to a particular set of jobless persons depriving the other, appears to be discriminatory. The State certainly has the legislative competency and can always formulate welfare measures but the same has to be applied equally without adopting a pick and choose method. When both sets of persons are hungry, the State cannot provide food to only a particular set and let the others starve. In such a case, can it be argued that the deprived lot cannot approach the writ Court for relief,

especially when all the parties participated in the same recruitment process?

39. Any public spirited person may file Public Interest Litigation challenging the Scheme as the money for the Scheme will be paid from the State exchequer, but the same will surely not take away the right of an individual to approach the writ Court if he has genuine reasons to feel aggrieved by the Scheme.

40. While formulating the Scheme the State relied upon Article 21 of the Constitution relating to fundamental right to life and Article 41 of the Constitution being the directive principle of State policy relating to right to work, to education and to public assistance. The aforesaid provisions apply equally to all. For securing life and livelihood to one group, the State cannot and ought not to ignore the other.

41. The State contends that the petitioners and the beneficiaries of the Scheme do not lie on the same footing. Whether the petitioners and the targeted beneficiaries are on the same plane or they belong to two separate and distinct sets, is also an issue to be decided.

42. Prima facie, it appears that the State has sought to provide financial support to candidates who failed to retain their job in view of the order passed by the Hon'ble Court. Specific observation of the Hon'ble Supreme Court in the judgment dated 3rd April, 2025 is that the service of the tainted candidates be terminated and they should

refund any salary/payment received since their appointments were the result of fraud, which amounts to cheating.

43. Once the highest Court of the land has decided the issue of illegal appointment conclusively and opined that the appointments were result of fraud, no person who was the beneficiary of a fraudulent act of the statutory authority ought to be provided any support, that too, from the public exchequer.

44. For adjudicating as to whether an interim order can be passed in the matter, the Court has to come to a prima facie finding as to whether any arguable case has been made out or not. From the discussions made hereinabove, it is evident that the petitioners have been able to come up with an arguable case.

45. By virtue of the Scheme certain persons who have been found to be involved in fraudulent activity by the Hon'ble Court will be provided rupees twenty-five thousand or twenty thousand per month from the public exchequer without performing any job, duty or work. If eventually after hearing all the parties in the writ petition, the Court opines that the Scheme is in violation of the legal provisions, then there will hardly be any scope to get refund of the money paid to these persons.

46. As it is, the money is being provided for financial relief. It is obvious that these persons are not very financially stable and will not be in a position to return the money if the Court ultimately declares

the Scheme as bad in law. The same will amount to unjust enrichment of certain persons on the strength of the money to be paid from the coffers of the State. Thus, the balance of convenience and inconvenience does not stand in favour of the authority to proceed to make payment in terms of the impugned Scheme.

47. As regards the submission of the State regarding non impleadment of the alleged beneficiaries in the writ petition, the Court is of the opinion that none has a vested right, far less fundamental right, to receive payment from the State exchequer without performing any duty and/or work. It does not appear that fundamental right of any of the so-called beneficiaries will be infringed if any order is passed restraining the State from giving any effect to the subject Scheme for the time being. Moreover, the beneficiaries have been found to be tainted by the Hon'ble Court. Payment to such tainted candidates amounts to giving undue benefit to them.

48. As the petitioners are also jobless and are in need of financial assistance, as such, the petitioners rightly feel that they have been deprived of the benefit of the Scheme. Proceeding to provide payment to the tainted candidates instead of proceeding to obtain refund of the payment received by them, calls for interference by the Court.

49. The State ought to appreciate the supremacy of the rule of law. As per Article 144 of the Constitution, all authorities, civil and judicial, in the territory of India shall act in aid of the Hon'ble

Supreme Court. The law laid down by the highest Court of the land is binding upon all and everybody will be bound to follow the same no matter how unpalatable it is. The faith and trust of the public in the judicial system cannot be permitted to be eroded. The act of the State respondents in formulating the impugned Scheme, prima facie, appears to overreach the order passed by the High Court affirmed by the Hon'ble Supreme Court.

50. The State has referred to Article 41 of the Constitution for formulation of the Scheme. Article 41 of the Constitution mentions that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and any other cases of undeserved want.

51. By the impugned Scheme the State is not making any provision for securing work. The Scheme is also not providing any public assistance to any unemployed candidate. On the contrary it appears that, the State is providing financial assistance to candidates whose job stood terminated by the order of the Court as the same was result of cheating. The State would be obliged to make payment to persons for rendering their service to the State. Paying persons gratuitously who are not serving the State but are either sitting at home or engaged elsewhere, does not appeal to the Court. Permitting the State to

proceed with the Scheme will tacitly support fraudulent activity, cheating and corruption.

52. Apropos the submission made by the State regarding pendency of the review proceeding before the Hon'ble Supreme Court for which the instant writ petition ought not to be entertained, the Court is of the opinion that mere filing of a review petition will not tantamount to continuation of the proceeding which stood finally and conclusively decided by the Court by passing judgment on 3rd April, 2025.

53. A litigant can never be restrained from filing any application before the Court. Whether the said application will be entertained or not is the sole discretion of the Court; but the party to the review proceeding cannot take the stand of pendency of the proceeding only because of filing of the review application.

54. According to the State if the petitioners have any grievance, the same ought to be agitated before the Hon'ble Supreme Court where the review application is pending and the Scheme impugned herein cannot be put to judicial scrutiny before this Court in the writ jurisdiction.

55. If it is the specific stand of the State that the review application is pending, then the State ought to have taken leave of the Hon'ble Supreme Court to give effect to the impugned Scheme. On one hand the State proceeds to publish a new Scheme without obtaining leave of the Court where the matter is alleged to be pending, and on the other,

when the said Scheme is challenged before the Court, the State opposes the same citing pendency of the review application. Such conflicting stand of the State does not appear to be proper.

56. As regards the submission of the State that the petitioners should approach the Court in contempt jurisdiction, I am of the opinion that if a litigant contends that the Scheme has been formulated in wilful, deliberate and intentional violation of the order of the Court, then the course of approaching the competent Court in contempt jurisdiction is always open. Here, the petitioners do not allege violation of the Court's order. The petitioners challenge the Scheme which is a consequential step taken by the State after order is passed by the Court.

57. The Scheme in question has just been formulated and the State is in the process of giving effect to the same. Formulation and publication of the Scheme is an absolute fresh and new cause of action. Validity of the Scheme is falling for adjudication before this Court for the first time. It has been brought to the knowledge of the Court that payment in accordance with the Scheme has not been disbursed till date.

58. It will not be proper for the Court to enter into and decide the validity of the impugned Scheme in its entirety at this stage, without granting the State an opportunity to file affidavit.

59. The respondents are, accordingly, directed to file affidavit in opposition within a period of four weeks; reply if any, within a fortnight thereafter. Liberty to mention the matter for hearing on conclusion of the aforesaid time period.

60. As an interim measure, the State is restrained from giving any effect and/or further effect to the impugned Scheme till 26th September, 2025 or until further order, whichever is earlier.

61. It is made clear that the observations made herein above are tentative, only for the purpose of deciding the prayer for interim order and the Court need not be influenced by the same at the time of final disposal of the writ petition.

62. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)