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2021

Through Video Conference
MAT 61 of 2020
With
I.A. No.CAN 1 of 2020 (Old No. CAN 1280 of 2020)
Tahamina Khatun
-vs-
State of West Bengal & Ors.

Mr. Kanai Lal Samanta .. for the Appellant

Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das for the State

Sk. Rejaul Alam ... for the respondent no. 5

By consent of the parties the appeal and the application be treated as on day's list and disposed of by this common order.

This is an appeal arising out of the order dated 2nd December, 2019 passed by the learned Single Judge whereby the issue relating to grant of Child Care Leave in favour of the writ petitioner and sanction of benefits for rendering 20 years continuous service under the Career Advancement Scheme, was directed to be considered by the Director, Madrasah Education. Along with such direction there was an observation made in the order under appeal that the Court was of prima facie view that the writ petitioner's claim for 20 years' service benefits under Career Advancement Scheme should not be considered in view of her conduct. It is also been directed by the learned Single Judge that the Director shall be at liberty to recommend for initiation of disciplinary proceedings against the writ petitioner.

The writ petitioner is a group-D staff in a Government aided recognized Madrasah working against the sanctioned post. Since she is an approved staff of the said Madrasah under relevant provisions of the Leave Rules, it is open to the writ petitioner to avail of the leave

subject to her requirement upon the same being sanctioned by the concerned Madrasah Authorities. During course of hearing it has been brought to our notice one Memorandum No. 5560-F (P) dated 17th July, 2015 issued by the O.S.D. & E.G. Joint Secretary to the Government of West Bengal relating to sanction of Child Care Leave in favour of approved teaching and non-teaching staff of the educational institutions subject to certain conditions stipulated therein. It also appears that the writ petitioner made application for Child Care Leave vide a letter dated 1st August, 2018 which is at page 49 of the stay application for the period from 17th August, 2018 to 15th September, 2018. A contemporaneous application was made for sanctioning benefit under the Career Advancement Scheme for rendering 20 years of continuous service vide letter dated 28th February, 2016. Both issues require to be addressed by the concerned authority upon deciding whether the writ petitioner is entitled to get the sanction of Child Care Leave as prayed for at the material point of time as well as sanctioning of service benefits under the Career Advancement Scheme.

During course of hearing it has been contended on behalf of the learned advocate representing the teacher-in-charge of the Madrasah that the writ petitioner is habitual absentee and several letters were issued to the writ petitioner for resuming her duty but the same was not complied with by the writ petitioner. On posing question to the learned advocate representing the teacher-in-charge whether any proceedings have been initiated against the writ petitioner, no satisfactory reply has been offered before us.

Considering the order passed by the learned Single Judge, grievance mainly ventilated before us by preferring the appeal by the appellant is the observations contained in the order under appeal to the extent of making recommendation for initiation of disciplinary proceedings

by the Madrasah Authorities on the basis of the order to be passed by the Director of Madrasah Education. It has also been prima facie decided by the learned Single Judge that in view of the facts and circumstances writ petitioner is not entitled to get the benefit under the Career Advancement Scheme.

Considering the rival contentions of the parties and the facts relevant in this matter, we are of the opinion that since two issues have been remitted to the Director of Madrasah Education for consideration, one is grant of benefit under the Career Advancement Scheme and another is sanction of Child Care Leave in terms of the relevant memorandum dated 17th July, 2015, we are not interfering with the particular part of the order under appeal whereby the two issues have been directed to be considered by the Director of Madrasah Education. However, we are setting aside that part of the order under appeal by which the learned Single Judge has expressed opinion that the writ petitioner is not entitled to get the benefit under the Career Advancement Scheme as well as grant of liberty by the learned Single Judge to the Director of Madrasah Education for recommending for the purpose of initiation of the disciplinary proceedings against the writ petitioner.

With the above observations both the appeal and the application are partly allowed.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)