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Ct-12

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MAT 112 of 2021
with
I.A No. CAN 1 of 2021

The West Bengal Madrasah Service
Commission & Ors.
Vs.
Shamima Sultana & Ors.

Mr. Prosenjit Mukherjee
Mr. Nirmalya Das
Ms. Madhurima Sarkar
... For the Appellants

Mr. Arjun Ray
Ms. Saheli Mukherjee
Ms. Debapriya Mukherjee
... For the Writ Petitioner/Respondent

Mr. Subhrangsu Panda
... For the D.M.E

Mr. Uday Sankar Chattopadhyay
Mr. Santanu Maji
Ms. Snigdha Saha
Mr. Sayan Chattopadhyay
... For the Respondent no. 6

Mr. Shamim Ul Bari
... For the State Respondent

Although the matter is appearing under the heading application, by consent of the parties we take up the appeal itself for hearing by treating the same as on day's list.

We have heard the learned counsel for the parties.

The appellants are aggrieved by the order passed by the learned Single Judge by which the appellants were directed to offer a post in Allahabad High Madrasah in the district of Dakshin Dinajpur on priority and in place and stead of the private respondent solely on consideration that the writ petitioner, who

applied for general transfer in the year 2011 could not be accommodated since the writ petitioner did not find any suitable Madrasah of her choice at the time of counselling session. Her general transfer was carried forward to the next counselling session. In the meantime, the private respondent, namely Jasmin Ara Begum, applied for general transfer in the year 2013, which process got stalled due to pendency of proceedings before the High Court as well in the Hon'ble Supreme Court with regard to the vires of the Madrasah Act. After the said issue was ultimately settled when the applications for general transfer were processed by the West Bengal Madrasah Service Commission, preference was given to the private respondent on the ground of seniority.

The learned Single Judge interpreted relevant provisions of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of persons for Appointment and Transfer to the Post of Teacher and non-teaching Staff) Rules, 2010 in favour of the writ petitioner and held that having regard to the fact that the writ petitioner applied for general transfer earlier point of time and an equitable right has accrued in favour of the writ petitioner to get a priority offer to any other candidate. On the basis of such interpretation of the Rule 33(2) the writ petition was allowed.

Learned counsel for the Madrasah Service Commission submits that the writ petition applied for general transfer in 2011 and she could not find any suitable place in the district of Dakshin Dinajpur at the time of counselling session.

It is submitted that the notice inviting

applications for transfer and mutual transfer under the heading “General Information” in Clause (g) it is specifically stated that the seniority in service towards transfer case only may be counted from his/her service in present serving Madrasah. The said condition is consistent with Rule 33 of sub-rule (2) of West Bengal Madrasah Service Commission Rules 2010. The writ petitioner was aware of the said Rule. She did not opt for any Madrasah in the year 2011, although it was open to her to choose a Madrasah in the district of Dakshin Dinajpur. Learned counsel for the Madrasah has also drawn our attention to page 99 of the stay application where it appears that the writ petitioner participated in the counselling session conducted by the West Bengal Madrasah Service Commission for selection of a Madrasah and she was aware of the fact that in the event she did not select any Madrasah in the said counselling session her case would be forwarded to the next general transfer counselling session in future.

Learned counsel for the writ petitioner submits that Sub-rule (2) of Rule 33 of the said Rules has to be read in an equitable manner. Sub-rule (2) of Rule 33 does not necessarily mean that a candidate applied for transfer prior to relevant point of time would be deprived of his/her choice only on the ground that another candidate who is senior to him is in service. The senior most candidate in the context of general transfer should be read and understood to mean that the candidate who had applied prior thereto should be given preference.

On such premise it is submitted that the learned trial judge in extending the principles of equity has allowed the writ petition and that

order should not be interfered with. Equity cannot replace a Rule. The rule making power of the Madrasah is not under challenge. The relevant Rule which gives preference to seniority is also not under challenge. The applicant while participating at the counselling session was aware of the fact that the seniority would be given precedence, even if it was for a day while considering the claim of transfer. In the instant case, it is not in dispute that the private respondent is senior to the writ petitioner. Seniority is good enough under Rule 33 of sub-rule (2) of West Bengal Madrasah Service Commission Rules 2010 in considering the application for transfer at a time where there may be one vacancy, but several candidates have applied.

With due respect to the learned Single Judge we feel that the interpretation given by the learned Single Judge is contrary to the plain and simple meaning of Sub-rule (2) of Rule 33 and any other interpretation would mean rewriting the Rule. Although the learned Single Judge has referred to the golden rule of interpretation of a statute as an aid to arrive at the conclusion but it seems that the said principle was not properly applied in the instant case only on the ground that if such interpretation is permitted it might defeat equity. On a plain and literal interpretation of the said sub-rule (3) it is clear and simple that seniority in service should be given preference.

On such consideration the appeal stands allowed. The order of the learned Single Judge is accordingly set aside.

In view of allowing the appeal, the application for stay is also disposed of.

However, considering the fact that there are other vacancies in the same district the Commission shall take immediate step to accommodate the writ petitioner in a suitable Madrasah of her choice other than the Madrasah where the private respondent has been accommodated within three weeks from date.

There will be no order as to costs.

Urgent Xerox certified copy to be made available to the parties upon compliance of all formalities.

(Saugata Bhattacharyya,J.) (Soumen Sen, J.)

