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Ct-12

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MAT 198 of 2021
with
I.A No. CAN 1 of 2021

The President, Managing Committee of
Shyamnagar High School
Vs.
Mityl Chakravorty & Ors.

Mr. Amales Ray
Ms. Mousumi Bhowal
... For the Appellant

Mr. Indranil Roy
Mr. Sumit Kumar Roy
... For the Respondent no. 1/writ petitioner

Mr. Susanta Pal
Ms. Ananya Negi
... For the State

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.

The appeal is at the instance of the President, Managing Committee of Shyamnagar High School .

Mr. Pradip Kumar Dey, the Assistant Teacher, who was selected as Teacher-in-charge of the said school with the support of the majority members of the Managing Committee, who were present in the said meeting.

Smt. Mityl Chakravorty and four others challenged the decision of the managing committee for appointment of Mr. Dey as Teacher-in-Charge on the ground that though their willingness was called for by the managing committee before selecting the candidate for the post of Teacher-in-Charge, the selection was done in violation of the order passed by learned

single judge on 4th February, 2019 in W.P 1763(w) of 2019.

We have gone through the memo of appeal as well as the stay application and other materials during the course of hearing.

Learned counsel appearing for the appellant has submitted that there cannot be any rigid rule that the senior most teacher irrespective of qualification should be considered as Teacher-in-Charge in absence of the Headmaster and in this regard he has relied upon three decisions passed by learned single judges of this court, namely, i) W.P 37202(w) of 2013 (Smt. Rina Roy Vs. The State of West Bengal & Ors.), ii) W.P 4092(w) of 2015 (Manik Kumar Halder Vs. The State of West Bengal & Ors.) and iii) W.P 13726(w) of 2015 (Sri Sushanta Mondal Vs. The State of West Bengal & Ors.)

It is submitted that the resolution dated 12th December, 2020 clearly shows that the writ petitioners, more particularly Smt. Mityl Chakravorty did not offer herself for being considered as TIC and instead recommended the name of one Utpal Mandal. It is thus argued that right to claim for consideration of TIC has consciously been waived by the writ petitioner/respondent no. 1.

Mr. Indranil Roy, learned counsel appearing on behalf of the respondent no. 1/writ petitioner has submitted that in spite the writ petitioner is senior to Mr. Pradip Kumar Dey, she was not asked to give her willingness by the managing committee.

Mr. Roy has further submitted that two of the writ petitioners have lodged complaint against Mr. Pradip Kumar Dey for sexual harassment before the West Bengal State Commission for Women. It is further argued regarding the claim

of Mr. Dey that since he is master degree holder but his qualification cannot be accepted as such degree was obtained from an unrecognized institute.

Learned counsel appearing for the State has supported the writ petitioner and has relied upon the enquiry report, which was taken note by the learned single judge in allowing the writ petition.

We have heard the learned counsel appearing for the parties. The impasse that is likely to be created, in our view due to want of the Teacher-in-Charge has to be addressed first to ensure that the interest of the institution is not jeopardised in the crossfire of litigation. Prima facie, it appears that Mityl Chakravorty and the other writ petitioners did not offer themselves to be considered as TIC. In fact, the writ petitioner no. 1 has categorically proposed the name of another teacher for being considered as TIC. There also cannot be any dispute that the person, who was selected, has requisite qualification and the majority members of the managing committee has recommended his name for the post.

In the event at this stage if we upset the said resolution the institution will suffer. However, having regard to the nature of the allegation raised by the writ petitioners we feel that matter should be decided finally by the Commissioner of School Education, West Bengal within a period of ten weeks from the date of communication of this order by either of the parties. Till such decision is taken, Mr. Pradip Kumar Dey shall be permitted to discharge his function as Teacher-in-Charge of the institution.

The Commissioner of School Education shall decide the matter impartially and upon considering the materials to be produced by the

parties before the said authority. Thereafter the said authority shall pass a reasoned order after giving an opportunity of hearing to the parties preferably within the aforesaid period and communicate the decision to the parties within two weeks thereafter.

The appeal is thus allowed and the order of the learned single judge is set aside.

In view of disposal of appeal, the application for stay also stands disposed of.

There shall be no order as to costs.

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

