

02.08.2021
item no.25
s. bhar
Ct.No. 17

WPA 11693 of 2021

(via video conference)

Piyali Das

-Vs-

The State of West Bengal & ors.

Mr. Amitabrata Royfor the Petitioner

Mr. Supriyo Chattapadhyay

Mr. Sabyasachi Mondal ...for the State

Ms. Chaitali Bhattacharyya ..for the state respondent

Ms. Koyeli Bhattacharyya

...For the Respondent nos. 3 & 4

This is an imbroglio in the mutual transfer of the petitioner and the respondent no. 10. On 28.12.2020, the petitioner withdrew her consent which is *sine qua non* for any mutual transfer and intimated the same to the Commissioner of School Education. In this matter, the Headmaster of the school, where the petitioner is working as a teacher, by his letter dated 2nd July, 2021, has intimated that the salary of the petitioner would be stopped from next month i.e. month of August 2021.

The learned Advocate for the petitioner submits that the portal of payment to the petitioner has been blocked from 7th July, 2021. This shows that the salary of the petitioner has actually been stopped.

Mr. Supriyo Chattapadhyay, the learned Advocate for the State, submits that the recommendation of the Commissioner of School Education was made on 21st December, 2020 and the letter of the petitioner withdrawing her consent was written on 28th December,

2020. Therefore, I find that before passing of the final order of transfer on the basis of the recommendation of the Commissioner of School Education issued by the West Bengal Board of Secondary Education on 6th January, 2021, the consent of the petitioner was withdrawn.

When the consent of the petitioner has been withdrawn in a mutual transfer matter, I hold that the decision of the petitioner is required to be honoured as nobody can be compelled to do something against his/her wishes as something has been written on paper by some high-ranking officials in respect of the mutual transfer.

The wish of the party being the petitioner herein cannot be trammled under the steam roller of bureaucracy. Hence, I give the following directions:-

- i) The recommendation made by the Commissioner of School Education vide no. CSE/MT/01562 dated 21.12.2020 is set aside as the consequential and final effect of this recommendation is the actual mutual transfer order which was passed on 6th January, 2021 before which the petitioner withdrew her consent.
- ii) The direction given for allowing the transfer of the petitioner to another school by the West Bengal Board of Secondary Education dated 6th January, 2021 is set aside in the facts and circumstances stated above.
- iii) The petitioner shall be allowed to work in her school as usual before making the application for mutual transfer and she shall be paid full salary and the letter of the Headmaster of Hatimari High School dated 2.07.2021 shall have no effect in respect of the payment of salary to the petitioner.

The learned advocate for the petitioner submits that the direction is required to be given to the respondent no. 5, the District Inspector of School (Secondary Education), Malda to open the portal in respect of the petitioner so that her salary can be paid immediately.

The release orders issued by the School to the petitioner dated 4th February, 2021 and 12th February, 2021 are also set aside as a consequence of the order passed above.

With this direction, the writ application is allowed and it is expected by this court that the petitioner will not face any further complication in respect of her service as has been ventilated in the writ application.

All parties are to act on the server copy duly downloaded from the website of this court.

(Abhijit Gangopadhyay, J.)