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16.11.
2021
Ct. No.17

WPA 14559 of 2021

Rakhi Roy (Sarkar)
Vs.
The State of W. B. & Ors.

Mr. Kamalesh Bhattacharya
Mr. Rezaul Hossain
Mr. Parvez Hossain
.....For the Petitioner
Mr. Anjan Bhattacharya
.....For the Respondent No.8
Dr. Sutanu Kr. Patra
Ms. Supriya Dubey
.....For the WBCSSC
Mr. Supriyo Chattopadhyay
Ms. Iti Dutta
.....For the State

The allegation of the petitioner is that an order of transfer has been passed in respect of her husband's present school to another school during the pendency of a judicial proceeding. The matter came up last on 8th October, 2021 when the interim order passed and on 16.09.2021 it was extended for a limited period. The interim order is expiring today.

Both sides are present today. The matter is taken up for hearing.

I have considered the amended Rule 6 as published in Kolkata Gazette on 8th September, 2021 particularly Rule 6 (2) (b) which is as follows:-

"2) Upon submission of application, the authority

of SMC shall –

(b) examine whether departmental/judicial proceeding is pending or being contemplated, or suspension order is issued against applicant or not. In any such affirmative case, the school authority shall not forward the application.”

The petitioner has drawn my attention to Annexure – ‘P-3’ which is an application for bail filed by the husband of the petitioner in respect of P. S. Case No.131/2018 under Section 498A/325/307/306/34, I. P. C.

Learned advocate for the private respondent being the husband of the petitioner has submitted that the transfer application was filed in 2017 and it was processed in 2018 and at that point of time when the application was made, there was no criminal proceeding against his client and, therefore, Rule 6 (2) (b) is not applicable in his case.

The above mentioned Rule speaks of a bar in forwarding the application. If any departmental/judicial proceeding is pending, the school shall not forward the application.

Considering the letter and spirit of this provision. I find that the real intention of the legislature in framing this rule is the transfer of such a teacher against whom judicial proceeding is pending is barred so long the judicial proceeding is pending. Therefore,

I dispose of this application holding that the process of the application and the transfer order is cancelled and set aside and it is ineffective.

As the writ application has been allowed cancelling the recommendation and the transfer order, which is Annexure 'P-7' (at pages 42 and 43) there is no question of any extension of interim order.

(Abhijit Gangopadhyay, J.)