

16.02.2022

Court : 04
Item : 28
Matter : MAT
Status : DO
Transcriber: nandy

MAT 72 of 2022

with

CAN 1 of 2022

with

CAN 2 of 2022

Prof. Subha Sankar Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Dr. Chapales Bandopadhyay, Advocate

Ms. Anandamayee Dutta, Advocate

Ms. Atmaja Bandopadhyay, Advocate

.....for the Appellant

Mr. Bikash Ranjan Bhattacharya, Sr. Advocate

Mr. Dilip Kumar De, Advocate

Mr. Arunava Pati, Advocate

Mr. S.C. Dhara, Advocate

.....for the Respondent No. 2

Leave is granted to the learned Advocate-on-record of the appellant, to implead the left out parties, here and now.

The present appeal is taken up by the erstwhile Chairman of the West Bengal Central School Service Commission against a judgment dated January 10, 2022 wherein adverse remarks were made against the appellant followed by imposition of personal costs. The dispute pertains to the issuance of recommendation for appointment to the post of Assistant Teacher in secondary school.

According to the writ-petitioner there has been several tier of counseling and her position

could be evinced at serial no. 149 in a wait-list category of general candidates. The allegation was made that the wait-listed candidates, whose ranks are much below the rank of the writ-petitioner, have been recommended for appointment which tantamount to an act of malice, discrimination, nepotism and favouratism. Ultimately, the appellant being the erstwhile Chairman, was directed to consider such representation and the same was disposed of with the finding that all the candidates were informed to attend the office of the Commission on August 3, 2022 through SMS but the writ-petitioner did not appear whereas the candidates who have been recommended, in fact, appeared on the said date and, therefore, the Commission cannot be blamed to have committed any fault in this regard.

The single Bench relied upon various provisions of the Rules pertaining to the communication to be made to the candidates for counseling and held that such Rules have not been followed in true letter and spirit and, therefore, such defence taken by the appellant is unacceptable and contrary to the aforesaid provision.

It is no doubt true that if a thing is required

to be done in a particular manner it should be done in such manner and not otherwise. If the Rule prescribed the mode of communication, it has to be followed and adhered to as any infraction and/or violation may invite serious consequences. So far as the, portion of the order, where the Hon'ble Judge has directed the Commission to hold a counseling for petitioner in respect of undisputed vacancies and in the event of an exigency, be recommended for any future vacancies, is concerned, we don't find any infirmities therein.

We are informed by Mr. Bhattacharya, learned senior Counsel, appearing for the writ-petitioner/respondent no. 2, that the writ-petitioner has already been appointed. We thus do not find any scope to hold otherwise. However, Mr. Bhattacharya also joins hand with Dr. Bandopadhyay, learned Advocate, appearing for the appellant, that the adverse remark made against the appellant appears to be extraneous and the same may be expunged.

We are informed by Dr. Bandopadhyay that at the relevant point of time i.e. on August 3, 2020, the appellant was not holding the post of Chairman of the Commission, in fact, he joined the said post on December 16, 2020. Since the

writ-petition was directed to be considered by this Court, the aforesaid finding was based upon the records, the veracity could not be disputed. In view of the fact that the said findings were made from the record having no personal knowledge or the information in this regard, we do not find that it would not be appropriate to keep the adverse remark made against the appellant.

We thus expunge the portion of the impugned order by which the adverse remarks are made against the appellant as well as imposition of costs.

With these findings, the appeal being **MAT 72 of 2022** and the connected applications being **CAN 1 of 2022** and **CAN 2 of 2022** are disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

