

Court No. 17

WPA 2155 of 2022

19.04.2022

(AD 117)

(S. Banerjee)

Tapasi Maity

Vs.

The State of West Bengal & Ors.

Mr. Ujjal Ray

... for the petitioner

Let the affidavit of service filed in court today be kept with the record.

The petitioner made her first application for transfer on 12.08.2021 when there was no embargo in respect of transfer of single teachers in a post in a school. However, the petitioner instead of pursuing the first application made the second application for transfer on 26.11.2021. By this date, i.e., 26.11.2021, some conditions were put by the State in respect of transfer of single teachers in a school in respect of a post.

Therefore, though the learned advocate for the petitioner has submitted that the wrong was initially committed by the authorities by returning the application of the petitioner dated 12.08.2021, she cannot be penalised by applying the embargo put on the single teachers in a post in a school by virtue of the Government Order dated 22.09.2021.

I am sorry that I cannot accept this submission as the petitioner has abandoned her known right. The right known to her was that the respondents made mistake by returning her first application dated 12.08.2021. Abandonment of a known right is waiver. Therefore, I hold that the petitioner waived her right in respect of her first application and she cannot agitate the same. In this regard another principle of blowing hot and cold at the same time also comes into play as the petitioner once accepted the position of returning of her first application but thereafter she is saying that she is not bound by the decision in respect of her first application, though she accepted it.

So the second principle, as has been stated above, that a person cannot blow hot and cold at the same time, i.e., the principle of estoppel also creates a legal impediment before her beside the legal impediment of waiver. Therefore, I cannot accept that submission made on behalf of the petitioner.

However, the writ petition has been filed on 07.02.2022. When it was filed by that time, to be specific - on 3rd January, 2022, a notification in respect of single teacher in a school in respect of a subject has come into force. In respect of the penultimate paragraph of the said notification, the school has been directed not to reject such applications but to send it to the District Inspector of Schools.

Therefore, I direct the school to send the second application of the petitioner dated 26.11.2021 to the concerned District Inspector of Schools, if it is not done in the meantime.

The District Inspector of Schools is directed to look into the matter and try to see whether any local arrangement can be made in respect of the application of the petitioner for transfer and if local arrangement can be made, the procedures laid down in the notification dated 3rd January, 2022 is required to be followed by the District Inspector of Schools. If the local arrangement cannot be made, the concerned District Inspector of Schools will intimate the petitioner in writing the result of his endeavour of making local arrangements. This decision is to be communicated to the petitioner and also to the school where the petitioner is now working by three months from date.

However, if the local arrangement can be made by the District Inspector of Schools, the petitioner shall be given an opportunity to select other schools by filing a fresh application only for the purpose of naming the vacancies in those schools as, by the time such local arrangement is made, the vacancies the petitioner selected for her transfer may have been filled up.

With the above observation and direction, this writ application is disposed of.

(Abhijit Gangopadhyay, J.)