

150. 13.07.2022
BD Ct.15

W.P.A. 3400 of 2019

Nimai Doloi

-vs-

The State of West Bengal & Ors.

Mr. Swapan Kumar Majumder

Mr. Mukunda Lal Sarkar

....for the petitioner.

Mr. Ranjan Saha

....for the DPSC.

The writ petitioner is a primary teacher who was appointed on substantive basis vide letter dated 19th January, 2006 issued by the Chairman, District Primary School Council, Paschim Medinipur. Subsequently as it has been pointed out by Mr. Swapan Kumar Majumder, learned advocate, representing the petitioner that a notification was issued on 17th August, 2012 on behalf of the District Primary School Council, Paschim Medinipur, (hereinafter referred to as the "said Council") inviting application from eligible desirous candidates for transfer. Pursuant to such notification dated 17th August, 2012 petitioner made an application on 11th September, 2012 before the said council seeking transfer indicating the names of the school where petitioner was willing to be transferred under Narajole II- Circle. Based on such application the Chairman of the

said council issued an order of transfer dated 19th June, 2014 whereby the petitioner was transferred from Nilotpat Primary school to Narajole Rani Mrinalini Primary School. However, it has been submitted that such transfer order was not given effect to which triggered the first Writ Petition being WPA 30223 of 2015 which was disposed of by a co-ordinate Bench thereby directing the said council to communicate its decision on transfer of the petitioner which was taken on 18th January, 2016 as it was submitted on behalf of the council. There was specific direction by the co-ordinate Bench that such decision was required to be communicated within a period of two weeks from the date of communication of that order. It has further been submitted by Mr. Majumder, learned advocate, that in spite of such direction passed by the co-ordinate Bench the decision relating to transfer of the petitioner was not communicated at the material point of time.

Ultimately, petitioner was again transferred vide order dated 4th February, 2019 issued by the Chairman of the said council whereby the petitioner was asked to join the post of Assistant Teacher in Krishnapur Primary School from Nilapat Primary School. It has been submitted that during

pendency of the writ petition pursuant to the order passed by the co-ordinate Bench on 4th February, 2019 petitioner has joined the transferred post and is working there. However, challenge has been thrown to the transfer order dated 4th February, 2019 since petitioner wants to be transferred to Narajole Rani Mrinalini Primary School based on the first transfer order dated 19th June, 2014 which was issued by the Chairman of the said council considering the application of the petitioner dated 11th September, 2012.

Petitioner is aggrieved by the 2nd transfer order dated 4th February, 2019. It has also been submitted that pursuant to the direction passed by the co-ordinate Bench dated 3rd February, 2016 there was no formal communication made to the petitioner on behalf of the said council on the decision dated 18th January, 2016 relating to transfer of the petitioner.

Mr. Ranjan Saha, learned advocate representing the said council while defending the stand of the said council has placed reliance on paragraph 4 of the affidavit-in-opposition affirmed on 31st March, 2022. It has been submitted that it is true that prior to filing of the present writ petition there was failure on the part of the said

council to communicate the decision of the council dated 18th January, 2016; however, it was decided on 18th January, 2016 pursuant to the order of the Hon'ble High Court dated 6th August, 2015 passed on an intra Court appeal being AST 173 of 2015 not to give effect to the first transfer order dated 19th June, 2014. It has been submitted that being the position in view of the decision dated 18th January, 2016 the first transfer order dated 19th June, 2014 could not be given effect to.

This Court has heard the learned advocates representing the parties and perused the relevant materials available on records as well as pleadings exchanged by and between the parties.

The petitioner has challenged the subsequent transfer order dated 4th February, 2019 based on the fact that the petitioner was previously transferred vide order dated 19th June, 2014. Fact remains first transfer order dated 19th June, 2014 was not given effect to which prompted the petitioner to approach this Court by filing the first writ petition and while disposing of the said writ petition the co-ordinate Bench by passing order dated 3rd February, 2016 directed the said council to communicate the decision dated 18th January, 2016 which was not communicated to the petitioner within time. From the

affidavit-in-opposition it further appears that the Chairman of the said council vide memo dated 13th February, 2019 communicated the decision to the writ petitioner which was taken in the meeting dated 18th January, 2016.

While considering the aforesaid facts it appears that there was laches on the part of the said council in communicating the decision dated 18th January, 2016 to the petitioner and at the same time petitioner also sat idle over the issue of failure to communicate such decision within the stipulated time as per the order passed by Co-ordinate Bench on 3rd February, 2016.

That being the position, since there is no challenge thrown to the decision of the said council dated 18th January, 2016 touching upon the issue of transfer of the petitioner based on transfer order dated 19th June, 2014, legality of the steps taken by the said council relating to the transfer of the petitioner cannot be adjudicated in the present writ petition.

In view of such findings, the present writ petition stands disposed of upon granting leave to the petitioner to initiate steps in accordance with law, if so advised, against such decision of the council dated 18th January, 2016 which has been belatedly

communicated to the petitioner vide memo dated 13th February, 2019 which is also annexed to the affidavit-in-opposition to this writ petition.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)