

04.01.2024
SL No.18 wt 19
Court No.8
(gc)

**MAT 596 of 2022
CAN 2 of 2022**

**The Headmaster, Raiganj
Coronation High School
Versus
Sanjukta Roy & Ors.**

With

MAT 562 of 2022

**The Headmaster, Raiganj
Coronation High School
Versus
Sanjukta Roy & Ors.**

Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Soumya Dasgupta,
Mr. Kanak Kiran Bandhapadhaya,
Ms. Tanuta Guray,
Ms. Mousri Jana,
Mr. Ritankar Das

...for the Appellant.

Mr. Anjan Bhattacharya,
Ms. Anita Shaw

...for the Respondent/Writ Petitioner.

Mr. Shamim ul Bari,

...for the State Respondent.

Md. Sarwar Jahan,
Mr. Kaustav Roy,

...for the Respondent
Nos.8, 10 and 11.

Mrs. Koyeli Bhattacharyya, Adv.

...for the W.B.B.S.E.

Re: CAN 2 of 2022

1. This is an application for recalling of an order dated 11th August, 2022. On 11th August, 2022, a batch of appeal was heard and disposed of on merits by the Division Bench presided over by Justice Subrata Talukdar. The application for recalling was filed on 21st

September, 2022. In view of the fact that the said application was not heard by the Bench that had disposed of the appeal the matter was initially assigned to the Bench presided over by Justice Arijit Banerjee and thereafter to this Bench since the other member of the Bench that had originally passed the order was not available.

2. Mr. Bikash Ranjan Bhattacharya, learned Senior Counsel appearing on behalf of the appellant submits that by reason of the fact that Sanjukta Roy is presently discharging her duty as an Assistant Teacher, the allegations against three persons which include Mr. Kali Charan Saha, the present Headmaster, the writ petition does not survive although it may have been marked as part-heard. Mr. Bhattacharya has drawn our attention to the order passed by the Coordinate Bench at an interim stage, namely, the order dated 19th May, 2022 to argue that the Coordinate Bench was satisfied with the submission of Mr. Kalyan Bandopadhyay, learned Senior Counsel who had represented the Headmaster, Raiganj Coronation High School with regard to the removal of the Headmaster without arriving at a definite conclusion with regard to the

involvement of the present appellant in the said alleged act of preventing Sanjukta Roy from joining the institution. It is true that the Coordinate Bench was of the view that there could be no justification for the appellant being prevented from entering the school. While disposing of the appeal on merits, the Coordinate Bench had duly taken note of the fact that the Hon'ble Single Judge has restrained the present Headmaster of the school in issue from serving in his present capacity and drawing benefits therefrom. Thereafter, the Hon'ble Division Bench has passed the following order:-

“Having heard the parties and considering the materials placed, this Court finds that by the Order dated 7th of April, 2022, the Hon'ble Single Bench had correctly appreciated the facts and the law applicable. The Hon'ble Single Bench has also analysed the role of the parties claiming to be Assistant Teachers of the School-in-issue as well as the role of the school itself. The Hon'ble Single Bench had accordingly passed directions which appear in the following paragraphs and are reproduced below:-

“20. Learned advocate for the Md. Mahidur Alam, being the added respondent, has also drawn my attention to Rule 11 of the aforesaid

Rules of 2018 which says about interpretation and relaxation of rules.

... ..

22. Therefore, I set aside and quash the order dated 08.11.2021 passed by the President of the Ad hoc committee of the Board which is the disciplinary authority whereby said Md. Mahidur Alam was allowed to join the service in his post after withdrawal of the termination.

23. Now I direct the concerned DI to take immediate steps to declare that the petitioner of WPA 15962 of 2021, Ms. Sanjukta Roy, has joined the vacant post as was written by the DI and not only the DI, the Commissioner of School Education on different dates to the school, (as has been referred above) and Ms. Sanjukta Roy's confirmation in the service shall be made by the said DI within a period of seven days from date of this order.

... ..

25. I direct the school to take note of this order immediately as the present Teacher-in-Charge who has been appointed for one month from date after removal of the said headmaster who suppressed facts from the chairman of the Board being the Disciplinary Authority while reconsidering the matter by order of this court dated 14.09.2021 whereby the petitioner herein, namely Ms.

Sanjukta Roy, was harassed for a substantial period of time.

26. This matter is kept pending as the lady after harassment has joined the post after 13 months and her pending salary has still not been paid though the persons have submitted before this court through their learned advocate Mr. Bhattacharya that on 11th April, 2022 the entire due salary would be paid by cheque to the lady, being the petitioner herein and I grant liberty to the petitioner to mention, either personally or through her learned advocate or any other advocate, before me if she is harassed or any unwarranted comment or untoward gesture is made to her in the school.”

From a complete appreciation of the materials placed, this Court is of the view that the rules and regulations connected to the appointment and termination of Assistant Teachers in the facts of the case were correctly appreciated by the Order dated 7th of April, 2022. This Court also finds that by the Order dated 7th of April, 2022 the Writ Petition has been marked as heard-in-part and hence the lis between the parties cannot be said to have absolutely concluded.”

3. The points now urged in the garb of recalling cannot be appreciated. The matter was heard at length and parties have argued all

the points including the points raised or ought to have been raised. We do not find any error apparent on the basis of the record for which we could exercise our jurisdiction under review or recalling the said order. There has been no suppression of material fact.

4. On such consideration, we do not find any reason to recall the order dated 11th August, 2022.
5. Mr. Bhattacharya has submitted that since Sanjukta Roy has joined the school and the applicant is receiving the salary from the Government, no fruitful purpose would be served in keeping the writ petition pending as the prayers made by Sanjukta Roy in the writ petition has been allowed by reason of which Sanjukta joined the school and the applicant is receiving salary without being allowed to function as Headmaster which would cause inconvenience to the school. It is submitted that in view of the Division Bench judgment permitting the Headmaster to receive the salary, *prima facie*, goes to show that there has been no resistance caused to Sanjukta Roy to join the post at the instance of the appeal. We are not required to decide the said issue as it is for the learned Single

Judge to take note of such facts and the submissions, if made, in this regard may be considered at the stage of disposal of the writ petition. However, as observed earlier, we do not find any error apparent on the face of record and, accordingly, we are not inclined to recall the order dated 11th August, 2022.

6. With the aforesaid observation, the recalling application stands dismissed.
7. However, there shall be no order as to costs.
8. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)