

25.01.2022

Court : 04
Item : 12
Matter : MAT
Status : DISMISSED
Transcriber: nandy

MAT 1264 of 2021
with
CAN 1 of 2021

The Headmaster/Superintendent,
Shamsia High Madrasah (HS)
Vs.
Tarannum Parveen & Ors.

Mr. Syed Mansur Ali, Advocate
.....for the Appellant
Mr. Prosenjit Mukherjee, Advocate
.....for the Madrasah Commission
Mr. Subhrangshu Panda, Advocate
.....for the Respondent No. 1
Mr. Bhaskar Prasad Vaisya, Advocate
Mr. Suman Dey, Advocate
.....for the State

The instant mandamus appeal arises from an order dated November 11, 2021 passed by the Single Bench in WPA 16109 of 2021 directing the appellant to issue ‘No Objection Certificate’ within a period of two weeks from date in favour of the respondent no. 1. The writ-petition was taken out by the respondent no. 1 as the appellant unreasonably withheld the issuance of ‘No Objection Certificate’ which is a pre-requisite condition for entertaining an application for general transfer. A plea was taken by the appellant that there is only one teacher i.e. the respondent no. 1 in the stream of Geography in the said School and, therefore, ‘No Objection Certificate’ cannot be issued as the School would suffer the most.

Neither the Headmaster is an appointing authority nor is bestowed with any power to recruit any person by initiating the selection process. The

Headmaster is to run the Institution and is in the helm of administration. Indubitably the recruitment and appointment for the first time or on transfer is vested upon the Madrasah Service Commission under the West Bengal Madrasah Service Commission Recruitment (selection and recommendation of persons for appointment and transfer to the posts of teacher and non-teacher) Rules 2010 (hereinafter referred as Rule of 2010).

Rule 33 of the aforesaid Rule prescribed the mode and procedure for general transfer, which has been subsequently modified with further notification to operate in the interregnum period because of the pandemic. The Rule as it stands, requires the application from a teaching or non-teaching staff of the concerned Madrasah to be filed with the Head of the said Institution who will transmit the same to a higher authority for consideration. There is no provision pertaining to 'No Objection Certificate' to be issued by the Head of the Institution nor the power is reserved upon the said person to withhold such application after being taken out in a prescribed manner. The Madrasah Service Commission has modified the procedure to the extent that instead of physical form of an application, online portal has been provided where incumbent can apply directly and since it has to be routed through Head of the Institution, the 'No Objection Certificate' from such Head of the Institution is a pre-requisite condition.

We have been taken to various sub-rules of Rule 33 providing a mechanism and the mode of considering the prayer for transfer by way of counseling. Obviously, the Madrasah Service Commission shall take care of any vacancy that may arise on transfer having accepted in a concerned Madrasah and the right, which is accrued upon the teaching or the non-teaching staff, cannot be whittled-down or brushed-away on unreasonable withholding of the 'No Objection Certificate'.

There is a complete defiance in the attitude of the appellant in not observing and adhering the statutory rules governing the field and tried to forestall the process of the counseling on such frivolous pretext. Such belligerent Headmaster does not deserve any lenience nor any sympathy can be extended and a frivolous appeal has been filed with intent to delay the process and frustrate the purpose of such transfer.

We thus do not find any merit in the instant appeal. The same being **MAT 1264 of 2021** is **dismissed** with costs assessed at Rs.10,000/- to be deposited by the appellant with the State Legal Services Authority within two weeks from date. In default of deposit of such amount as indicated above within the stipulated period, the appropriate authority is directed to realize such amount from the salary of the appellant and shall deposit the same with the authority as indicated above.

If such deposit is made within the time, the SLSA shall keep the amount in an account earmarked for juvenile.

The appellant is further directed to issue the 'No Objection Certificate' by Monday i.e. **January 31, 2022.**

Connected application, if any, shall also stand dismissed.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)