

09.10.2023
SL No.30
Court No.8
(gc)

FMA 1512 of 2015

**Jagannath Saha
Vs.
The District Inspector of Schools (S.E.)
Burdwan & Ors.**

1. The parties are not represented nor any accommodation is prayed for on behalf of the parties.
2. The appeal had appeared in the warning list of cases on and from 19th September, 2023 with a clear indication that the said matter shall be transferred to the Regular Bench on 6th October, 2023. The appeal is again listed today in the main cause list. All the parties have sufficient notice about the listing of the matter before the Regular Bench on and from 6th October, 2023.
3. The appeal was filed on 24th December, 2014. The record shows that no attempt has been made to move this appeal after it was filed. No step has been taken to serve notice and prepare paper books. It clearly shows that the appellant is not interested to proceed with the appeal and has virtually abandoned the appeal. However,

we consider the materials on record and the impugned order.

4. It appears that the petitioner was appointed by the managing committee of a junior high school for discharging service in the unrecognized classes of IX and X. In view of the decision of the Division Bench of this Court in ***Manindra Nath Sinha Vs. State of West Bengal & Ors., reported in 2006 (2) CLJ (Cal) 489***, the managing committee of the school did not have the authority to appoint the petitioner in excess of the sanctioned strength. While disposing of the earlier writ petition directing approval of appointment of the petitioner and five others, the coordinate Bench's notice was not drawn to the decision in ***Manindra Nath Sinha*** (supra).
5. With the aforesaid context, the learned Single Judge held that a person who abandons his service in the school and enjoys the fruits of being posted as a 'sahayak' in the gram panchayat cannot conveniently shift to the position of a teacher of the school upon obtaining the order of approval. The petitioner while serving as a 'sahayak' in the relevant gram panchayat had no subsisting right to claim

that his appointment as an organizing teacher of the upgraded school ought to be recognized and approval granted. The district inspector has rightly observed in the impugned order that on facts, the petitioner is not entitled to any relief.

6. That apart, non-disclosure of the petitioner's appointment as a 'sahayak' before the coordinate Bench has to be seriously viewed. Writ remedy is available to those who approach the Court with clean and untainted hands. Such remedy is not for persons who are manipulative. His conduct is such that it makes him disentitled to relief.
7. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.
8. Under such circumstances, the appeal stands dismissed.
9. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)