

06.12.2023

Ct. 35
Sd. 55.

WPA 2539 of 2021

Musarat Parvin
Vs.
State of West Bengal & Ors.

Mr. Syed Shamsul Arefin
Ms. Nadira Abedin ..For the petitioner.

Mr. Biswajit Dutta ..For the State.

The petitioner is aggrieved with the alleged inaction on the part of the respondent State in not considering her requests, for refraining to transfer her from her place of posting, to the transferred place. Further she is aggrieved of non-release of her salary from the year August 2016 to August 2018 when she continued to work in the Sishu Shiksha Kendra at J.C. Bose Basti, Einstein Avenue, B-Zone at Durgapur-5 under Ward No. 3 of Durgapur Municipality, after issuance of the transfer order, for her transfer to Nutanpalli Sishu Shiksha Kendra under Ward No. 8 of Durgapur Municipality. The other allegation of the writ petitioner is the exercises of coercion and threat compelling her to submit resignation to the authorities.

The brief fact of the case necessary for disposal of the writ petition is that the petitioner was appointed as an Assistant Teacher on May 2, 2001 at V.N.

Prasad Sishu Shiksha Kendra, J.C. Bose Basti, Einstein Avenue, B-Zone at Durgapur-5 under Ward No. 3 of Durgapur Municipality. She worked there, continuously since thereafter, maintaining an unblemished service record. On July 5, 2016, the authorities issued an order of transfer to the petitioner. Even after the said order of transfer, the petitioner continued to work for the said Sishu Shiksha Kendra within ward no. 3, as mentioned above, till August 7, 2018.

Learned advocate appearing for the petitioner submits that firstly, the transfer order made by the respondent authorities was not in conformity with the service conditions. He says that the agreement enclosed a Clause for appointment of the Assistant Teacher at Sishu Shiksha Kendra within the local limit of his or her residence. In view of the matter, he says, the transfer order itself is de hors the stipulations made in the Regulations.

Secondly, he submits that the writ petitioner was ultimately forced to submit her resignation in the year 2018. He says that any forceful resignation, without any volition of the concerned person, would not be valid in the eye of law.

Thirdly, he submits that for the period from July 5, 2016 to 07.08.2018, when the petitioner continued

to work in the said Sishu Shiksha Kendra within Ward No. 3 after issuance of the transfer order by the authorities, the writ petitioner has not been paid with the due salary.

Mr. Arefin submits that as the writ petitioner has discharged her duties during the said period, she is entitled to salary and other benefits for the said period.

On perusal of the annexed documents, it appears that the conditions of service of the concerned person was to be a resident within the local limits of the Sishu Shiksha Kendra, where she was to be appointed. The condition, as envisaged on behalf of the petitioner that she could not be transferred to any other place outside the said local limit, does not appear to be incorporated in the agreement entered into between the parties. Undeniably the incumbent cannot challenge an order of transfer, which is prerogative of the employer, unless the same suffers from palpable illegality and arbitrariness. On this ground, the challenge of the petitioner as to the order of transfer is found to be not tenable. On the above ground, the writ petitioner should not succeed.

However, as the fact that the writ petitioner though having discharged her duties from August 2016 to August 2018 to the concerned Sishu Shiksha

Kendra, has not been paid salary and other benefits, for the said period, a direction is made upon the respondent authorities to immediately release her salaries and other benefits for the period from August 2016 to August 2018.

The writ petition is disposed of.

Urgent photostate certified copy of this order be supplied to the parties on priority basis, if applied for.

(*Rai Chattopadhyay J.*)