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M/L

15.05.23

Ct. No. 04

akd

WP.ST. 29 of 2023

Dr. Debashish Mondal
Vs.
The State of West Bengal & Ors.

Mr. Tarun Kumar Das,
Mr. Dilip Kumar Shyamal,
Mr. Koushik Banerjee.
... for the petitioner.

Mr. D. N. Maiti,
Mr. Asumdipta Santra.
... for the respondent no. 3.

Despite notice having been served upon the State, there is no representation when the matter is taken up today. On the last occasion, i.e. on 20th March, 2023 the matter was adjourned on the prayer of the learned Counsel for the State. There appears to be reluctance on the part of the State to participate in the hearing of the instant writ petition and, therefore, we decide to proceed with the hearing of the instant application in their absence.

The respondent no. 3 is represented.

The subject matter of dispute relates to transfer of the petitioner from the Department of Anesthesiology, NRS Medical College to the Department of Critical Care Unit in IPGMER, Kolkata as Assistant Professor.

Astonishingly, the Tribunal dismissed the writ petition solely on the ground that the employer is the best judge of placing the employee and, therefore, no interference is warranted in case of posting of the employee from one Department to another. The Tribunal did not realize that the petitioner is employed as Assistant Teacher to impart a subject in Medical Course. If a person, who is incompetent to deliver lecture on a subject over which he does not have

expertise, it has a larger impact on the future of medical professionals coming out from the said institution. Every subject in Medical Course has a greater importance and significance, as they interact with the human life directly and have to take a prompt and immediate decision in case of any emergency. Any kind of compromise even on the teaching level has to be viewed seriously, as it has a larger ramification on the Medical structure and the acumen of the Medical Professionals in treating the patient being the citizen of the country.

The petitioner has acquired a degree in Anesthesiology and, in fact, was appointed in the Department of Anesthesiology as Assistant Professor. He has been transferred to a Critical Care Medical Unit, where Anesthesiology is not the subject to be taught and, therefore, a person who does not have an expertise in a relevant subject cannot be forced to deliver lecture on a subject in which he does not acquire knowledge of excellence. The employer must be sensitive in this regard while transferring a professor from one institution to another.

We are conscious of the proposition that the transfer is an incident of service and a person in transferable job cannot resist nor can dictate the employer to keep him in the same institution.

It is fairly submitted on behalf of the petitioner that he is not adverse to an order of transfer, as he is ready to serve in any part of the State, but he must be transferred in a Department where he has an expertise or acquired knowledge.

Such stand cannot be termed as unreasonable. We, therefore, set aside the impugned order.

The concerned authority is directed to take a decision afresh. In the event the post held by the

petitioner at the time of transfer order has been filled up by another eligible candidate, the petitioner may be transferred to any other Institution in the Department of Anesthesiology within six weeks from the date of the communication of this order.

With the above observations, the writ petition is disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)