

11 23.08.2023
RP Ct. No. 01
AN

FMA 285 of 2023
with
IA No. CAN 1 of 2023

The Secretary, Law Department, Government of West Bengal
Vs.

Md. Habibullah Khan & Ors.

Sk. Md. Galib
Mr. Gourav Das

... For the Appellant

State

Mr. Tushar Kanti Mukherjee

... For the respondents

1. Heard learned counsel for the parties at length.

2. This intra-Court appeal filed by the State of West Bengal is directed against the order dated 09.01.2023 passed in WPA 21885 of 2022. In the said writ petition, the learned writ court has issued a positive direction to the Secretary, Law Department, Government of West Bengal to ensure that a notification was issued for appointment of temporary Muslim Marriage Registrar (in short, MMR) for Kalitala Ashuti Police Station area as expeditiously as possible positively within 28.02.2023 and immediately such appointment is given, the second respondent in the writ petition was directed to intimate such fact to the District Registrar, South 24 Parganas who was the 4th respondent in the writ petition and upon such intimation, the District Registrar, South 24 Parganas should consider and decide the representation given by the writ petitioner for transfer of the writ petitioner as MMR to Kalitala Ashuti Police Station

area and such representation was directed to be considered within a time frame.

3. Learned counsel appearing for the respondent writ petitioner referred to the Muhammadan Marriage Registration Rules, in particular, Rule no. 6 which deals with the jurisdiction. In the said Rule, it is stated that limits within which a MMR shall be licensed to act shall coincide with the limits of a District under the Indian Registration Act or within the jurisdiction of one or more Police Stations or part thereof as the Government may from time to time direct. The head-quarters shall be at some convenient place within those limits. It is submitted by the learned counsel appearing for the respondent/writ petitioner that the mandate of the Law requires the MMR to be posted as soon as a Police Station area is newly created. In our understanding, reading of Rule 6 of the said Rules does not mandate that as soon as the Police Station areas are created, the post of MMR has to be notified either as a temporary post or a permanent post. The writ petitioner has yet another agenda. He is at present functioning as a MMR in some other jurisdiction and he wants a MMR post to be created in the Kalitala Ashuti Police Station area and thereafter his application for transfer to the said post to be considered. In our view, while exercising jurisdiction under Article 226 of the Constitution of India, the Court cannot issue a positive direction for the purpose of creating a post and the learned Single Judge also rightly held in the first paragraph of page 2 of the order that it is expected that the

Law Department shall take immediate steps for issuing notification with regard to creating a temporary post of MMR. Therefore, the learned writ court should have left it to the discretion of the authorities to exercise powers in accordance with law instead of issuing a positive direction for creation of the post on temporary basis and thereafter to consider the representation for approval of the writ petitioner to the said post.

4. For the above reasons, the appeal stands **allowed in part** that the positive order issued by the learned Single Judge is set aside and the same is modified by directing the Secretary, Law Department, Government of West Bengal to take into consideration the formation of the new Police Station and also the relevant rules and take expeditious steps for the purpose of creating either a permanent or a temporary post of MMR. The other direction to consider the representation of the writ petitioner stands set aside.

5. Learned counsel appearing for the respondent /writ petitioner submitted that the respondent/writ petitioner should not be discriminated and in this regard referred to a case of one Mijanur Rahaman Molla. We find from the order of the District Registrar, South 24 Parganas dated 11.08.2023 that the order passed in another writ petition being WPA 17565 of 2021 was complied with after a contempt application was filed being CPAN No. 354 of 2023 dated 15.05.2023. In our view, each case has to be tested on its own merits and the reasons assigned by us in the

preceding paragraphs touches upon the jurisdiction of the Court qua the direction which was issued in the writ petition. Therefore, if any other case has been considered by the Government of West Bengal, it is upto the respondent/writ petitioner to make appropriate representation to the Government of West Bengal.

6. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam)
Chief Justice

(Hiranmay Bhattacharyya, J.)