

12.06.2023
Item no.7.
Court No.6.
AB

M.A.T. 490 of 2023
With
IA CAN 1 of 2023
IA CAN 2 of 2023

The State of West Bengal & Ors.
Vs
Sayed Mahabub Ali & Ors.

Mr. Jahar Dutta,
Mr. Bipin Ghoshfor the Appellants.

Mr. Golam Mastafa,
Mr. Subir Sabud,
Mr. T. S. Samantafor the Respondent No.1.

By consent of the parties, the appeal and the applications are taken up for hearing together.

In re : IA CAN 1 of 2023

This is an application for condonation of delay of 116 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 1 of 2023 is, accordingly, disposed of.

In re : MAT 490 of 2023, IA CAN 2 of 2023

A judgment and order dated September 30, 2022, whereby the writ petition of the respondent no.1 herein being WPA 6960 of 2020 was disposed of, is under challenge in this appeal.

The operative portion of the order under appeal reads as follows:

“As indicated above, the District Nodal Officer by Order dated 26.07.2010 cancelled the panel prepared by the Managing Committee of Khanjapur Madhyamik

Shiksha Kendra and directed initiation of the process of selection for engagement of Samprasarak for the vacant post in Khanjapur Madhyamik Shiksha Kendra as per the existing rules of the Government.

Since the aforesaid direction of the District Nodal Officer has been upheld by the Division Bench, I feel that it will not be wise to interfere with the Order passed by the District Nodal Officer. Bearing in mind of the aforesaid Order of the District Nodal Officer, the writ petition may be disposed of by passing the following direction.

The Managing Committee of Khanjapur Madhyamik Shiksha Kendra, Dakshin Dinajpur is directed to initiate the process of selection for engagement of Samprasarak /Samprasarika in Geography for the vacant post in Khanjapur Madhyamik Shiksha Kendra denovo as per the existing rules of the Government and the Managing Committee will allow the petitioner to participate in the selection process. While selection would be conducted preference would be given to the candidature of petitioner. The Managing Committee of the Shiksha Kendra is directed to complete the selection process within sixty days from the date of communication of this Order.”

Learned Advocate for the State/Appellant says that the order could not be carried out because there is a Government Order dated January 1, 2010, bearing no.5671-PN/O/I/O-7/2009, which is to the following effect:

“Engagement of Samprasarak/Samprasarika, Mukhya Samprasarak/Mukhya Samprasarika in any vacancy of Madhyamik Shiksha Kendra is hereby stopped with effect from 01.01.2010 until further orders. The Panchayat Samitis will not approve any panel for engagement of Samprasarak/Samprasarika, Mukhya Samprasarak/Mukhya Samprasarika with effect from 01.01.2010. The panel already approved by the Panchayat Samiti till 31-12-2009 will not come under the purview of this order. Where the Managing Committees of Kendras have already started selection process for engagement of Samprasarak/Samprasarika, Mukhya Samprasarak /Mukhya

Samprasatika etc. the same shall be cancelled and has to be notified by them in this regard.”

From the impugned order, it does not appear that the aforesaid Government Order was placed before the learned Single Judge. There is no mention of that order in the judgment and order under appeal. Although learned Advocate for the State says that attention of the learned Judge was drawn to the Government Order, we have to go by the order of the learned Judge, which is under appeal.

We do not interfere with the order under appeal. However, if the State is entitled to in law to approach the learned Single Judge for review of the judgment and order assailed before us on the strength of the aforesaid Government Order dated 1.1.2010, the State would be at liberty to do so in accordance with law.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

M.A.T. No.490 of 2023 is, accordingly, disposed of along with IA CAN 2 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)