

19.01.2023

Item No.12

Crt. No.11.

KB

**MAT 755 of 2022
with
IA No. CAN 1 of 2022
with
IA No. CAN 2 of 2022**

**Sanghamitra Bhattacharya
Versus
Sudeshna Kar and Ors.**

Mr. Kalyan Kumar Bandyopadhyay
Mr. Arjun Ray Mukherjee
Mr. Sougata Mitra
Ms. Subhasri Chatterjee
Ms. Ankita Dey
... For the Appellant.

Mr. Bhaskar Prasad Vaisya
Mr. Sabyasachi Mondal
... For the State Respondent.

Mr. Abhratosh Majumdar
Mr. Siddhartha Banerjee
Mr. S. P. Lahiri
... For the Respondent/writ petitioner.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Under challenge in this appeal is the Order of the Hon'ble Single Bench dated 13th May, 2022. At issue before the Hon'ble Single Bench was the continuance of the present appellant as the Assistant Headmistress of the School-in-issue namely, Kamala Vidyamandir High School for Girls (HS). Before the Hon'ble Single Bench in WPA No. 7475 of 2022 were several teachers and non-teaching staff acting as the writ petitioners.

The Hon'ble Single Bench, *inter alia*, directed both the Managing Committee of the School-in-issue and the District Inspector of Schools, Kolkata to take steps to appoint a Teacher-in-charge (TIC) within the period prescribed by the Hon'ble Single Bench.

Mr. Bandyopadhyay, Learned Senior Counsel appearing for the present appellant whose transfer as the Assistant Headmistress of the School-in-issue has also been the subject matter of earlier writ petitions as well as earlier appeals, submits that in the Writ Petition being WPA 7475 of 2022 the Order whereof dated 13th May, 2022 is under challenge in this appeal, the Hon'ble Single Bench ought to have taken into consideration the Order of the Hon'ble Division Bench dated the 11th of May, 2022 passed in MAT 612 of 2022 with CAN 1 of 2022 on the self-same issue.

Taking this Court to the Order dated 11th May, 2022 wherein the present appellant was also the appellant before the said Hon'ble Division Bench, Learned Senior Counsel submits that on the issue of transfer of the present appellant to the School-in-issue, it was categorically held by the said Hon'ble Division Bench that the Order of transfer is *per se* illegal and contrary to the provisions of law and therefore set aside.

On the second issue, the said Hon'ble Division Bench held that *qua* the Order of transfer, the Writ Court

has visible limitations in dealing with such transfer Order. However, while permitting the competent administrative authority to take a decision afresh on the Order of transfer, the benefits accruing to the present appellant arising out of her transfer were directed to be paid by the said Hon'ble Division Bench.

Mr. Bandyopadhyay submits that the findings with regard to the first issue by the said Hon'ble Division Bench purely emanated from the fact that a case was sought to be made out before the Hon'ble Single Bench that the Order of transfer of the present appellant could not be made against a post which was not sanctioned. It was urged before the Hon'ble Single Bench by the writ petitioners, who are the Respondents to this appeal, that apart from the non-sanction of the said post, the student strength of the said school did not permit the sanction of a post of Assistant Headmistress therein.

Learned Senior Counsel next takes this Court to the Order of the Hon'ble Division Bench dated 11th May, 2022. By the said Order of the Hon'ble Division Bench it was, *inter alia*, directed that the *status quo* regarding the post held by the present appellant as the Assistant Headmistress of the school as existing on 11th May, 2022 shall be maintained. It is submitted that the Order dated 11th May, 2022 in the present appeal was passed keeping in mind that the present appellant as the Assistant

Headmistress has not been reverted back to her original school or to any other school.

It is next submitted by Learned Senior Counsel that the directions of the Hon'ble Division Bench dated 11th May, 2022 were not properly appreciated by the Hon'ble Single Bench *vide* its Order dated 13th May, 2022. It is pointed out that the Order of 13th May, 2022 has the effect of completely dislodging the directions of the Hon'ble Division Bench dated 11th May, 2022. It is argued that the Hon'ble Single Bench has proceeded *de novo* to appreciate the case and directed the Managing Committee and the District Inspector of Schools, Kolkata to appoint a TIC to the said School-in-issue notwithstanding the clear fact that the Order dated 11th May, 2022 directed the parties to maintain *status quo* as existing on 11th May, 2022.

It is finally pointed out by Learned Senior Counsel that in the meantime during pendency of this appeal it has come to the notice of the present appellant that by a Memo dated 18th May, 2004 of the District Inspector of Schools, Kolkata, the post of Assistant Headmistress of the School-in-issue is treated to be a sanctioned post. It is submitted that since the terms of the Order of the Hon'ble Division Bench dated 11th May, 2022 is founded on the fact that the transfer of the present appellant to the School-in-issue is against a post which is not

sanctioned, such basis stood removed with the said Memo (*supra*) showing the post to be sanctioned. A Review Application bearing the number RVW 81 of 2022 is also pending before the said Hon'ble Division Bench seeking review of the concerned portions of the Order dated 11th May, 2022.

An additional fact is further pointed out by Learned Senior Counsel that the Writ Petition being WPA 7475 of 2022 ought to have impleaded the present appellant as a party respondent. Non-impleadment of the Writ Petitioner, who is a party vitally affected by the Order impugned of 13th May, 2022, renders the proceedings before the Hon'ble Single Bench bad in law.

Mr. Majumdar, Learned Senior Counsel appearing for the writ petitioners/the Respondents to this appeal, submits that the Order impugned dated 13th May, 2022 was passed by the Hon'ble Single Bench after going through the facts as prevailing on that date.

It is submitted that the Hon'ble Single Bench took notice of the fact of the period prescribed by the Hon'ble Division Bench for taking steps in terms of the said Order of the Hon'ble Division Bench dated 11th May, 2022

In view of the such prevalent facts the Hon'ble Single Bench in its wisdom directed the Managing Committee and the concerned District Inspector of Schools to take steps to appoint a Teacher-in-Charge so

that the administrative functions of the said school are not disturbed.

The State is represented by Mr. Sabyasachi Mondal, Learned Advocate led by Mr. Bhaskar Prasad Vaisya, Learned Additional Government Pleader (AGP).

Having heard the parties and considering the materials placed, this Court finds for the reasons discussed above that the Order impugned dated 13th May, 2022 has failed to fully appreciate the terms of the order as granted in the appeal and dated 11th May, 2022. This Court is of the view that the state of affairs directed to be maintained by the order impugned dated 13th May, 2022 must yield to the directions of the Hon'ble Division Bench dated 11th May, 2022.

The present appellant is, accordingly, permitted to pursue the Review Application before the said Hon'ble Division Bench. Till such time the Review Application is decided by the Hon'ble Division Bench, the terms of the Interim Order as granted on the 11th May, 2022 shall continue to operate.

Upon disposal of the Review Application, the parties shall be entitled to seek a *apropos* consideration on merits of the Writ Petition before the Hon'ble Single Bench.

In the backdrop of the above discussion and the directions passed, **MAT 755 of 2022** with **IA No. CAN 1 of 2022** and **CAN 2 of 2022** stand **disposed of**.

Since affidavits are not called for, all other allegations are deemed to be denied and disputed.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)