

08.02.2023

Court : 04
Item : PB-01
Matter : CRC
Status : OP
Transcriber : **NANDY**

CRC 21 of 2022
in
MAT 1032 of 2021

Nirmal Kanti Joddar
Vs.
Narayan Patra & Ors.

Mr. Sridhar Chandra Begari, Advocate

.....for the Applicant

Mr. Biswajit De, Advocate

Mr. D. Chakraborty, Advocate

.....for the Contemnor Nos. 1 & 2

Dr. Sutanu Kumar Patra, Advocate

Ms. Supriya Dubey, Advocate

.....for the Contemnor No. 4

Ms. Koyeli Bhattacharya, Advocate

.....for the Contemnor No. 5

Mr. Amitesh Banerjee, Senior Advocate

Mr. Suman Basu, Advocate

.....for the D.I. of Schools

Let the affidavit-in-oppositions and affidavit-in-reply filed by the respective parties be taken on record.

By an order dated 28.01.2022 the Mandamus Appeal was disposed of directing the School Authority to withdraw the 'No Objection Certificate' if issued to a candidate who is younger in age of the petitioner or do not come within 10% category and shall issue the 'No Objection Certificate' strictly in terms of Rule 5(6) of the West Bengal School Service Commission (General Transfer, Transfer on special grounds and relocation) Rules, 2015. A further direction was passed upon the authority to consider the application filed by the petitioner in terms of Rule 6 of the said Rules and to take an appropriate decision within a stipulated time.

The contempt application is taken out alleging wilful and deliberate violation of the said order to the

extent that despite the mandamus having been issued, neither the 'No Objection Certificate' is withdrawn from a candidate who is younger in age nor the 'No Objection Certificate' is issued in favour of the petitioner. It is further alleged that the application which was directed to be disposed of within a stipulated time, is still kept pending by the authorities and no steps have been taken thereupon.

Considering the gravity of the allegations having made, we issued the Rule upon the alleged contemnors who are personally present in Court today. It is submitted by Mr. Amitesh Banerjee, learned senior Counsel appearing for the District Inspector of Schools, South 24-Parganas that the School Service Commission called the petitioner for limited counseling for the purpose of ascertaining the preferences of the petitioner to be transferred to a School but the petitioner did not turn up and, in fact, replied to the said notice in a manner, not expected from a *bona fide* litigant.

Our attention is drawn to the reply annexed to the affidavit-in-reply filed by the petitioner and we find that certain unsubstantiated allegations have been made. The fact remains that the petitioner did not turn up for a limited counseling despite the notice having been served upon him. It is not expected that the moment the authorities are inclined to implement the order of the Court and called upon the petitioner to participate in the limited counseling, hurdle would be created by taking such plea which cannot be supported and/or corroborated by any other documents.

In course of hearing the Counsels appearing for the School Service Commission, D.I. of Schools as well as School Authorities, uniformly submit that all the formalities relating to withdrawal and issuance of 'No Objection Certificate' have already been completed and the only course left to complete the entire exercise is to obtain the preference of the petitioner through a limited counseling.

In view of the above fact, we direct the petitioner to appear before the School Service Commission on **09.02.2023** at **02.00 p.m.** for limited counseling and this Court has been assured that the preference of the petitioner would be taken in a more rational and pragmatic manner which would not frustrate the purpose for which the petitioner sought for transfer.

Let this matter be listed on Friday i.e. **10.02.2023** at 03.00 p.m.

In view of the stands taken by the respective contemnors, the personal appearances of each of the contemnors are dispensed with until further order.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

