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Ct-08

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FMA 2097 of 2015
with
I.A No. CAN 1 of 2015(Old CAN No. 4441 of 2015)
CAN 2 of 2021

The Nadia District Primary School Council & Anr.
Vs.
Arpita Chakraborty & Ors.

Mr. Arindam Chattopadhyay
Mr. Soumik Dey
... For the Appellants

Mr. Debasish Banerjee
Mr. Raju Bhattacharya
Mr. Supree Naskar
Mr. Rakesh Jana
...For the Respondent no. 1/
Writ petitioner

Ms. Tapati Samanta
... For the State

1. By consent of the parties the appeal and the applications are taken up together and disposed of by this common order.

2. The writ petitioner/respondent no. 1 is an Assistant Teacher. She challenged the order of temporary transfer dated 19th June 2012 passed by the Chairman, Nadia District Primary School Council. Justice Debaish Kar Gupta, as His Lordship then was, initially heard the writ petition and admitted the writ petition with the following interim order:-

“Upon prima facie consideration of the provisions of Rule 4 of the said Rules, 2002, I find that the Primary School Council concerned is the authority to pass an order of transfer and not the Chairman of any Primary School Council. Upon

prima facie consideration of the provisions of Section 53 of the West Bengal Primary Act, 1973, I find that the Chairman of a Primary School Council is authorized to take necessary steps to meet the emergent situation subject to a condition of ratifying such decision in the meeting of the concerned District Primacy School Council within a month thereof. Upon prima facie consideration of the impugned order of temporary transfer, I find that one month has already expired.

In view of the above, I find that the petitioner has not only made out a prima facie case, but the balance of convenience and inconvenience in favour of granting interim relief to the petitioner. The interim order of transfer is stayed until further orders.”

3. The above order is still in force. In the mean time, the writ petitioner, alleging non-disbursement of her arrear salary, filed an interlocutory application being CAN 8777 of 2014 praying for release of her salary. It appears that the order was passed on 9th March, 2015, when the Council was not represented. Learned Single Judge directed the Chairman of Nadia District Primary School Council to release the salary of the petitioner within a specified time. This order is under challenge. Although the appeal was filed on 4th May, 2015, the record does not reveal that the said appeal was moved thereafter.

4. In the appeal, it is argued that the writ petitioner did not join her original school between

15.5.2012 to 15.11.2015. This, however, is disputed by the learned counsel representing the writ petitioner.

5. We are of the view that entitlement to the arrear salary may be considered by an appropriate authority and it is submitted on behalf of the State that Commissioner of School Education, West Bengal is the appropriate authority to decide the matter with regard to the arrear salary.

6. Learned counsel for the appellants has drawn our attention to the detailed representation made by the writ petitioner on 21st August, 2017 to the Commissioner of School Education, West Bengal, appearing at page 114 in the affidavit-in-opposition filed on behalf of the writ petitioner. The Commissioner presumably due to filing of the appeal did not consider the said representation. We are of the view that the salary prior to the interim order could not have been denied. However, after the interim order was passed and on the basis of a clear statement made on behalf of the appellants that she did not join the school even after the transfer order was stayed, we direct the Commissioner of School Education, West Bengal, to consider the representation made by the writ petitioner and dispose of the said

representation by giving a reasonable opportunity of hearing to the parties and the parties shall produce relevant documents at the time of hearing in order to enable the Commissioner to arrive at a just and proper finding. The Commissioner shall dispose of the said representation within eight(8) weeks from the date of communication of this order by passing a reasoned order to be communicated to the parties within one week from the date of passing such reasoned order.

7. We make it clear that the Commissioner shall decide the matter in accordance with law and consider the documents to be produced by the parties at the time of hearing.

8. The writ petitioner shall forward a copy of the representation dated 21st August, 2017 within a week from date along with a copy of this order to the Commissioner of School Education, West Bengal.

9. The temporary transfer order has now become irrelevant and there is no necessity to go into the question of temporary transfer order, as by the passage of time the temporary transfer order has lost its force. The temporary transfer order is accordingly set aside. However, this order

shall not prevent the appellants to decide any future transfer, if any such occasion arises in accordance with law.

10. In view of the aforesaid order, the appeal being FMA 2097 of 2015 is accordingly disposed.

11. In view of disposal of the appeal nothing remains to be decided in CAN 4441 of 2015 and CAN 2 of 2021 and the same are accordingly disposed of.

12. Ms. Tapati Samanta, learned advocate, appears on behalf of the State, on being requested submits on instruction that the Commissioner of School Education, West Bengal, is the appropriate authority to decide the matter. 13. Learned Government Pleader is requested to regularise the appointment of Ms. Tapati Samanta.

14. The department shall make an endorsement that the writ petition being WP 15608(w) of 2012 is also disposed of by passing this order.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

