

199    20.01.23

Ct. No. 04

Akd

**WP.ST. 60 of 2021**

**With**

**CAN 1 of 2022**

**Biswajit Das**

**Vs.**

**The State of West Bengal & Ors.**

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**Mr. Rudraksha Chattopadhyay.**

**... for the petitioner.**

The scope of the original tribunal application was limited to the extent that the representation made by the writ petitioner to the Deputy Director of School (Administration), which has been forwarded to the Director of Public Instruction, West Bengal, has not been attended nor any decision has been taken thereupon.

The prelude of the said dispute originated on an order of transfer inflicted upon the writ petitioner and the representations have been made to consider the aforesaid decision sympathetically, as the writ petitioner is suffering from various diseases and requires constant medical attention. Obviously on the basis of the aforesaid grievance the tribunal application was disposed of on 10<sup>th</sup> March, 2021 directing the Director of Public Instruction, West Bengal, to consider the said representation and pass a reasoned order within a specified time.

Though it is not necessary in the instant case but we must record that the time limit set-forth in the impugned order, in our opinion, was not appropriate; more particularly when the subject matter of dispute relates to an order of transfer. Fixing fifteen weeks time to pass a reasoned order is too exorbitant and

may some time counter-productive to the writ petitioner, as he has to wait for a decision and in the meantime may be subjected to various actions to be taken against him.

Be that as it may, at the time of admission of the instant writ petition this Court directed the said authority to file an affidavit of compliance. It is submitted by the learned Advocate for the petitioner that the said order was passed for the obvious reason that despite time line having been fixed in the impugned order, the authority was sitting tight over the matter and kept the said representation in a suspended animation.

It appears that pursuant to the directions of the Tribunal and this Court in the instant writ petition the decision has been taken immediately on 13<sup>th</sup> September, 2021 by captioning as a reasoned order and the same is annexed to the instant application seeking setting aside of the said order, as the said authority did not consider the medical documents and the plight of the writ petitioner which he suffers because of ailments and medical treatments.

The first and foremost question that arise in the instant writ petition is whether the writ petitioner can seek an order for setting aside of the reasoned order passed during the pendency of the writ petition as a subsequent event and within the ambit of the original cause of action. It is not doubt true that the subsequent events, which altered the situation which was prevalent during the currency of the original proceeding having a direct impact on the decision may be taken on record for rendering complete and

effective justice. The aforesaid proposition is propelled not only to shorten the litigation but also to secure the legal maxim *ex debito justitiae*. The subsequent events must be inter-related or intertwined with the original cause of action and not an independent and separate cause of action for which the remedy lies to approach the forum of first instance. It would not be proper for the higher forum to take up the cause, which is otherwise maintainable before the forum of first instance, and decide the same as the proceeding was pending before it. Such an approach has a ramification, as the aggrieved person will lose a forum, which cannot be normally allowed.

Article 323 A and 323 B of the Constitution of India permits the establishment of the Tribunal for a specific classes of cases in order not only to ease out the burden the High Court but also to secure the timely disposal of the aforesaid cases. The Constitution Bench in case of *L. Chandra Kumar vs. Union of India & Ors.* reported in (1995) 1 SCC 400 was considering the vires of the Act having promulgated under Article 323 A and 323 B of the Constitution and the exclusion of the jurisdiction of the High Court under Article 226 and 227 of the Constitution. The Constitution Bench held that the powers exercised by the High Court under Article 226 / 227 of the Constitution is within the basic structure of the Constitution or a very fabric thereof which cannot be taken away through a legislative fiat. It was held that the Tribunal shall act as a Court of first instance and the order passed by the Tribunal is amenable to be challenged by an aggrieved person before the High Court under Article 226 / 227 of the Constitution of India.

Taking a clue and the spirit of the findings rendered in the said Constitution Bench decision that the Tribunal acts as a Court of first instance, any fresh cause of action independent and separate from the original cause of action is required to be challenged before the Court of first instance and not to the higher forum straightway. The hierarchy of the Court's system as recognized in the Constitution of India does not permit the approach directly to a higher forum but must route through a forum of first instance.

Since the reasoned order is passed by the authority in compliance of the impugned order and the order passed by this Court, any grievance of the petitioner in relation thereof can be addressed or redressed by approaching the proper forum. It is not open to the writ petitioner to challenge the said order on merit by taking out an application in the writ petition where the subject matter was within the limited sphere and passing of the reasoned order pending the said writ petition to be treated as a subsequent event does not have any impact on the merit of the said impugned order. The moment an independent order is passed in compliance with the impugned order, it gives rise to a fresh cause of action and, therefore, the challenge in the manner as has been done in the instant case is not permissible.

Since the petitioner was acting in good faith on the advice of the legal experts before a wrong forum, we, therefore, feel that the benefit thereof should have been extended to the writ petitioner.

In view of the findings recorded hereinabove and the fact that the impugned order has already been complied with, we do not find any reason to interfere with the said order.

The writ petition as well as the connected application is disposed of.

However, the dismissal of the instant writ petition shall not prevent the petitioner to challenge the reasoned order before the appropriate forum.

**(Harish Tandon, J.)**

**(Prasenjit Biswas, J.)**