

Item-27. 10-10-2023

sg Ct. 8

FMA 2022 of 2015

The Chairman, West Bengal Central
School Service Commission & Ors.
Versus
Madhumita Das & Ors.

Dr. Sutanu Patra, Adv.
Ms. Supriya Dubey, Adv.
...for the appellant

1. It appears that the petitioner was an Assistant Teacher in Bio-Science in Harirampur C.M.D. Balika Vidyalaya. Pursuant to an advertisement issued by the West Bengal Central School Service Commission (hereafter the Central Commission) inviting applications for transfer, she had applied therefor. Patiram High School was the preferred choice of the petitioner. It transpires from the record that Patiram High School was also the preferred choice of one Shri Hariswami Das, the respondent no.7.
2. Upon consideration of the applications that were received pursuant to the advertisement, the Central Commission vide memo dated 24.11.2014 recommended the respondent no.7 for appointment as Assistant Teacher in Bio-Science in Patiram High School and recommended the petitioner on the self-same date i.e. on 24.11.2014, for appointment on transfer as Assistant Teacher in Bio-Science in Rampur High School (H.S.).
3. This decision has been challenged by the writ petitioner.
4. In the writ petitioner, it has been alleged that the Regional Commission had recommended the respondent no.7 on 30-06-2014 for appointment as Headmaster, Sovanagar High

School (HS) and that such appointment had been approved by the District Inspector of Schools (SE), Malda vide memo dated 04.08.2014; hence, in view of such appointment, the respondent no.7 ought not to have been recommended for appointment on transfer in Patiram High School, thereby depriving the petitioner of the opportunity of being appointed as an Assistant Teacher in Bio-Science in such school.

5. Dr. Sutanu Patra, learned Counsel representing the appellants had adopted the submission made by him as recorded in the impugned order. Dr. Patra has submitted that the process of appointment of Headmaster and the process for appointment on transfer are two independent processes and since the respondent no.7 had not informed the Central Commission by 24.11.2014 that he was not interested in appointment on transfer in Patiram High School, the Commission was left with no other alternative but to recommend the respondent no.7 for appointment on transfer in Patiram High School and the petitioner for appointment on transfer in Rampur High School, which was her third preference. It is also submitted by him that since the Commission did not commit any illegality in recommending the respondent no.7 for appointment on transfer in Patiram High School and the petitioner in Rampur High School, no case for interference has been set up.
6. The respondent no.7 did not contest the proceeding.
7. The learned Single Judge had relied upon the letter dated 16th October, 2014 which would show that prior to recommendations being issued in favour of the respondent

no.7 and the petitioner on 24th November, 2014, the petitioner had informed the Chairman of the Central Commission with regard to appointment of the respondent no.7 as Headmaster, Sovanagar High School and had prayed that since the post of Assistant Teacher of Bio-Science in the school which was her first choice was lying vacant, she ought to be considered for appointment on transfer to such post.

8. The Chairman of the Central Commission did not address the said letter at all. The respondent no.7 having joined the post of Headmaster in Sovanagar High School and his appointment also having been approved by the concerned District Inspector and the post of Headmaster being superior to the post of Assistant Teacher, there could indeed be no occasion for the respondent no.7 to join the post of Assistant Teacher in Patiram High School renouncing his claim on the post of Headmaster.
9. As rightly observed by the learned Single Judge that for all practical purposes and intents, the post of Assistant Teacher in Patiram High School would remain vacant if appointment is not made on such post.
10. Dr. Patra appears to have confirmed before the learned Single Judge that once the recommended candidate does not join the post to which he has been recommended for appointment on transfer, the vacancy would be filled up only in pursuance of the recruitment process that would be initiated by the Central Commission in the near future.
11. The learned Single Judge upon taking into consideration that

the West Bengal School Service Commission (General Transfer) Rules, 2013 does not bar a recommendation being made in favour of the petitioner and that there could not be any reason for the post of Assistant Teacher in Bio-Science in Patiram High School to remain vacant for being filled up in course of the next process and directed the Chairman of the Central Commission to issue recommendation letter in favour of the writ petitioner.

12. In view of the factual matrix narrated above and taking into consideration that the writ petitioner by dint of her merit position worked out in terms of parameters laid down in the Rules of 2013 has acquired a right for being recommended for appointment on transfer in Patiram High School particularly when the respondent no.7 had joined Sovanagar High School as Headmaster before he was recommended on 24th November, 2014.

13. We do not find any reason to interfere with the order passed by the learned Single Judge. The appeal is, accordingly, dismissed.

(Uday Kumar, J.)

(Soumen Sen, J.)