

Item-65. 06-12-2023

MAT 1079 of 2023
CAN 1 of 2023

sg Ct. 8

Noble Mission of South Calcutta & Ors.
Versus
Tapati Basu & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Sudipta Dasgupta, Adv.
Mr. Arka Nandi, Adv.
Ms. Shahini Ghosh, Adv.

...for the appellants

Mr. Ekramul Bari, Adv.
Mr. Subhro P. Lahiri
Ms. Ankita Dey, Adv.

...for the respondents/writ petitioners

Mr. Biswabrata Basu Mallick, Id. AGP
Ms. Mrinalini Majumder, Adv.

...for the State

1. The report filed in the form of an affidavit on behalf of the respondent nos. 3 and 7 is taken on record.
2. One of the respondents namely, Smt. Tapati Basu being respondent no. 1 tendered her resignation on 3rd March, 2021 and she retired in July 2023 during pendency of the appeal. Smt. Sudipa Banerjee, the respondent no.2 tendered her resignation on 2nd March, 2021 with health and family issues without serving any notice period before termination of service on resignation.
3. Admittedly, in the application for approval and resignation, the school has forwarded the names of Smt. Tapati Basu and Smt. Sudipa Banerjee (then working as Assistant Teachers). They were admittedly working in the school for the last 20 years. Both the respondents tendered their resignations during the period when the application for recognition and approval was pending with the State Government.

4. In view of the resignation tendered by the writ petitioners notwithstanding the fact that it was approved subsequent to their resignation, the State appellants have refused to pay their salary and consequential benefits. In the report filed on behalf of the respondent nos. 3 and 7, they have disclosed the payment made to both the respondents towards services they have rendered till they resigned from service.
5. Mr. Biswabrata Basu Mallick, learned Counsel appearing for the State submits that in view of the Memorandum No. 136-Edn(B) dated 15th May, 1985, resignation tendered by an employee or his/ dismissal or removal entail forfeiture of past service. It is submitted that both of them left the institution when their services were required as they were appointed to impart education upon the specially needed students. It appears that on early occasion, the authorities concerned denied such relief on the ground that the Assistant Teachers of Noble Mission of South Calcutta had already submitted their resignation exclusively on the personal issues and at the time of covid pandemic when the children of the school were in need of paramount service from the teachers, they cannot be considered for rejoining in service. It further appears that the authorities concerned were contemplating to issue show cause notice for non-submission of service books irrespective of availing of financial benefit from the Government.
6. We feel that the writ petitioners have filed this application only after they became aware that their names have been

approved mistakenly and as on the date of approval they were not on the payroll. In the absence of any documents showing that their health conditions were deteriorated or they were advised to take rest during pandemic period, we are not inclined to grant any relief to the writ petitioners. Admittedly, they have left the institution at a relevant point of time when the children needed them most.

7. On such circumstances, we set aside the order passed by the learned Single Judge. The appeal succeeds. However, there shall be no order as to costs. The appeal and the connected applications are accordingly, disposed of.
8. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)