

12.12.2023
SI No.14
Court No.8
(gc)

MAT 1160 of 2023
CAN 2 of 2023

Samanway Choudhury
VS
The State of West Bengal & Ors.

Mr. Sougata Mitra,
Mr. Subhadeep Maitra
...for the Appellant.
Mr. Amal Kr. Sen, A.G.P.,
Mr. Lal Mohan Basu
...for the State.
Mr. Bhaskar Prasad Vaisya, A.G.P.,
Mr. Nilay Baran Mandal,
...for the Council.

1. The appeal is arising out of an order dated 21st December, 2022 in a writ petition in which the writ petitioner has challenged “Hearing Report” dated 10th July, 2019 passed by the Chairman, D.P.S.C., Purulia. It appears that the petitioner made a detailed representation for taking benefit of ten years in service and also with regard to the hearing report. The said documents are at pages 65 and 67 of the Stay petition.
2. The learned Single Judge accepted the report and, accordingly, dismissed the writ petition. The problem started when the petitioner made a complaint that he was unable to perform his duty as a teacher in the existing school due to life threat on the basis of an application filed for transfer.

The said prayer was allowed by the Commissioner of School Education. It is, thus, to be presumed that the Commissioner of School Education was satisfied with the grounds furnished by the petitioner for not being able to attend the school. However, the order of the Commissioner does not speak of it. The Commissioner considered the prayer for transfer on the basis of an order passed by Justice Soumitra Pal on 30th April, 2013 and pursuant to the said order, the transfer was allowed by the Chairman/Secretary, D.P.S.C., Purulia on 10th January, 2014. It appears that the proposal for transfer was considered favourably by the Chairman which clearly gives an impression that his absence from duty was not wilful or deliberate. Thereafter in the second writ petition, an order was passed by Justice Samapti Chatterjee on 22nd April, 2019 by which the Chairman, D.P.S.C. was directed to take a decision in respect of the petitioner's representation dated 5th August, 2014 in relation to his arrear salary and periodical increment of 2013.

3. This time, the Chairman while deciding the matter did not take into consideration its earlier order by which the prayer for transfer was allowed. It was incumbent upon the Chairman to consider that if the petitioner is no way responsible for not being able to discharge his duty as a teacher in the earlier school, he cannot be denied the service benefits. There is no wilful or deliberate omission on the part of the petitioner. No disciplinary proceeding was initiated against the petitioner for not joining the school for the aforesaid period. Prima facie, it certainly gives an impression that the petitioner was able to satisfy the authority concerned about the reason of his non-joining the school for the aforesaid period.
4. In view of the fact that this is not reflected in the order dated 10th July, 2019, we set aside the order impugned and direct the Commissioner of School Education to consider the representations made by the appellant/writ petitioner on 30th June, 2020 and 21st December, 2022 and also take into consideration the observation made in this order with regard the period during which the petitioner could not work

within a period of six weeks from the date of communication of this order by a reasoned order after giving a reasonable opportunity of hearing to the appellant/writ petitioner and all concerned.

5. With the aforesaid observation, the appeal and the application stand disposed of.
6. However, there shall be no order as to costs.
7. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)