

12th July,
2023
(AK)
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W.P.A 15154 of 2023

Sri Kalipada Mondal
Vs.
The State of West Bengal and others

Mr. Sandip Das
...for the petitioner.

Mr. Pritam Choudhury
Mr. Shourya Vir Das
...for the State.

Learned counsel for the petitioner contends that a long drawn process of litigation against the debarment of the petitioner from functioning as a Marriage Registrar, on the ground that the petitioner was appointed as a primary school teacher, culminated in an order dated September 6, 2022 passed by a coordinate Bench in WPA 16152 of 2006, whereby the learned Single Judge specifically allowed the petitioner's writ petition, observing that mere appointment of the petitioner as a primary teacher, in the facts of the case, cannot be an impediment for him to function as Marriage Officer or Hindu Marriage Registrar as the order is silent as to how the employment of the petitioner as a primary teacher interferes with the discharge of duties as a Marriage Officer or Hindu Marriage Registrar.

Learned counsel appearing for the petitioner submits that, despite representations by the petitioner for compliance of the said order, no such compliance has been effected by the respondent authorities as yet.

It is further submitted that the respondent authorities are not supplying the password necessary for the petitioner to carry out online marriage registrations.

Learned counsel for the State submits that the order passed by the learned Single Judge in WPA 16152 of 2006 is contrary to the settled position of law.

It is submitted that under the relevant legal provisions, if a person functions as a primary teacher, he is not entitled to carry on his activities as a Marriage Registrar.

In fact, it is submitted, an appeal is under process of preparation against the said order of the learned coordinate Bench.

It is submitted, on instruction, that the law being contrary, the said order could not be given effect to.

Despite the submission of the State that it is contemplating an appeal against the order dated September 6, 2022 passed in WPA 16152 of 2006, it is not explained as to what occasioned the prolonged delay in taking such steps till date.

At present, we are in the month of July 2023, whereas the order-in-question was passed long back, about ten months previous to the present date.

Apart from the fact that the appeal proposed to be filed is long time-barred, the arguments made by the State regarding inter-departmental communication being the reason for the delay is premature and cannot be decided by the present writ court.

In any event, despite the position of law argued by the State, it cannot be doubted that the State is barred, as on date, by the principle of *res judicata* in view of the order dated September 6, 2022 of the coordinate Bench staring at its face.

Since this court is not sitting in judgment over the said order, there is no scope of granting opportunity to the State to reopen the issue which has already been finally decided, particularly since no appeal has been preferred till date.

Accordingly, WPA 15154 of 2023 is allowed, thereby directing the respondent authorities to immediately furnish the necessary password to enable the petitioner to function as a Marriage Registration Officer online for the zone/district designated to him.

Such password shall be provided by the respondent authorities within a fortnight from date.

Needless to say, the observations made herein are subject to the outcome of appeal, if any, preferred by the State, in the event the delay in filing the said appeal is condoned and/or an order of stay is passed in the said appeal at all.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)