

25 28.8.2023

Ct-08

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AST 155 of 2015
with
I.A No. ASTA 1 of 2015(Old No. ASTA 108 of 2015)

**Murshidabad District Primary
School Council & Ors.
Vs.
Ashoke Kumar Singh & Ors.**

Md. Sarwar Jahan
Sk. Nayeemul Haque
... For the Appellants

Mr. Lal Ratan Mondal
Ms. Sk. Kiran
... For the Respondent no. 1
Writ Petitioner

Ms. Manali Biswas
... For the School

Mr. Santanu Kumar Mitra
Mr. Avishek Prasad
... For the State

1. We have heard the learned counsel appearing for the parties.

2. Pursuant to our earlier order service has been effected upon the i) Head Teacher, Kapasdanga Junior Basic School, Village & Post-Jafrabad, District-Murshidabad, ii) Head Teacher, Jitugnananda Primary School, Village-Mahinagar, P.O. Azimganj, District-Murshidabad, iii) Head Teacher, Mukundabag Junior Basic School, Village-Mukundabag, P.O Kiriteswari, District-Murshidabad and iv) Smt. Lipika Chowdhury, Assistant Teacher, Kapasdanga Junior Basic School, Village & Post-Jafrabad, District-Murshidabad. Mr. Manali

Biswas appears for the school. On the prayer of the learned counsel representing the school, time to file Vokatnama on behalf of the said schools is extended till one week from date in the department. Learned counsel submits that all of them have been inducted subsequent to the incident and unable to respond to the allegations made by the writ petitioner. Smt. Lipika Chowdhury, Assistant teacher is no more working in the said school.

3. The writ petitioner/respondent was appointed as a teacher in Azimganj Hindi Primary School on 9th September, 1971. At the time of his appointment, he was underage. He attained majority in 1974. The communication dated 28th September, 1984 from the President, Ad-hoc Committee, District School Board, Murshidabad to the Directorate of School Education (Pry. Branch), New Secretariat Building, Calcutta that the writ petitioner was 29 years of age as on 28th September, 1984. The requirement of more teachers is also adequately reflected from the report filed by the District Inspector Schools on 27th July, 1979. By the aforesaid time, Mr. Singh became major and the initial ineligibility was undone. This aspect of the matter was not considered by the Directorate of School Education. There is no dispute that

the writ petitioner continued to work in the school as a primary school teacher till 2002. It is also alleged that thereafter he did not join the school on the plea that the school was shifted at a distant place and it would not be possible for him to attend the school. This, however, appears to be not correct in view of the order passed by Justice K.J. Sengupta, as His Lordship then was, in a writ petition on 28th April, 2005. The said order is reproduced below:-

“A peculiar situation has arisen in this matter. At the time of moving of the writ petition the venue of the school located at Azimgunj and it was housed by the Eastern Railway Authorities. An interim order was passed by this Court restraining the respondents from disturbing the petitioner’s functioning. Subsequently without leave of the Court the venue of the school has been changed at Kapsadanga at the building of Kapsadanga Junior Basic School in the morning section but the petitioner was not allowed to join along with other teachers at the changed venue. By this process the petitioner has been prevented from working in the said school in order to create a case of disruption of his services. When the Court’s order protected the petitioner’s services, no authority of the law can change it except the Court itself. The earlier order of the Court is not modified nor verified or set aside and the said order is till subsisting. For this illegal action a contempt proceeding has been initiated. A question arises as to the

regularization of the petitioner's services in terms of the earlier decision taken by the Primary School Board. But at the same time taking advantage of the petitioner's inability as above a point has been taken that the petitioner is no longer in services. I think the interim order of the Court should be implemented without prejudice to contempt application. Therefore I direct the Headmaster and/or the Teacher-in-charge of the aforesaid primary school of the changed venue to be personally present before this Court on the next date of hearing and to explain as to why the petitioner was prevented from working in the same school at a changed venue. Let a copy of the writ petitioner and the copy of the contempt application be served upon him."

4. It appears that contempt proceeding was initiated against the Headmaster and the Headmaster was present and her presence is dispensed with on undertaking that she would be as and when required, thereafter the contempt application was disposed of on July 24, 2008 with the following observation:-

"In the writ petition being C.P 12087(w) of 1993, I passed an order giving certain directions upon the Headmaster and the Teacher-in-Charge of the concerned school. I am tol that the writ petition is still pending for hearing. It is alleged that there is a violation of the aforesaid order. I do not know whether subsequently this matter was taken up for

hearing by the appropriate regular Bench or not.

This contempt application is disposed of as the original writ application is pending for hearing and the appropriate regular Bench will deal with the matter. I could have taken steps in this matter, had I passed the final order giving direction. Therefore, the aforesaid position is clarified. With this observation, the contempt application is disposed of.”

5. It further appears that in the contempt proceeding, the deposition of the writ petitioner was recorded.

6. Mr. Mondal has referred to various complaints made in the local police station to show that in spite of willingness of the petitioner to join the present school, he was prevented from resuming his duties in an attempt to create disruption against the service.

7. We have considered the record and we are of the view that the writ petitioner was willing to join the school after the venue of the school was changed but for reasons best known to the school, he was not allowed to join the said school. This act of the management cannot cause any disruption with regard to the continuity of the service. The petitioner was all throughout ready and willing to discharge his duties and was willing to join the school at the changed venue. The school cannot take advantage of

his not joining the said school as a plea for disruption of the service and denying him the financial benefits.

8. When the employee is willing to join and the employer has prevented the employee from joining, it cannot be a case of breaking service as there has been no wilful breach on the part of the employee to discharge his function. However, in the meantime, the writ petitioner has retired from service. Taking into consideration that he has completed the qualifying period of service for pension, he shall be deemed to be in service till the superannuation and shall be provided with all retiral benefits as admissible to an assistant Teacher of a primary school.

9. We make it clear that there is no break-in-service and the entire period when he was not allowed to join the school shall not be treated as a break-in-service.

10. All the admissible dues shall be released within a period of six weeks from date.

11. The Sub-Inspector of School shall send all the required documents to the District Inspector of Schools, Murshidabad within two weeks from date and the entire process shall be completed within four weeks thereafter.

12. The Headmaster of school is directed to forward all documents as may be required by the

District Inspector of Schools, Murshidabad for the purpose of completion of formalities.

13. A copy of this order shall be immediately forwarded to the Headmaster of the School.

14. On such consideration, the appeal being AST 155 of 2015 is allowed and stands disposed of.

15. In view of disposal of the appeal nothing remains to be decided in the application for stay being ASTA 108 of 2015 and the same is accordingly disposed of.

16. However, there shall be no order as to costs.

17. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

