

21.09.2023
Court No. 13
Item No. 9
AP

FMA 2688 of 2015
With
IA NO: CAN 1 of 2015 (Old No: CAN 6587 of 2015)

Nilogrib Sardar
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Deb Barman
Mr. Anindya Sundar Das
Mr. Sounak Ghosh

... For the Appellant.

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee

... For the State.

1. The appeal is directed against a five line interim order dated 8th June, 2015 passed in WP 2504 (W) of 2014. By the said interim order, the petitioner was directed to join the transferred post failing which the authority would be entitled to stop his salary and further allowance.

2. The brief facts relevant to the case are that the appellant/petitioner applied for mutual transfer, which was allowed on 21st March, 2013 by the respondent authorities. The person who agreed to join the petitioner's school accepted the order of mutual transfer issued by the authorities and joined the school on 17th May, 2013.

3. The writ petitioner/appellant was repeatedly requested to accept the letter of release and join the new school which he refused.

4. It is submitted by the writ petitioner/appellant before this Court that he withdrew his application for mutual transfer on 12th March, 2013. Such document is, however, not annexed to the writ petition. Challenging the order of transfer, a writ petition was filed on 21st June, 2014.

Learned Single Bench directed the writ petitioner/appellant to join his transferred post immediately, failing which the authority would stop his salary. The writ petitioner/appellant has remained without joining the transferred post for more than eight years now.

5. There is reason why the Court below passed the interim order. The order of mutual transfer once effected and one of the beneficiaries thereunder complying and acting upon the same would estopp the writ petitioner/appellant from withdrawing his application. The respondent authorities could not have cancelled the order of transfer since the same has already been acted upon.

6. In the above circumstances, the writ petitioner/appellant is clearly guilty of approbation and

reprobation. The writ petitioner/appellant also does not seem to be very serious with his service.

7. The non-compliance of the Court's order dated 8th June, 2015 and any other consequences of refusal to accept the posting issued by the Council and the unauthorized absence of the petitioner would attract civil consequences within the meaning of the service conditions specially in the discipline and appeal rules of the District Primary School Council, North 24-Parganas. The petitioner may have also abandoned service. The respondents shall be at liberty to take steps in that regard.

This Court is, therefore, not satisfied that there is any merit in the writ petition much less in the appeal. The only opportunity given to the writ petitioner by the Court below has not been availed. The report of the authorities has not even been assailed in the instant CAN application.

8. For the reasons stated hereinabove, the appeal being FMA 2688 of 2015 shall stand dismissed.

9. Consequently, CAN 1 of 2015 (Old No: CAN 6587 of 2015) shall also stand dismissed.

10. In view of the observations made hereinabove, WP 2504 (W) of 2014 shall also stand dismissed.

11. There shall be no order as to costs.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Supratim Bhattacharya, J.)