

Item-1. 21-09-2023

MAT 1401 of 2023
CAN 1 of 2023

sg Ct. 8

Tapati Kapuria
Versus
The State of West Bengal & Ors.

Mr. Dibyendu Chatterjee, Adv.
Mr. Rahul Deb Goenka, Adv.
...for the appellant

Mr. Bhaskar Prasad Vaisya, Adv.
Mr. Pinaki Bhattacharyya, Adv.
...for the DPSC, 24-Parganas(N)

Mr. Biswabrata Basu Mallick, Adv.
Mr. Sanji Das, Adv.
...for the State

1. The statement filed by the Chairman, District Primary School Council, North 24 Parganas shows that there is inordinate delay in releasing the subsistence allowances for the months of July 2022, August 2022, December, 2022, January 2023, March 2023 and April 2023. The person deputed by the Chairman is unable to offer any explanation for the said delay.
2. The subsistence allowances should have been released immediately if the employee under suspension is entitled to receive the said allowances in accordance with the rules.
3. We are dissatisfied with the conduct of the North 24 Parganas Primary School Council in not releasing the subsistence allowances in time.
4. The writ petitioner, in addition to the aforesaid sum, shall receive a sum of Rs.10,000/- to be paid by the Chairman, North 24 Parganas District Primary School Council personally and not from the fund of the State or the Board within one week from date, in default, the appellant shall be

entitled to mention this matter for not compliance of this order.

5. However, having regard to the fact that the order of termination has been issued in the meantime, we cannot grant any further relief to the appellant. The appellant shall be at liberty to challenge the order of termination in accordance with the law.
6. Mr. Bhaskar Prasad Vaisya has submitted that the disciplinary proceeding was initiated prior to the order passed by Justice Gangopadhyay, in which His Lordship observed that the Head Teacher of the Primary School could not have issued the letter dated 13th March, 2021 as it is extremely “highhanded, unwarranted, uncalled for”. The learned Single Judge has thereafter observed that the said teacher is not “fit for the post”.
7. We feel that if the teacher has a reasonable explanation to offer for being upset with her representations not being considered the said observation of the learned Single Judge shall not form the basis of the proposed punishment.
8. It is needless to mention that the letter dated 13th March, 2021 was couched in a language which is undesirable. However, if the appellant has enough justification for reason of her agony and irrespective of the language in which it is couched the said matter is required to be considered by the disciplinary authority while imposing punishment and not to be swayed or influenced by the observation made by the learned Single Judge that the appellant is not fit for the post.
9. Having regard to the fact that the letter of termination has

already been issued and it gives a fresh cause of action to the appellant, we dispose of this appeal by observing that, in the event the final order of termination is challenged the observation of the learned Single Judge - that she is not fit for the post - shall not operate as resjudicata and the order of termination needs to be assessed on the basis of her grievance she raised.

10. The appeal and the application are thus disposed with the aforesaid observations.

11. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Prasenjit Biswas, J.)

(Soumen Sen, J.)