

07 21.9.2023

Ct-08

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FMA 1291 of 2022

with
I.A No. CAN 1 of 2022

Shri Abhishek Bhadra

Vs.

The Chairman, CISCE & Ors.

Mr. Kishore Mukherjee

Mr. Ahitagni Dey

... For the Appellant

Mr. Debashis Saha

Mr. Arnab Biswas

Ms. Sarbani Das

... For the Respondent nos. 2 to 4

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

2. Without entering into the issue as to whether the writ petition is maintainable we feel that the learned Single Judge has rightly addressed the issue and disposed of the writ petition by giving opportunity to the writ petitioner to seek enforcement of any contract, claim, damages against the respondents in an appropriate civil or other proceeding otherwise maintainable in law.

3. Briefly stated that the petitioner joined as an Assistant Teacher on 6th November, 2017. The petitioner thereafter joined the post of Principal of the school on 26th March, 2019 and resigned therefrom on 29th February, 2020, which was accepted by the school on 2nd March, 2020.

4. It was the contention of the petitioner that if there was resignation as Principal he continued to remain to the post of Assistant Teacher.

5. Learned Single Judge has rightly observed upon noticing the fact that he resigned from the post of Assistant Teacher and thereafter joined as a Principal would automatically mean that the petitioner was absorbed in the regular post of Principal and was functioning as such. In fact, it would be a promotional post, if no resignation from the post of Assistant Teacher. After he has resigned from the post of Principal, his earlier status as an Assistant Teacher cannot arise because of hierarchical status he achieved by reason of his appointment as the Principal of the school. Since it is not a case of termination, the decision of **Marari Balika Vidyalaya Vs. Asha Srivastava** reported in **(2020)14 SCC 449** would not apply. This would be clear from the observation made in a subsequent decision in **St. Mary's Education Society and Anr. Vs. Rajendra Prasad Bhargava & Ors.**, reported in **(2023)4 SCC 498** in paragraphs 62 and 63. The said paragraphs are reproduced below:-

“62. We may say without any hesitation that Respondent no. 1 herein cannot press into

service the dictum as laid down by this Court in **Marwari Balika Vidyalaya** as the said case is distinguishable. The most important distinguishing feature of **Marwari Balika Vidyalaya** is that in the said case the removal of the teacher from service was subject to the approval of the State Government. The State Government took a specific stance before this Court that its approval was required both for the appointment as well as removal of the teacher. In the case on hand, indisputably the Government or any other agency of the Government has no role to play in the termination of Respondent no. 1 herein.

63. In context with **Marwari Balika Vidyalaya**, we remind ourselves of Bye-law 49(2) which provides that no order with regard to the imposition of major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Disciplinary Committee. Thus unlike **Marwari Balika Vidyalaya** where approval was required of the State Government, in the case on hand the approval is to be obtained from the Disciplinary Committee of the institution. This distinguishing feature seems to have been overlooked by the High Court while passing the impugned order.”

6. In view of the aforesaid, the appeal fails.

7. The appeal being MAT 1291 of 2022 stands dismissed.

8. In view of dismissal of the appeal nothing remains to be decided in the application for Stay being CAN 1 of 2022 and the same is accordingly dismissed.

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

10. The letter of resignation of the appellant and the acceptance of the said letter filed in court is taken on record.

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

(Prasenjit Biswas, J.)

(Soumen Sen, J.)

