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Ct-08

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MAT 2339 of 2023

with

I.A No. CAN 1 of 2023

Apurba Sarkar

Vs.

State of West Bengal & Ors.

Mr. Soumik Ganguli

Mr. Dilip Kumar Sadhu

Mr. Sourat Nandy

Ms. Chandana Chakraborty

... For the Appellant

Mr. Bhaskar Prosad Vaisya

Mr. Nilay Baran Mondal

... For the DPSC

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

2. The appeal is arising out of an order passed by the learned Single Judge on 5th September 2023 in connection with a writ petition in which the petitioner has prayed for general transfer on special ground. Learned Single Judge dismissed the writ petition after taking into consideration the affidavit filed by the respondent no. 7 disclosing the pupil-teacher ratio as 52 : 1. There cannot be any doubt even the said teacher is now allowed to be transferred the children would suffer and it would frustrate the provision of the Right of Children to Free and Compulsory Education Act, 2009. The ground for transfer is that the wife of the present appellant is suffering from gynecological disease. Nothing had prevented the appellant to take care of

his wife with proper medical treatment at his place of work. The denial on the ground of single teacher is not relevant to the issue as the petitioner/appellant has to first satisfy the condition of general transfer on special ground.

3. Mr. Bhaskar Prosad Vaisya, learned counsel appearing for the DPSC, Purulia, has drawn our attention to the order passed by this Bench in MAT 1712 of 2023 (Sushanta Roy Vs. State of West Bengal & Ors.) on 10th October, 2023. In view of that order, we are not inclined to allow the transfer as we are not satisfied with the medical report of the wife.

4. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge. However, in the event the medical condition of the wife requires the presence of the husband the authority concerned shall consider his application, if filed offline, in accordance with the relevant provision and on consideration of the report to be filed by CMOH with regard to the medical condition of the wife.

5. It is needless to mention that if the special conditions are satisfied, the denial of transfer of single teacher may not be sustainable.

6. The school authorities are directed to take steps for increasing the staff strength in the mean time and the Commissioner of School Education is directed to ensure that the school can maintain the pupil-teacher ratio as required under the Act.

7. In view of the aforesaid, the appeal being MAT 2339 of 2023 stands disposed of.

8. In view of the disposal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly disposed of.

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

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

(Uday Kumar, J.)

(Soumen Sen, J.)

