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2024
MONDAY

Court : 08
Item : DL-11
Matter : FMA
Status : DO
Bench ID : 266048
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 664 of 2015
with
CAN 1 (8232) of 2012
CAN 2 (9237) of 2012

The State of West Bengal,
Secretary, Department of Education
Vs.
Chanda Srivastav & Ors.

Mr. Biswajit Dey, Advocate

.....for the Appellant/State

1. Despite notice having served upon the learned Advocate representing the respondent no. 1, there is no appearance on her behalf.
2. Let the communicating letter filed by the appellant in Court today be kept with the record.
3. The order issuing a writ of mandamus directing the District Inspector of Schools (Secondary Education), Purulia is assailed in the instant appeal.
4. The respondent no. 1 claimed to have been engaged as an organizing teacher and rendering service since 1993, her service could not be regularized despite the School being recognized subsequently.
5. Despite service, there is no representation on behalf of the State and, therefore, the Single Bench proceeded on the basis of assertion made by the respondent. Previously, a plea was taken by the State Authority that the School being a new set-up, there is no question of regularizing the organizing teacher.
6. The said decision was challenged before this Court in WP 10501 (W) of 2006. While disposing of the writ-petition, it was observed that the expression 'new set-up' as used by the authority is misdemeanor and cannot create an embargo upon the School having

the benefits available under the Rules.

7. The sum and substance of the said order clearly discernible therefrom is that the expression 'new set-up' as used by the authority was found to be misdemeanor and should not be used for the purpose of not granting the recognition to the School; as a consequential effect of refusing to regularize the service of the organizing teacher.
8. The appellant/State has produced several documents in the instant appeal throwing light on the fact that the School where the respondent no. 1 claimed to have been engaged as an Organizing Teacher, were given a provisional recognition for a period of one year which was not extended subsequently. Even a report does not suggest any existence of such School. All such documents are produced for the first time before this Court in an appeal as the State were not represented when the writ-petition came to be filed and disposed of.
9. In our opinion, those documents are relevant for the purpose of determining the issues raised by the respondent and an opportunity must be given to the State/appellant to bring the same by way of an affidavit. Since the Single Bench did not have an opportunity to deal with those documents, we feel that the matter should be considered upon exchange of affidavits. Furthermore, the contempt application filed by the respondent faced dismissal on the score of non-existence of the School which, in our opinion, is also to be taken into account after affording an opportunity to the State.
10. Accordingly, the impugned order is set aside.
11. The matter is remitted to the Trial Court for decision on merit.

12. The appellant is directed to file affidavit-in-opposition within two weeks from date. Reply thereto, if any, shall be filed within a week thereafter.
13. The writ-petition shall be disposed of on merit.
14. The appellant is further directed to communicate this order to the learned Advocate representing the respondent no. 1 immediately.
15. With these observations, the appeal being **FMA 664 of 2015** and the connected applications **CAN 1 (8232) of 2012** and **CAN 2 (9237) of 2012** are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J)