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16.05.2024
Jayanta
Ct. 11

FMA 544 of 2024
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IA No.: CAN No. 1 of 2024

Koyel Mitra
– Versus –
The State of West Bengal & Others

Mr. Shuvro P. Lahiri
Mr. Rajesh Naskar
... for the Appellant.

Mr. Sourav Mitra
... for the SSC.
Mr. Santanu Mitra
Mr. Subhabrata Das
... for the State.

Affidavit-of-service filed by the appellants be kept on record.

The present appeal has been preferred challenging an order dated 6th February, 2024 passed by the learned single Judge in a writ petition being WPA 17309 of 2022. By the said order, the writ petition was dismissed observing, *inter alia*, that ‘*Be that as it may, the “Utsashree Portal” is now under suspension, as such the prayer of the petitioner for general transfer cannot be considered at this stage*’.

Mr. Lahiri, learned advocate appearing for the writ petitioner/appellant herein submits that the appellant was appointed as a Mathematics teacher in the Chuprijhara Khaldhar Para Junior High School (hereinafter referred to as the said school). He initially

submitted an application for general transfer in terms of the provisions of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as the 2015 Rules) on 4th August, 2021 and thereafter the application was resubmitted on 23rd August, 2021. The same was returned by the respondent no. 6 to the appellant on 2nd October, 2021. The appellant resubmitted the same on 10th May, 2022. Thereafter on 9th July, 2022 the respondent no. 6 returned the same to the appellant with a remark '*Single Subject Teacher*'.

Placing reliance upon a judgment of a coordinate Bench of this Court, he submits that an application for transfer cannot be dismissed on the sole ground that the applicant is a single teacher. The circular dated 3rd January, 2022 provides the guidelines towards consideration of an application of a single teacher. Under the said circular, it is incumbent upon the respondent no. 4 to take urgent steps in time to search for a teacher on the same subject from nearby and to make local arrangement strictly maintaining the time frame.

Mr. Mitra, learned advocate appearing for the West Bengal Central School Service Commission denies and disputes the contention of the appellant.

Mr. Santanu Mitra, learned advocate appearing for the respondent nos. 2, 4 and 7 submits that all the

relevant documents have not yet been forwarded by the school authorities to the respondent no. 4.

Heard the learned advocates appearing for the respective parties and considered the materials on records.

An application for transfer cannot be dismissed on the sole ground that the applicant is a single teacher. Procedural law cannot defeat substantive rights and it is required to assist and aid the object of the statute. The same cannot defeat the substantive rights conferred by statute. In view thereof, we are of the opinion that on the ground that the *Utsashree* portal was under suspension, the learned single Judge ought not to have rejected the appellant's writ petition.

In view thereof, the order impugned in the present appeal and the remarks of the respondent nos. 6 dated 9th July, 2022 are set aside and the appellant is directed to serve all the documents including the copies of the writ petition, the stay application and a copy of this order upon the respondent no. 4 within a period of three weeks from date.

Upon receipt of such documents and within a period of 6 (six) weeks thereafter, the respondent no 4 shall consider the appellant's application for transfer afresh in the light of the observations made in this order, in the vacancies existing on date, in the light of the provisions contained in the circular dated 3rd January, 2022, upon granting an opportunity of hearing

to the appellant and the school authorities and communicate the final decision to the appellant.

Needless to observe as the operation of the online portal has been temporarily suspended, the appellant's application shall be considered through offline mode and the final decision shall be communicated by the respondent no.4 to the appellant.

In the event the appellant's claim deserves acceptance, all necessary follow up steps shall be taken by the respondents forthwith.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)