

04 19.04.24

Ct. No. 04

akd

WP.ST. 57 of 2024

**Sankar Prasad Dey
Vs.
State of West Bengal & Ors.**

**Mr. Samim Ahammed,
Mr. Arka Maiti,
Ms. Ambiya Khatun,
Mr. Danishuddin Abbasi.
...for the petitioner.**

**Mr. Tapan Kumar Mukherjee,
Mr. Rabindra Narayan Dutta,
Mr. Hare Krishna Halder.
...for the State.**

Let the certified copy filed today be taken on record. Let the same be tagged with the instant writ petition.

Several issues have been raised in the instant writ petition filed against an order no. 4 dated 14th March, 2024 in relation to violation of the transfer policy and the transfer order being a retaliation to the issues raised against certain irregularities and/or lapses committed by the department, but we find that an application was taken out by the writ petitioner immediately on the next date of passing the impugned order raising a point that the recording of events therein are not correct state of facts.

The order of transfer was the subject matter of challenge before the Tribunal and on refusal to pass interim order, the petitioner approached this Court in WP.ST. 201 of 2023, which was disposed of on 5th January, 2024 directing the respondents to allow the petitioner to continue in the post of Lecturer in Mechanical Engineering in the Kolkata Technical School, Kolkata till the disposal of the original application.

It goes without saying that the said interim order was operative till the final order is passed by the Tribunal; which is the subject matter of challenge before this Court.

It is submitted by the learned Advocate for the petitioner that the writ petitioner has filed an application for recalling of the impugned order before the Tribunal raising an issue that the said order was passed in such a manner as if the appearing Counsels have consented for final disposal of the original application; which, in fact, is not the correct recording of events. It is submitted that though the name of the Counsel for the writ petitioner was recorded in the impugned order, but, in fact, he did not appear on the said date and a junior member was entrusted with the task of seeking adjournment on his ground.

It appears thus that an application for recalling of the order has already been filed and the Tribunal is in seisin thereof; we feel that justice would be sub-served if the said application is decided at the earliest. We are conscious of the proposition of law that if there is a wrong recording of the events in the impugned order, the approach is to be made before the same Judge inviting his attention that such events never happened; which, in fact, has been done in the instant case.

At the time of admission of the instant writ petition this Court passed an interim order to the effect that no coercive action should be taken against the writ petitioner; which is still operative. Furthermore, the petitioner was enjoying an interim order during the currency of the original application and, therefore, justice demands that the protection which the petitioner enjoyed during the pendency of the original application and while the instant writ petition is pending should be extended till the disposal of the

Miscellaneous Application No. 23 of 2024.

Without entering into the merit of the impugned order we feel that if the Miscellaneous Application No. 23 of 2024 is disposed of by the Tribunal, it would subserve the justice and may bring the issue at rest.

We have been forwarded with a copy of an order no. 1 dated 9th April, 2024 passed by the Tribunal on the aforesaid Miscellaneous Application; wherefrom it appears that the same is fixed for admission on 10th September, 2024. We failed to appreciate the manner in which the Miscellaneous Application is postponed for hearing for the purpose of admission when the nature of the said application is to recall of the order passed on alleged wrong recording of events happened before the Tribunal.

We, therefore, direct the Tribunal to prepone the date and dispose of the said Miscellaneous Application No. 23 of 2024 within fortnight from the date of the communication of this order.

The State respondent is directed to file the reply to the said application on or before 24th April, 2024; rejoinder, if any, shall be filed by 26th April, 2024.

The Tribunal shall make endeavour to dispose of the same within the time indicated hereinabove and shall refuse the adjournment to either of the parties unless necessitated by unforeseen and unavoidable circumstances.

The time limit for exchange of affidavits is peremptory and mandatory and shall not be extended without the leave of the Court.

Pending the said Miscellaneous Application No. 23 of 2024 the interim order granted by this Court in the instant writ petition shall continue for a period of three weeks from date or until further order whichever is earlier.

For the abundant precaution we hereby make it clear that we have not gone into the merit or demerit of the impugned order nor we had an occasion to go into the points agitated in the instant writ petition and, therefore, the disposal of the instant writ petition shall not be construed to have decided the points so urged which are kept open to be decided if the impugned order is recalled by the Tribunal.

With these observations the writ petition is disposed of.

There will be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)