

30.07.2024

sayandeep

Sl. No. 21

Ct. No. 08

MAT 1306 of 2024

With

CAN 1 of 2024

Smita Ghosh

Vs.

The State of West Bengal & ors.

Mr. Sudip Ghosh Chowdhury

... for the appellant

Mr. Anirban Ray

Mr. Biswabrata Basu Mallick

Mr. Sk. Md. Galib

Mr. Kapil Guha

..... for the State

Mr. Avishek Prasad

.... For the DPSC, Malda

The dispute revolves around the joining of the appellant into the School after an inordinate absence without seeking any permission or an approval from the competent authority. Undeniably, the appellant was absent from duty with effect from 27th August, 2018 until May, 2022. Suddenly, she intended to join the said School which was denied and a representation was made to the competent authority and apathy being shown on the disposal of said representation.

The writ petition was filed before this Court being WPA 19159 of 2022 for a direction upon the authority to permit her to join the said School. The said writ petition was disposed of on 15th September, 2022 directing the Chairman of District Primary School Council to take a decision on the application filed by the appellant after affording an opportunity of hearing within a specified time. Subsequently, an order was

passed by the said Chairman of the Council on 16.06.2023 with the finding that her unauthorized long delay absence is in violation of the leave rules and in total disregard to the competent authorities. The explanation which she offered was not found satisfactory and there appears to be failure on the part of the appellant in discharging her solemn duties. Ultimately, the said authority contemplated to initiate a disciplinary proceeding against the appellant. The said order is assailed in the writ petition being WPA 18904 of 2023 and an interim order was passed on 1st December, 2023 directing the Chairman of the Council to allow the appellant to join the School forthwith.

It is not in dispute that in due compliance of the said interim order, the appellant was permitted to join the School and discharged her duties in the capacity of the Assistant Teacher until the impugned order is passed.

We find from the impugned order that the Single Bench has made out a case of its own and proceeded to dismiss the said representation neither of the parties above pleaded the case appearing in paragraph 9 of the impugned order and it is no permissible for the Court to make out a case for the party *de horse* the pleadings and decide the issues. The cause of action pleaded in the writ petition was in relation to an order dated 16.06.2023 which indicates that because of the unauthorized long absence without seeking any

permission for approval from the competent authority tantamount to a misconduct and, therefore, the disciplinary proceeding should be initiated against the appellant. The moment the authorities have decided to launch the disciplinary proceeding because of the long absence having perceived it would not be proper for the Court to nib the aid initiation in the bud taking a different route. The decision of the authority is to be just on the legal parameter and if it is contemplated to initiate a disciplinary proceeding as permissible in law, the Court cannot substitute its decision that the initiation of a disciplinary proceeding is a wasical approach as the appellant does not deserve to remain in service. The Court should not substitute itself into the armed chair of the administrative authority to take a decision which has not been taken by such administrative authority.

We thus find that the ultimate decision taken by the Single Bench cannot be sustained. The same hereby set aside.

The respondent authorities are free to initiate a disciplinary proceeding as permissible in law and it is expected that after following the principles of natural justice would bring such proceeding to its logical ends at an earliest.

Since the petitioner was permitted to join the School in terms of the interim order which gets merged with the final order impugned in the instant appeal and

the same having been set aside we, therefore, direct the authorities to permit the appellant to continue in joining the said School until the final decision is taken in the said disciplinary proceeding. The joining the School shall not create any special equity into the appellant nor would involve any benefits subject to the ultimate decision taken in the disciplinary proceeding.

With these observations, the appeal and the application are disposed of.

Let the original certified copy filed today be tagged with the memorandum of appeal hear and now.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)