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2024**

Ct. No. 08

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**MAT 1457 of 2024
IA No. CAN 1 of 2024**

**Himani Shit
Vs.
The State of West Bengal and others**

**Mr. Biswarup Biswas,
Mr. Gora Chand Samanta.
... for the appellants.**

**Mr. Vivek Jyoti Basu,
Mr. Pashupati Sana.
... for the State.**

**Dr. Sutanu Kumar Patra,
Ms. Supriya Dubey.
... for the WBCSSC.**

**Ms. Koyeli Bhattacharya,
Mr. Bibek Dutta.
... for the WBBSE.**

**Mr. Sk. Sahjahan.
... for the School Authority.**

Let the certified copy of the impugned order filed in Court today be kept with the record.

An application seeking transfer from the present school to another is rejected by the authorities on the ground of single teacher in the relevant subject.

The rejection order was passed prior to 3rd January 2022 and on the basis of the decision of the School Education Department dated 26th August 2021. Though the Court in other catena of decisions had accepted the contention of the statutory authority that the application can be dismissed on the ground that there is only one teacher in the relevant subject yet the judgment has to be read in the facts of the case and not out of context.

There has been slew of litigations poured in the docket of the Court, as the respondent authorities took

the decision to reject the application for transfer on the ground of single teacher and the orders being passed by this Court in this regard, which constrained the Government to revisit the aforesaid stand and ultimately decided to issue the notification dated 3rd January 2022.

It is expressly provided in the said notification that the application for transfer shall not be rejected on the ground of single teacher and it is obligatory on the part of the District Inspector of Schools to make local arrangement so that the education of the students are not hampered, provided the ground for transfer is found to be fit in this regard.

In Partha Ghosh vs. The State of West Bengal and others (MAT 160 of 2024), the Division Bench interpreted the expression “fit case” appearing in the said notification dated 3rd January 2022 to be akin to a pragmatic and reasonable decision taken by the authorities keeping in mind in all the circumstances for which the application for transfer is made by the teacher.

So far as the applicability of the notification dated 3rd January 2022 is concerned, the Court has directed the authorities to consider the application taking into account the said notification; whereas in some cases, the Court did not permit the applicant to take advantage of the said notification and the present case is one of such nature. A distinction has to be drawn in the above cases in the light of the date of the decision taken by the authorities. The application for transfer is filed prior to the said notification, but no decision has been taken by the authorities in the interregnum.

Since the right has been recognized and fructified by the subsequent decision of the Government in issuing the notification dated 3rd January 2022, we feel that even if the earlier application, which was rejected on technical ground, it does not foreclose the right of the appellant to make further application by taking

advantage of the said notification. The authorities are bound to decide the same on its merit.

We, therefore, permit the writ petitioner/appellant to make a fresh application seeking transfer to the competent authority within a week from date on the selfsame ground or any other grounds, if available. On receipt of the said application, the authority shall complete the exercise as required under the statutory provision and obviously shall take note of the notification dated 3rd January 2022 within four weeks from the date of receipt of the said application.

For abandon precaution, it is hereby made clear that the findings made herein above shall not be construed to have any impact on the decision to be taken by the authorities on merit, as the authority shall be free to decide the same in accordance with law.

With these observations, the appeal and the connected application being CAN 1 of 2024 are disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

