

24.09.2024
sayandeep
Sl. No. 12
Ct. No. 08

MAT 1666 of 2024
With
CAN 1 of 2024

Subhamindu Adhikari
-Versus-
The State of West Bengal & ors.

Mr. Sakti Pada Jana
Ms. S. Das
Mrs. Sudipta Pramanik

..... for the appellant

Mr. Sougata Mitra
Mr. Nikhil Gupta

..... for the State

Dr. Sutanau Kumar Patra
Ms. Supriya Dubey

.....for the WBCSSC

The short point involved in the instant appeal relates to the applicability of the relevant Rules prevalent at the time when an application for transfer was made and not the subsequent Rules which came into effect at a later point of time. Admittedly, the application for transfer on the ground of distance was made in the year 2021 by uploading the same in “UTSASHREE” portal provided by the respondent authorities. The application remained pending for a pretty long time and ultimately in the remark column, it was indicated that the said application cannot be processed because the petitioner/appellant is the single teacher in the School. The Single Bench noticed subsequent decision of the Government reflected in the notification dated 3rd January, 2022 wherein the bar of single teacher was diluted and a corresponding obligation was imposed upon the D.I. of Schools to make an alternative arrangement with a view to impart education in the said subject uninterruptedly. There has been a slew of litigations before this Court raising

an issue that the respondent authorities cannot take a stand of a single teacher in a subject in relation to an application filed prior to 3rd January, 2022 as the same is required to be decided on the basis of the Rules or the regulations prevalent at the time of making an application.

The Co-ordinate Bench in case of **Prapti Chakraborty vs. State of West Bengal and ors. (MAT 205 of 2023)** decided the said point by delivering the Judgment on 10.08.2023 in the following:

“10. Under such circumstances, we direct the Commissioner of School Education to consider the application for transfer of the petitioner on verification of the record and production of relevant documents by the school authorities. It is needless to mention that the application for transfer shall be considered on the basis of norms prevalent at the relevant point of time and not on the basis of any subsequent circular. The interest of the students would also be a relevant consideration.

12. The Commissioner of School Education shall decide the issue within six weeks from the date of communication of this order by either of the parties upon giving an opportunity of hearing to the writ petitioner and the school authorities and decide the matter by passing a reasoned order to be communicated to the parties within one week thereafter.”

Since the co-ordinate Bench has already held that the application filed prior to 3rd January, 2022 is required to be decided on the basis of the Rules, Regulations and the Norms prevalent at the time of uploading the said application on the official portal, recourse to a subsequent notification is impermissible. The subsequent co-ordinate Bench is bound by the decision of the earlier co-ordinate Bench unless it found the same not in tune with the statutory provisions or intend to take a different view but in this regard the matter should be referred to the Chief Justice to constitute a larger Bench.

We do not find any incongruity in the Judgment of the earlier co-ordinate Bench inviting a dissenting view to be taken and respecting the judicial discipline and following mandate given by the earlier co-ordinate Bench, we find that the order of the Single Bench runs counter to the same.

The order impugned is thus set aside.

The Commissioner of School education is directed to take a decision on the application for transfer filed by the petitioner in terms of the law laid down by the earlier co-ordinate Bench in **Prapti Chakraborty** (Supra) and the entire exercised shall be completed within eight weeks from the date of the communication of this order.

The appeal is, thus, allowed. The connected application is accordingly disposed of.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)