

23.09.2024
sayandeep
Sl. No. 06
Ct. No. 08

MAT 1807 of 2024
With
CAN 1 of 2024

Somruk Shital Chandra Institution H.S. & anr.
-Versus-
Sima Das & ors.

Mr. Sanjay Saha

..... for the appellants

Mr. P.K. Bhattacharyay

..... for the State

Mr. Ujjal Ray

Mr. Arpa Chakraborty

.....for the respondent No. 1

PARTHA SARATHI SEN, J.:-

1) Leave is granted to the appellant to add the D.I. of Schools (SE), South 24 Parganas as respondent No. 6A in the category of the respondents here and now. Since the said respondent No. 6A in the writ petition is the District Inspector of School (SE), South 24 Parganas, there is no fetter on the part of the State counsel to represent the said added respondent.

2) The subject matter of challenge in this appeal is the order dated August 8, 2024 passed in WPA 24863 of 2022 by the learned Single Judge of this Court whereby and whereunder the writ petition filed by the respondent No. 1 herein was allowed directing the appellant/School authority to forward the transfer

application of the petitioner on medical ground to the concerned D.I. within a fortnight from the date of communication of the said order.

3) In course of hearing, learned advocate for the appellant/School authority strongly contended that while passing the order impugned, learned Trial Court has failed to visualize the true implication of the notification No. 707/SE/S/1S-04/95(PT) dated September 8, 2021 by which some amendments have been effected in the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and re-allocation) Rules, 2015.

4) It is contended that while passing the impugned order, learned Single Judge has also overlooked that a departmental proceeding is contemplated against the writ petitioner on account of her unauthorized leave. Drawing attention of this Court to page Nos. 21, 25 and 27 being annexure 1 of the stay application, it is submitted further that from the copy of the resolution adopted by the Managing Committee of the School, it would reveal that the writ petitioner/respondent No. 1 herein remained absent on duty in the said School unauthorizedly. She was given due caution and even thereafter she did not rectify herself and thus by an unanimous resolution, the Committee has taken a decision for deducting the

salary of the writ petitioner/respondent No. 1 herein initially for 15 days per month and to adjust the overdrawal for excess unauthorized leave. It is further submitted that considering the conduct of the writ petitioner/respondent No. 1, the Managing Committee of the appellant/School also had to take a resolution for initiation of the disciplinary proceeding and send the same to the D.I. of Schools (SE) for referring the matter before the Board to take appropriate action against that.

5) It is submitted further on behalf of the appellant/School that though the aforementioned decisions of the appellant/School was challenged before this High Court and pursuant to the order passed by this High Court in an earlier round of litigation, the D.I. of Schools (SE) had quashed the decision regarding the deduction of salary but the D.I. of Schools (SE) remained absolutely silent with regard to the contemplated proceeding of disciplinary proceeding as against the writ petitioner/respondent No. 1 herein.

6) Learned advocate for the appellant further submits that though the disease of Thalassemia of a ward of a teacher exempts him/her to seek transfer overriding the normal procedure for transfer of the incumbent but the learned Single Judge had miserably failed to comprehend the amended Rule 5 of the

aforementioned notification which clearly postulates that the departmental proceeding, even if, the same is in contemplation creates a bar for favourable consideration of the prayer of the incumbent to seek transfer even on the ground of suffering of disease by a ward from Thalassemia of the said incumbent teacher. Learned advocate for the appellant school thus submits that this is a fit case for allowing the instant appeal by setting aside the order impugned.

7) Per contra, learned advocate for the respondent No. 1/writ petitioner also places his reliance upon the aforementioned notification dated September 8, 2021 under cover of which an amendment took place with regard to the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and re-allocation) Rules, 2015. It is submitted by him that it is undisputed that the son of the writ petitioner/ respondent No. 1 is Thalassemic and he requires blood transfusion off and on. Such factum is very much known to the appellant/School. The Managing Committee of the School did not adhere to the predicament of the writ petitioner and on the contrary they proceeded to declare the leave as availed by her as unauthorized leave and most unilaterally started deducting the salary of the writ

petitioner/respondent No. 1 without even taking prior approval of the concerned D.I. of Schools (SE).

8) It is further contended that for no reason whatsoever and without looking to the plight of the writ petitioner/respondent No. 1, the school authority proceeded further and most illegally recommended for initiation of the disciplinary proceeding which has been challenged by the writ petitioner before this Court and pursuant to that order, the D.I. of Schools (SE) undercover of his memo No. 141/LS dated June 30, 2023 quashed the decision of the appellant/School authority and directed to stop deduction of the salary of the petitioner without the approval of the West Bengal Board of Secondary Education. It is further submitted on behalf of the respondent No.1/writ petitioner that while passing the reasoned order, the concerned D.I. of Schools (SE) further noticed that the School authority even did not grant CCL in case of her utter need for the treatment of her son who is admittedly suffering from the disease Thalassemia. Learned advocate for the respondent No. 1/writ petitioner thus submits that it is a fit case for dismissal of the instant appeal.

9) On consideration of the entire materials as placed before us, it appears that it is not disputed either before learned single Judge or before us that the son of the respondent No. 1/writ petitioner who is a teacher of

the appellant No. 1/ School is suffering from Thalassemia. Materials has been placed before us that on account of such disease, she had to seek transfer to a nearby school of her residence. From the materials as placed before us, we further find that the School authority did not even consider to forward the said application for transfer though the school authority is well aware of the amended provision of the notification dated September 8, 2021. Materials have been placed before this Court that when the respondent No. 1/writ petitioner had to take long leave for the treatment of her son such leave was not considered favourably and even the School authority proceeded to declare such leave as unauthorized and further proceeded to deduct the salary of the writ petitioner. From the reasoned order dated June 30, 2023 as passed by the concerned D.I. of Schools (SE), it appears to this Court that the School authority even did not grant Child Care Leave to the writ petitioner during her utter need for the treatment of her son. It thus appears to this Court that the hostility of appellant/School is apparent on the face of the record which no prudent person can consider as just and proper.

10) The argument as advanced on behalf of the appellant/School that the learned Single Judge ought not to have passed the order for forwarding the

application for transfer to the concerned D.I. of Schools (SE) on the ground of contemplated disciplinary proceeding does not convince us much. On perusal of the reasoned order dated June 30, 2023, it reveals that the D.I. of School has practically condemned the action of the appellant/School and cautioned the School authority not to deduct the salary of the writ petitioner/respondent unless approval of the West Bengal Board of Secondary Education is issued in this regard. We find no whisper regarding any contemplation of initiation of disciplinary proceeding in the said reasoned order of the D.I. of Schools (SE) and we are thus constrained to hold that the submission of the learned advocate for the appellant/School is mere a wishful thinking of the School authority in order to prevent the respondent No. 1/writ petitioner from getting transfer from the said School to a nearby School of her residence even at the time of urgent need of the writ petitioner especially on the ground of her son's disease like Thalassemia. We are thus constrained to hold that the action of the appellant/ School authority is not only hostile to the writ petitioner and at the same time, the same violates the very principle of natural justice even the right to life of the writ petitioner as enshrined under Article 21 of the Constitution of India. We thus do not find any merit in the instant appeal.

11) Accordingly, the instant appeal as well as the connected application are dismissed, however without any order as to costs. The application being CAN 1 of 2024 is also dismissed.

(Partha Sarathi Sen, J.)

HARISH TANDON, J. :-

1) I could not persuade myself to take a dissenting view to an ultimate decision taken by my brother in the order dictated in the open Court but I could not resist myself to pen few words which in my opinion would throw a light on the core issue.

2) It is a common adage prevalent in the society that the nobody on the earth is not infallible and may commit error but to committing repeated error with malice and pre-notioned mind is unacceptable. My brother has succinctly narrated the facts germane from the records and have expressed his views in pursuit of achieving the ultimate decision, i.e., the dismissal of appeal and, therefore, I do not intend to reiterate the same.

3) The education system prevalent in the State of West Bengal is regulated and guided by the several Acts and the Rules enacted by the Government to be adhered to and/or followed by various authorities

coming within the ambit thereof. While the power is conferred upon the statutory authorities to deal with the case relating to the education system in the State equally the rights are balanced between the teaching and the non-teaching staffs of the educational institutions and, therefore, an equilibrium is required to be maintained when an disparity on the rights are evident and imminent from the conduct of the respondent authorities.

4) The West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and re-allocation) Rules, 2015 was published and duly notified in the official gazette on 27th February, 2015. By promulgating the said Rules, the conditions relating to a transfer was sought to be streamlined in order to eradicate the frivolous applications for transfer, as the authorities were of the view that the genuine ground for transfer should not be defeated at the fiat of the executives inculcating their personal notions and/or believe but to be guided by the Rules and the provisions made therein.

5) Rule 4 of the said Rule was subsequently amended by a notification dated September 8, 2021 incorporating various eventualities/situations relating to transfer and it is no gainsaying that Clause (a) thereof includes various diseases including Thalassemia

as a ground for transfer. Rule 6 was amended to streamline the procedures to be adopted by the authorities in relation to an application made therein and it is manifest therefrom that Clause (e) of Sub Rule 1 of Rule 6 provides for dispensation with the provisions of Clauses (c) and (d) of the said sub-Rule provided an application is made on the ground contemplated under Rule 4(a) to (d) of the said Rules. We have seen the arguments advanced by the School authority before the Single Bench where two folds grounds were taken; one in relation to a single teacher in a particular subject and other in contemplation to initiate disciplinary proceedings.

6) So far as the first point is concerned, the School authorities were taking shelter under the umbrella of a single teacher and rejecting the applications despite having found the grounds disclosed therein to be genuine. The Government issued notification dated 3rd January, 2022 mandating that the application for transfer shall not be rejected solely on the ground of a single teacher in a particular subject provided the School Managing Committee found the grounds to come within the folds of “fit cases” and corresponding obligation was imposed upon the D.I. of the concerned District to make an alternative arrangements so that the students of the said School is

not deprived of getting educated in the said particular subject. In view of the above, the first ground does not appear to be tenable and having realized so, the counsel for the appellant squeezes the argument solely on the ground of the disciplinary proceeding having contemplated against respondent No. 1.

7) My brother has succinctly narrated the resolution taken by the School Managing Committee from time to time and the actions taken thereupon including the deduction of the salaries against the unauthorized absence but according to me, the moment the authorities have decided to issue a note of caution, it cannot be perceived that there was any contemplation to initiate a disciplinary proceeding. However, in a second resolution, the decision was taken to deduct the salary in the manner as indicated hereinabove which also does not appear that there was any contemplation to initiate a disciplinary proceedings rather the said resolution was forwarded to the D.I. of Schools (SE) to give his approval thereupon which was negated by the said authority as the School Managing Committee is not bestowed with the power to impose any penalty. If the stand of the School is perceived in the sense that it was not a disciplinary action taken by the authority but the deduction for an unauthorized absence, does not come within the fold of Clause (b) of Sub Rule 1 of Rule 6.

8) Our attention is drawn to the provisions contained in West Bengal Board of Secondary Education (Appointment, Confirmation, Conduct and Discipline of the Teachers and Non-teaching Staff) Rules 2018. The disciplinary authorities defined in Section 2 (h) to mean any officer of the Board not below the rank to Depute Secretary to the Board duly authorized to initiate disciplinary proceedings against the teacher and the non-teaching staff. Since the D.I. of Schools (SE) was of the opinion that the decision of the Managing Committee does not come within the purview of the one of the instances provided therein and having quashed the same, the School Authority cannot be said to have initiated a disciplinary proceedings or contemplating to initiate disciplinary proceeding against the petitioner. The D.I. of Schools (SE) directed the School Managing Committee or TIC to provide the details of the absence of the respondent No. 1 so that she can submit her application for leave mentioning what kind of leave is sought for with proper documents. Further direction was passed upon the TIC to prepare a report about the details of the absence of respondent No. 1 with proof, the leave credited at the petitioner, the balance of leave after adjusting the absence allowing leave for her credit so that the Board may take a conscious decision.

9) Interestingly, despite the specific direction passed upon the TIC, the School authority departed from the same and caused the letter dated 31st August, 2022 and 27th November, 2022 making proposal to initiate a disciplinary action. The tenet of the said communication does not reveal that the aforesaid communications were made in terms of the direction passed by the D.I. of Schools (SE). There is no reference of the requisitions as directed by the D.I. of Schools (SE) except the enclosure of the copy of the leave statement and papers concerning the unauthorized absence appended thereto.

10) The Disciplinary proceeding can only be initiated on receipt of the complaint made to the Board under Rule 5 of the said Rules. Since 2012 the State has not communicated that any action has been taken by the Board contemplating to initiate a disciplinary proceedings. More than two years have lapsed and there is a complete silence in this regard which cannot be used as a deterrent to the application for transfer necessitated by a medical emergency. There has been a complete apathy shown by the School Managing Committee in dealing with the application for transfer. Accordingly, the instant appeal is dismissed without any order as to costs.

11) The connected application being CAN 1 of 2024 is also dismissed.

(Harish Tandon, J.)