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26.04.2024
Ct. No. 11
Jayanta

MAT 1915 of 2023

**Basabi Kander Samanta
vs
State of West Bengal & Ors.**

Mr. Biswajit De
Mr. Debabrata Chakraborty
Ms. Mallika Manna
.....For the Petitioner.

Ms. Koyali Bhattacharyya
.....For the W.B.B.S.E.

Mr. Sumit Kumar Roy
.....For the S.S.C.

Mr. Biswabrata Basu Mallik
Mr. Tamal Taru Panda
.....For the State.

The present appeal has been preferred challenging an order dated 10th August, 2023 passed by the learned single Judge in the writ petition being WPA 10132 of 2022. By the said order the learned single Judge observed that '*the petitioner is the sole teacher of History in the said school as such her prayer at this stage cannot be considered*'.

Mr. De, learned advocate appearing for the appellant submits that the writ petition was disposed of only on the basis of the submission made by the learned advocate appearing for the State/respondents that there is no surplus teacher of history available in the district to fill up the vacancies, without calling for any report from the respondent no. 4.

Mr. De argues that the appellant's application for general transfer cannot be rejected on the sole ground that

she is the only history teacher in the said school. Dealing with such circumstances, the Government *vide* memo dated 3rd January, 2022 has detailed the procedure required to be followed by the competent authority in the event a single teacher makes application for transfer. Such argument, as advanced was glossed over by the learned single Judge and such infirmity warrants interference of this Court.

Mr. Basu Malik, learned advocate appearing for the State/respondents submits that there is no infirmity in the order impugned since there is no surplus teacher of history available in the district to fill up the vacancy that would arise upon transfer of the appellant.

He informs us that out of the 7 (seven) vacant posts of teachers in the school, 5 (five) had already been filled up.

Ms. Bhattacharyya and Mr. Roy learned advocates enter appearance on behalf of the Board and Commission respectively.

By a notification dated 27th February, 2015, the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 were promulgated. The said rules were amended from time to time and the last amendment was effected *vide* memo no.09-SE dated 3rd January, 2022. The operative part of the said memo runs as follows :

“In that event a single subject teacher makes application for transfer, the SMC will not reject the application and inform the DI(SE) about such application.

The DI (SE) will immediately discuss the matter with the CSE in the DI(SE) will take urgent step in time bound manner to search for a teacher on the same subject from nearby and make local arrangement so that the teacher of the other school attends the school wherefrom the teachers has applied for transfer on days of the week on a temporary basis till such time a permanent teachers subject joins. The DI (SE) will inform such arrangement to the CSE who shall inform the matter to the Chairman of WBCSSC, President of WBBSE and School Education Department, CSE will ensure such arrangement in 7 days immediately. The DI(SE) will communicate such arrangement to the school concerned and the HOI in question shall forward the application of the teacher to the DI(SE) will then forward the case to the WBCSSC for consideration, WBCSSC will suitably recommend the case for transfer to the WBBSE and the Board will issue transfer order accordingly.

This remains in force until further order.”

From the said memo dated 3rd January, 2022 it appears that a teacher's application for transfer on medical ground cannot be rejected on the sole ground that he/she is a single teacher for a particular subject in the concerned school and in such circumstances the respondent no. 4 has been directed to take appropriate steps as earmarked in the said memo. Had the said memo dated 3rd January, 2022 been brought to the notice of the learned single Judge, the order would have been otherwise.

In the said conspectus, the order impugned in the present appeal is set aside and the respondent no. 4 is directed to consider the appellant's application for transfer, in the vacancies existing on duty, in the light of the provisions contained in the memo dated 3rd January, 2022, as quoted above, upon granting an opportunity of hearing to the petitioner and the school authorities.

Needless to observe, as the operation of the *online* portal has been temporarily suspended, the appellant's application shall be considered through *offline* mode and the final decision shall be communicated by the respondent no. 4 to the appellant.

The above exercise shall be completed within a period of 12 weeks from the date of communication of this order along with a copy of the writ petition.

The appeal and the connected application are, accordingly, disposed of.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)