

Items- 21-04-2025
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Ct. 8

FMA 262 of 2021
CAN 1 of 2020 (old CAN 82 of 2020)

Tapan Kumar Dhan
Vs.
Nemai Charan Mondal & Ors.

With

FMA 264 of 2021
CAN 1 of 2020 (old CAN 309 of 2020)

The Managing Committee of
Bhagwanchak Patiram Sikshaniketan & Anr.
Vs.
Nemai Charan Mondal & Ors.

Mr. Kumaresh Dalal

... for the appellant in FMA 262/2021

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.

Mr. Raju Bhattacharyya

Mr. Arunav Miti

...for respondent nos. 5&6 in FMA 262/2021

For the appellant in FMA 264/2021

Mr. Prahlad Ch. Ghosh

Mr. S. Hazra

...for the respondent no.1

Mr. Tapan Kr. Mukherjee

Ms. Tuli Sinha

...for the State

1. These two appeals involving identical questions of law are taken up for consideration and dispose of by this common order.
2. One Nemai Charan Mondal filed a writ petition assailing an order dated 23rd April, 1997 passed by the District Inspector of Schools (S.E.), Medinipur. The grievance of the petitioner was that there has been misinterpretation of the Rules and his marks have not been calculated on percentage basis as per the Recruitment Rules of 27th

October, 1995.

3. The learned Counsel on behalf of the school appears to have made a submission before the learned Single Judge that there is fixed percentage of marks in the Rules and there has been no transgression by the District Inspector of Schools. The learned Counsel for the State has made the submission that matter may be referred to the Director of School Education, West Bengal now Commissioner of School Education to adjudicate the disputes raised by the petitioner.
4. In view of the consensus of the appearing party recorded in the said order, the Commissioner of School Education, West Bengal was directed to take into consideration the relevant Recruitment Rules as well as other Notifications operating in the field and as the case may be, applicable in the instant case to decide the representation and dispose of the representation in accordance with law within the time stipulated. It appears that the said order was acted upon and the Commissioner of School Education has passed an order on 5th November, 2020.
5. We have been informed that one of the parties have filed a writ petitioner challenging the said order and the writ petitioner is pending. In the said proceeding, Sri Tapan Kumar Dhan was also a party.
6. The Commissioner in disposing of the representation had observed that Physical Education and Word Education are in the same group in the staff pattern and the clarification mentioned in Word Education ought to be

obviously applicable to Physical Education also because both of them appear at para 6(c)(xii) of Mem No. 485-GA dated 4th April, 1996. The authority was of the view that panel prepared in 1996 cannot be made operative in the year 2020 when statutory recruitment Rule as per Legislative Mandate came into force after 1997.

7. Mr. Partha Sarathi Bhattacharyya, learned Senior Counsel appearing on behalf of the petitioner, submits that the Commissioner has overlooked Section 10 of the West Bengal School Service Education Act, 1997 which protects the teachers in the employment of the school immediately before the commencement of this Act.
8. This factual aspect of the matter is under consideration before the learned Single Judge and hence, we refrain from making any comment in this regard. We are of the view that the order impugned has not decided the right of the parties and hence, shall not be appealable. Moreover, the order passed was by consent of the parties.
9. On such consideration, the appeals are dismissed. However, the observation made in this order, shall not be influence the pending proceeding between the parties.
10. We clarify that there is no requirement of the authorities concerned to refer to the pending appeals as the decision in the appeal have no relevance to the order passed which is subsequent to the filing of the appeal and was passed in terms of the order of the learned Single Judge.
11. Mr. Bhattacharyya has submitted that his client has accepted the decision of the Commissioner excepting the

rider added to the order that it shall abide by the result of the appeal and in contradiction of Section 10 of the School Service Commission Act, 1997.

12. Both the appeals and the connected applications are, thus, dismissed.
13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Smita Das De, J.)