

SUPREME COURT OF INDIA

Exec.Dir.,W.Bengal Power Dev.Corp.Ltd.

Vs.

Ardhendu Sekhar Bala

C.A.No.7570 of 2009

(Tarun Chatterjee and R.M.Lodha JJ.)

13.11.2009

ORDER

Tarun Chatterjee, J.

1. Leave granted.

2. The Executive Director (FM & HR) West Bengal Power Development Corporation Ltd. is the appellant before us. A school was set up by the appellant in the name of "Kolaghat Thermal Power Plant High School" (in short `the School') mainly for the wards of the employees of Kolaghat Thermal Power Station. The 2 respondent No.1 Shri Ardhendu Sekhar Bala was appointed as Assistant Teacher of Bengali in the aforesaid School. Without going into the details, on or about 26th of February, 2009, nine employees of the West Bengal Power Development Corporation Ltd. including the respondent No. 1 were transferred from one Power Project to different Power Projects. The respondent No.1 was aggrieved by the order of transfer and for that reason, he had challenged the order of transfer by way of a writ petition filed before the High Court of Calcutta on 24th of March, 2009. By a final order dated 30th of March, 2009, a learned Judge of the High Court rejected the writ application holding that an order of transfer could very well be made if the exigencies of the services so required.

3. Feeling aggrieved, the appellant has filed an appeal on 16th of April, 2009 before the Division Bench of the High Court which is still pending. It may be kept on record that before filing of the appeal i.e. on 16th of April, 2009, the respondent No.1 was released w.e.f. 30th of March, 2009. It is not disputed that another teacher Shri Kamal Das, after the release of the respondent No.1 from the School as Assistant Teacher, joined the said school in place of Ardhendu Sekhar Bala, the respondent No.1 herein. After the joining of Shri Kamal Das, the Division Bench by the impugned order dated 15th of June, 2009 had stayed the operation of the judgment of the learned Single Judge passed on 30th of March, 2009 rejecting the application under Article 226 of the Constitution. Considering the facts and circumstances of the present case, particularly the fact that Shri Kamal Das has already joined the post in the said School in place of respondent No.1, there was no necessity at that stage for the Division

Bench to grant stay of the order of the learned Single Judge. Although the Division Bench by the impugned order had passed an interim order pending the disposal of the appeal, we are of the view that in view of the fact that Shri Kamal Das has already joined the post where the respondent No.1 was working at the time of his transfer, there was no need to stay the operation of the impugned order of the learned Single Judge at that stage. Mr.Mukherjee, learned counsel appearing for the respondent No.1 has drawn our attention to the fact that the respondent No.1 is not in a position to join the post where he has been transferred by the order of transfer as it appears that a lady teacher of another school has been transferred in the same post and she has joined the same. If such be the position, it would be the appellant to take steps to allow the respondent No.1 to join the post where he was transferred and also to release the lady teacher from the said post and place her in some other suitable place. We, however, make it clear that the joining of the respondent No. 1 in the transferred post shall abide by the result of the pending writ appeal.

4. For the reasons aforesaid, the impugned order is set aside. The appeal is allowed to the extent indicated above. However, we request the Division Bench of the High Court to decide the pending appeal within three months from the date of supply of a copy of this order to it positively. It may be stated that the appeal shall be decided without granting any unnecessary adjournment to either of the parties. In view of the order passed in the appeal itself, the interlocutory applications such as the application for modification or clarification of our order dated 21st of July, 2009 have become infructuous and are also accordingly disposed of.

5. We also make it clear that we have not gone into the merits of the writ appeal which shall be decided by the High Court in accordance with law.