

Kamala Nandy Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Feb. 24, 2009

Hon'ble Judges: Kishore Kumar Prasad, J; Girish Chandra Gupta, J

Bench: Division Bench

Advocate: Ekramul Bari, K.M. Hossain, for the Appellant; Santanu Kumar Patra for the School Service Commission, B.R. Patranabis, S. Sengupta for the State, for the Respondent

Judgement

1. The School Service Commission recommended the name of the writ petitioner/appellant for appointment to the post of Assistant Teacher in

Manbhum Victoria Institution (HS). The writ petitioner at that point of time was already an approved teacher of Chakdah HS (High) School. The

writ petitioner's case is that at the time when the recommendation was made in her favour by the School Service Commission, she was pursuing

her B.Ed. course with permission of the authorities. In the event she was to join the new school as per the recommendation of the School Service

Commission, she would have to give up her B.Ed. course which she was pursuing at that point of time. She, in that view of the matter, applied for

leave to join the school after she completed her B.Ed. course.

2. The case of the School Service Commission is that the recommendation is valid for 90 days. If the candidate does not join within 90 days, the

recommendation ceases to be operative.

3. Mr. Bari, Learned Counsel, appearing for the appellant, contended that the provision for 90 days is directory and not mandatory and the School

Service Commission has the power to extend the time within which the recommended candidate may join the school.

4. We have not been impressed by this submission because the settled law of interpretation is that "Expression of one is exclusion of another.

When 90 days have been expressed to be the period within which the candidate has to join, it has to be implied that any other or further period

was not contemplated. Moreover, the School Service Commission is a recommending body. The recommendation is made to fill up the post lying

vacant in the concerned school. The School Service Commission has no business to make charity at the cost of the school where the posts are

lying vacant and the students are suffering. We are, therefore, satisfied that there is no scope to hold that it was open to the School Service

Commission to extend the period of 90 days for the purpose of joining. Such a construction is contrary to all canons of interpretation and is also

likely to adversely affect the interest of the students and in the long run is likely to open flood gate for corruption.

5. There is still another way of looking at it. The recommendation of the Commission is in the nature of an offer which has to be accepted without

any qualification. If the offeree puts forward conditions then it becomes a counter-offer which the Commission is not bound to accept. This is what

has happened in this case.

6. In that view of the matter, the only conclusion is that the writ petitioner/appellant has failed to avail of the opportunity and that is the end of the

matter.

7. This appeal is, thus, disposed of.

8. In view of the disposal of the appeal, the application for interim order being CAN No. 2486 of 2008 becomes infructuous and the same is

disposed of as such.

9. There will be no order as to costs.

10. Let urgent xerox copy of this order, if applied for, be delivered to the Learned Counsel for the parties upon compliance of all usual formalities.