

10/12/2020
Item 3
Court No.12
AB

Through Video Conference

**FMA 285 of 2019
With
I. A. No. CAN/1/2019
(Old No. CAN/3812/2019)**

The West Bengal Madrasah Service Commission

Vs

Rowsonara Khatun & Others

Mr. Prosenjit Mukherjee,
Ms. Madhurima Sarkar,
Mr. Saptarshi Chakraborty,
Mr. Sourav Sardar ...for the Appellant.

Mr. Supriyo Chattopadhyay,
Ms. Saswati Adhikary ...for the Respondent no.1
/ Writ Petitioner.

By consent of the parties, the appeal and the application are treated as on day's list and are disposed of by a common order.

The writ petitioner was confirmed in a substantive post of teacher on May 13, 2013 and was eligible to apply for general transfer as per the Rules, namely, the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of Persons for Appointment and Transfer to the Post of Teaching and Non-teaching Staff) Rules, 2010. The said Rules of 2010 have been upheld by the Apex Court.

It is not in dispute that there is a post lying vacant in English in Hamidia High Madrasah, Suri, Birbhum. The writ petitioner is a confirmed teacher holding a substantive post and teaching the same subject. As such, the writ petitioner is entitled to apply for general transfer to the said post.

It further appears that the writ petitioner is presently posted at a remote village in Uttar Dinajpur, which is almost 400 km away from the native place where she was staying with her husband and two little children. The husband of the writ petitioner, namely, Sk. Ekramul Haque is also an Assistant Teacher of Itagoria Hazi Momtaj Hossain Madhyamik Vidyalaya (H.S.), Birbhum. It was on such consideration the learned Single Judge felt that the application for transfer of the writ petitioner should be considered by the authorities after taking into consideration the aforesaid facts.

By reason of the employment, the family is not disrupted weighed with the learned Single Judge in directing the authorities to take into consideration the aforesaid facts, which we feel also a relevant unless there are considerations, which overweighed such factors, which are not presently demonstrated before us.

It is more on a pedantic view of the general rules of transfer and Rule 33 of the said Rules of 2010 that

an argument is made that the order of the learned Single Judge is contrary to law.

The learned Single Judge allowed the writ petitioner to make a fresh application for transfer from Dodhikotbari Ashrafia High Madrasah (HS) to the said post which has fallen vacant in English. The authorities have encashed the demand draft and as such, there is no requirement for the writ petitioner to deposit any amount. The application fees, which have been paid earlier, shall be adjusted with the new application to be made by the writ petitioner.

The learned Single Judge while disposing of the matter has clearly stated that it is needless to mention that apart from the submission of the application for transfer the writ petitioner shall follow the procedure prescribed in Rule 33 (ii). What is sought to be urged before us now is that the direction of the learned Single Judge that the writ petitioner may be accommodated against any vacancy within the district of Birbhum, may not be possible as the counseling process has started and she may not be selected in the counseling for a post in the district of Birbhum.

We only say that it is like putting the cart before the horse. The situation has not arisen from which we can come to a conclusion that the writ petitioner was not successful in counseling. What would happen in future is not the present consideration for which we

shall interfere with the order impugned at present. We are of the view that the factors, which are required to be taken into consideration, as indicated by the learned Single Judge and which seems to have weighed with the learned Single Judge, are relevant considerations determining the application for transfer of the writ petitioner.

In view thereof, we are not inclined to interfere with the order under appeal. The Appeal and the application are dismissed.

However, there shall be no order as to costs.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)