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24.09.2020
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WPA 14143 of 2019
with
C.A.N. 1 of 2020

Kabari Bokshi
Vs.
The State of West Bengal & Ors.

Mr. Shamim Ul Bari
Mr. Ali Ahsan Alamgir.
... for the petitioner.

Mr. Arindam Chattopadhyay.
... for the State.

The writ petitioner is a permanent resident of Haldia, Purba Medinipur is working as an Assistant Teacher in Bagmari Narikalyan Siksha Sadan (H.S.), Post: Pratapdighi, P.S. Pataspur II, Purba Medinipur in the remote area of Contai Sub-Division which is more than 85 kilometers away from her permanent place of residence where the petitioner was residing with her husband wherefrom the petitioner was attending the school after travelling a long distance of 170 kilometers daily through various mode of transport which is almost impossible for the petitioner to attend the school regularly and in this way the petitioner was suffering and the students also were not getting proper assistance from the

teacher. The petitioner has applied to the School authority for 'No Objection Certificate' for being transferred. As per the provisions of Section 4(c) and in the notification of the Government of West Bengal School Education vide notification no. 159-SE/S/15-4/95 (Part) - 27 February, 2015 which enjoys that an incumbent belonging to the following categories may apply for transfer on any of the special grounds, namely:-

"(a) Any teacher or non-teaching staff or his/her son/daughter or spouse suffering from malignant diseases, heart diseases, renal failure, thalassemia, replacement of organ, serious gynecological disorder or physically disablement of 40% or more or to assist in proper treatment of self or his/her son/daughter or spouse."

Accordingly, the petitioner has opted for consideration for her general transfer on the special ground that she is a teacher serving in the said aided school where the serving places of the spouse are away beyond 50 kilometers since her residence is beyond 70 kilometers from the school she sought for being transferred a place near to her permanent address at Haldia. Under Rule 7 which

provides a procedure for general transfer on special grounds under Rule 4(1)(a) and Rule 4(1)(b) as under:

- “(1) The teacher shall submit application with sufficient documents for consideration of the Managing Committee in connection with the transfer on medical ground.
- (2) The Managing Committee may, after examination of the prayer and after receiving views of the Medical Practitioner of the committee, forward the prayer with resolution of the District Inspector of Schools (Secondary Education) who will forward after verification of vacancy as per option submitted by the teacher and non-teaching staff where he/she may desire to be transferred, to the School Education Department.
- (3) The school Education Department may, after proper examination, recommend the prayer to the West Bengal School Service Commission and in case of inter-district reallocation of service, the Department

shall cause necessary enquiry on vacancy report."

On conjoint reading of the provisions it would appear that, the headmaster or the school authority has to simply give the 'No Objection Certificate' for general transfer on a special ground to be considered by the Secretary, School Education Department, which has to be rooted through District Inspector of Schools (SE).

It is pointed out that the petitioner's father-in-law and mother-in-law are very aged person and suffering from various ailment and there is no other person to look after them save and except the petitioner herein and as such it is almost impossible for the petitioner to attend her school regularly and in this way the petitioner was suffering and the students also were not getting proper assistance from the teacher. That apart, the petitioner is a mother of two minor child and during her pregnancy, she faced so many complications due to her regular long journey. Moreover, the children are also missing the company of their mother as well as proper care and attention. On such grounds, the petitioner has sought for consideration of a general transfer on a special ground as she has no other alternative but to

transfer herself from her present school to any school either nearer to her permanent place of residence at Haldia, Purba Medinipur so that the petitioner can look after her parent and child as well as can follow her doctors advice and also can enjoy a peaceful life with their children. It is also pointed out that the petitioner's husband is an Assistant Professor of Kultali Dr. B.R. Ambefkar College at Kultali and distance between petitioner's school and her husband's college is more than 226 kilometers. It is also not possible for the petitioner to attend her children and his parents at Haldia. The petitioner has made an application before the school authority on 4th September, 2018 with prescribed format along with all relevant documents for its consideration to that effect on 29th March, 2019 so that the petitioner can avail the opportunity of general transfer on special ground under the provisions of West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015. The petitioner made several requests to the school authority to issue 'No Objection Certificate' and to forward the petitioner's application to the concerned authority so that the authority may proceed with petitioner's application for general

transfer on special ground, but no steps was been taken to that effect though verbally informed the petitioner that school authority shall not issue no objection and shall not process the application of the petitioner unless the petitioner can obtain any order from the Hon'ble High Court.

In response to the application made by the petitioner, the school authority by its letter under reference no. 20/2019 dated 10.04.2019 has communicated to the petitioner informing that the school authorities are unable to issue No Objection Certificate of general transfer due to the fact that already students are admitted for the subject of philosophy for session 2019-2020 and if 'No Objection Certificate' is issued that will harmful towards the students of the institution. It is also pointed out that the total sanctioned post of the said school are 20 in upper primary and Madhyamik section and 3 in the Higher Secondary section. The total numbers of teachers for our upper primary and Madhyamik section are 14 in numbers and the total strength of the institution is 831 numbers. There are nine posts which are vacant in the school and there is crisis for teachers. This is one of the ground for which the 'No Objection Certificate' has not been granted to the writ

petitioner. Such information was given to the petitioner vide the letter under reference dated 10.04.2019 of the school authority namely Bagmari Narikalyan Siksha Sadan under challenge. It shows that the ground on which the school authority has not considered the application of the petitioner is a shortage of teachers in the school and the school session is well in the progress and if the writ petitioner is transferred from the said school, the words of the institution will suffer.

In this context, Mr. Bari, learned advocate for the petitioner submits that, four teachers have already joined in the school and there are nine part time teachers, so students will not suffer. It is pointed out that the school authority cannot simply reject the application for general transfer on the special ground as a matter of concern and relied on the decision in *Managing Committee, Kholapota Prankrishna Halder Girls High Schools & Anr. Vs. Nibedita Roy reported in 2009(3) CHN 626* and also several judgments being unreported *W.P. 12484(W) of 2016 (Bahula Sashi Smriti High School (H.S.) & Anr. Vs. State of West Bengal & Ors.)*. There are other decisions also passed on 6.3.2020 in *W.P. 3096(W) of 2020*, *W.P. 13033(W) of 2019*, *W.P. 21597(W) of 2017* and

in all such decisions, it has been pointed out that the school authorities cannot refuse to grant 'No Objection Certificate' for the dearth of teachers in the school. They shall take immediate steps for the appointment of teachers and they are at liberty to approach the School Service Commission as well and for that reason the writ petition should be allowed with the direction upon the school authority that the No Objection Certificate has to be given by the school authority by forwarding the application to the School Service Commission or the Secretary, School Education Department shall consider as the genuineness or the claim made by the petitioner as per the Rules under the Government as noted above. In the context of the what has been discussed above and in consideration of the provisions of Rule 4 together with the Rule 7 of the notification of the Government of West Bengal as mentioned above, the school authority is directed to reconsider the application of the petitioner for the No Objection Certificate within three weeks from the date of communication of the copy of the order and to forward the petitioner's application for general transfer on special ground to concerned District Inspector of Schools (SE), Purba Medinipur or Additional District Inspector of Schools, Contai

Sub-Division after observing all legal formalities and the District Inspector of Schools (SE), Purba Medinipur or the Additional District Inspector of Schools, Contai Sub-Division concerned shall forward the application to the School Education Department, Government of West Bengal for consideration of general transfer on special grounds as per the claim made by the petitioner. Whole exercise be completed within four weeks from the date of communication of this order.

With the above direction, the writ petition being WPA 14143 of 2019 along with C.A.N. 1 of 2020 are disposed of accordingly.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on completion of all necessary formalities.

(Shivakant Prasad, J.)