

22.12.2020
SL No.24
Court No.12
(gc)

**FMA 1082 of 2019
With
CAN 1 of 2019
(Old No: CAN 8599 of 2019)**

**Amar Jana
Vs.
West Bengal Central School Service Commission,
Secretary & Ors.**

(Via Video Conference)

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Soumitra Chatterjee,
Mr. Golam Karim Chowdhury,
...for the appellant.
Dr. Sutanu Kr. Patra,
Ms. Supriya Dubey,
...for the S.S.C.
Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das,
...for the State.

The instruction which is filed on behalf of the State respondents is taken on record.

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

This appeal has arisen out of an order dated 3rd July, 2019 passed by the learned Single Judge, considering that the writ petitioner is the sole Assistant Teacher in Sanskrit in Goas Kalikapur High School (H.S.), P.O.- Goas, Dist. – Murshidabad (hereinafter referred to as the “said school authority”), the prayer for grant of “no objection” to be issued by the said school authority was not allowed by the learned Single Judge by passing order dated 3rd July, 2019, which is under appeal.

The writ petitioner being the sole Assistant Teacher in Sanskrit taking classes in Secondary as well as Higher Secondary Section, weighed with the learned Single Judge in not granting the prayer of the writ petitioner seeking “no objection” from the said school authority which would have facilitated her case of transfer in terms of the West Bengal School Service Commission (General Transfer, Transfer on Special Ground and Reallocation) Rules, 2015 (hereinafter referred to as the “said Rules of 2015”).

It appears that at the time of disposal of the writ petition, the West Bengal School Service Commission was not represented.

On previous occasion, after hearing the learned Advocates representing the writ petitioner as well as the State respondents, we thought it fit to direct the learned Advocate representing the writ petitioner to serve a notice upon the West Bengal School Service Commission since according to us without hearing the School Service Commission, issue cannot be decided as raised in the present appeal.

Today we have heard at length the writ petitioner, the School Service Commission represented by Dr. Sutanu Kr. Patra as well as the State respondents.

It has been submitted on behalf of the West Bengal School Service Commission that the writ petitioner is eligible to seek transfer by making an application in terms of the said Rules of 2015 specially under Rule 3 sub-Rule

2. In view of the non-cooperation by the concerned school authority in the matter of granting “no objection” in favour of the writ petitioner, the application of the writ petitioner for general transfer under the said Rule 3 till date has not been processed by the concerned respondent authorities. But the admitted position is as it emanates from the order of the learned Single Judge that the writ petitioner was appointed in 2013 and has been working in the said school and he applied for transfer in the year 2016 which was approved by the School Education Department vide letter dated 16th March, 2018.

In addition thereto it has been categorically submitted by Dr. Sutanu Kr. Patra, learned Counsel appearing for the S.S.C that if the teacher concerned is eligible for transfer in terms of the relevant provisions of the said Rules of 2015, the concerned school authority where the writ petitioner is discharging his duty as Assistant Teacher cannot withhold No-Objection Certificate on the ground of the dearth of teacher in the said school, specially when the right has been accrued in favour of the serving teacher in Government aided recognized school by virtue of the said Rules of 2015 for general transfer.

Accordingly, we direct the concerned authority of Goas Kalikapur High School (H.S.), P.O.- Goas, Dist.- Murshidabad to issue No-Objection Certificate to the writ petitioner within a period of fortnight from this date in support of the application of the writ petitioner for general

transfer. Upon issuance of No-Objection Certificate by the concerned school authority, the application for general transfer of the writ petitioner shall be processed by the concerned respondent authorities in accordance with the relevant provisions as contained in the said Rules of 2015 as expeditiously as possible.

On completion of the procedure after transferring the petitioner from the present school to some other school, the resultant vacancy which is to be created needs to be filled up considering the academic interest of the students of the said school as expeditiously as possible and, accordingly, the respondent authorities including the school authority of Goas Kalikapur High School (H.S.) to take immediate steps for filling up the said resultant vacancy of Assistant Teacher in Sanskrit in accordance with law.

In above conspectus, the order under appeal dated 3rd July, 2019 stands set aside and the appeal being FMA 1082 of 2019 along with CAN 1 of 2019 (Old No: CAN 8599 of 2019) are allowed and disposed of.

All parties are to act on a website copy of this order on the usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)