

06,DL,Ct.18.
15.01.2021
AJ.

W.P.A. 103 of 2021

Dildar Hossain

-Vs-

The State of West Bengal & Ors.

Mr. Subhrangsu Panda,
Mr. Syed Nurul Arefin,
Mr. Tirthankar Chatterjee.
.....for the petitioner.

Mr. Prosenjit Mukherjee,
Mr. Nirmalya Kumar Das,
Ms. Madhurima Sarkar.
.....for the Madrasah
Service Commission.

The petitioner is an Assistant Teacher in the subject of Chemistry (Hons. PG Category) at Khanpur High Madrasah (H.S.), District : Malda.

The West Bengal Madrasah Service Commission, the respondent no. 2 herein in the year 2013 published a notice inviting application from approved teacher/non-teaching staffs of recognized non-government aided Madrasah for general transfer from one Madrasah to another.

The petitioner applied for mutual transfer as such did not apply for the said general transfer.

The Commission could not consider the said application of the petitioner for mutual transfer since some of the provisions of the West Bengal Madrasah Service Commission Act, 2008 were declared *ultra vires* to the Constitution in W.P. 20650(w) of 2013.

The Hon'ble Supreme Court in Civil Appeal No. 5808 of 2017 (***Sk. Md. Rafique v. Managing Committee, Contai Rahmania High Madrasah & Ors.***) ultimately declared that the said provisions of the aforesaid Act to be valid and constitutional but in the meantime the teacher with whom the petitioner sought for mutual transfer applied for general transfer as such he is no more interested for the said mutual transfer.

The petitioner apprehends that as he once applied for mutual transfer he may not be allowed to apply for general transfer in future as Rule 33(g) of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of Persons for Appointment and Transfer to the Posts of Teacher and Non-Teaching Staff) Rules, 2010 provides that no staff shall get the benefit of more than one transfer in the same category of post.

The petitioner therefore prays that his application for mutual transfer may be treated to be an application for general transfer in response to the said notice of 2013.

Mr. Mukherjee, learned advocate appearing on behalf of the Commission submits that the said Rule will not stand in the way of the petitioner to apply for general transfer in response to any future notification that may be published by the Commission inviting application for general transfer if the petitioner is found otherwise eligible for such transfer.

That being the stand of the Commission, W.P.A. 103 of 2021 is disposed of by granting liberty to the petitioner to apply for general transfer in response to any future advertisement that may be floated by the Commission for the purpose of general transfer and the Commission is directed to consider the said application in accordance with law.

It is made clear that this Court has no occasion to go into the question of eligibility of the petitioner for general transfer it is for the Commission to decide the same, if occasion so arises.

Since no affidavit has been invited from the respondents, allegations made in the writ petition are deemed to have been denied by the respondents.

There shall be no order for costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)