

24.11.2021
SL No. 22
Court No. 24
(P.M.)

WPA 4527 of 2021

Sunirmal Das
Vs
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Bapin Baidya
... for the petitioner

Mr. Bhaskar Prasad Vaisya,
Mr. Gourav Das
... for respondent No. 6

Mr. Susanta Pal,
Ms. Ananya Neogi
.. for the State

The petitioner is primarily aggrieved by the transfer order passed by the Secretary, South 24-Parganas District Primary School Council vide Memo No. 304 dated 4th February, 2019. By the said order of transfer the petitioner was transferred from Narayanitala FP School, Patharpratima North to Malaya FP, Patharpratima North.

The transfer order mentions that the petitioner was transferred for the interest of primary education as per order and approved list of the Department of School Education (Elementary Education Branch) vide Memo No. 80-SE/EE/10M-70/2018 received on 1st February, 2019.

Memo No. 80 dated 1st February, 2018 is an order of the Deputy Secretary, Department of School Education (Elementary Education Branch) which mentions that the School Education Department has decided to rationalize the primary teachers to ensure proper distribution of teachers

among different primary schools in the State by way of transferring primary teachers from schools running with surplus teachers to the schools having deficit teachers.

The school from which the petitioner was transferred had 133 students in the rolls and four teachers in the month of February, 2019, details of which are available at page 42 of the writ petition.

The teacher-student ratio as per the provision of the Right of Children to Free and Compulsory Education Act, 2009 mentions that for students between one hundred and twenty one to two hundred, the number of teachers should be five.

Admittedly, the school in which the petitioner was serving did not have any surplus teacher, if calculated, in accordance with the above calculation mentioned in the Act of 2009.

The school to which the petitioner had been transferred had 104 students in the rolls with three regular teachers which mean that the teacher-student ratio in Malaya FP School, Patharpratima North was in accordance with the calculation mentioned in the Act of 2009. There was no deficit of teachers in Malaya FP School.

The petitioner, being aggrieved by the order of transfer, initially approached this Court by filing writ petition being W.P. No. 11088 (W) of 2019 which was disposed of by an order dated 5th July, 2019 by directing the respondent authority to consider the representation

submitted by the petitioner challenging the order of transfer and to take a decision in accordance with law.

In compliance of the direction passed by the Court, the respondent authority considered the representation of the petitioner and was of the opinion that the Government was not in a position to consider his prayer as the action was taken as per the policy decision of the Department.

The petitioner filed a further writ petition being W.P. No. 3235(W) of 2020 which was disposed of by an order dated 3rd March, 2020 whereby the Court directed the petitioner to submit a fresh representation ventilating his grievances. The respondent authority was directed to consider the same upon granting an opportunity of hearing to the petitioner and take a decision in the matter.

The respondent authority has duly considered the matter afresh and by the impugned communication dated 27th January, 2021 the Chairman, South 24-Parganas District Primary School Council has passed order that as per the Memo dated 1st February, 2019 the office found that there is a prima facie case made out by the petitioner and hence his case is referred to the Department of School Education for consideration and necessary action.

It appears from records that time and again the petitioner is constrained to approach this Court being aggrieved by the initial order of transfer which was issued on 4th February, 2019.

The Chairman has come to a considered opinion that the petitioner has a prima facie case, whereas the State respondents are of the opinion that the decision has been taken as per the policy of the department.

There is nothing on record to show that the policy decision of the department requires transfer of a teacher from a school which does not have any surplus teacher. The school from where the petitioner was transferred did not have any surplus teacher on the date the petitioner was transferred. The policy decision of the State is based upon the calculation mentioned in the Act of 2009. The calculation completely supports the case of the petitioner and the Chairman of the Council rightly opined that the petitioner had a prima facie case to be considered.

In view of the facts mentioned herein above, it appears that the order of transfer which was passed on the ground of the petitioner being a surplus teacher of the school is not borne out from the records.

Accordingly, the transfer order dated 4th February, 2019 issued in favour of the petitioner is set aside.

The concerned authority of the District Primary School Council is directed to take necessary steps to post the petitioner either in the school from where he was transferred provided a vacancy exists or in the event there is no vacancy in the previous school, then the petitioner be posted in any other school as per the calculation of the teacher-student ratio mentioned in the Act of 2009.

In case the petitioner chooses to remain posted in the transferred school, the Council shall permit the petitioner to remain in the said school.

The writ petition stands disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(**Amrita Sinha, J.**)