

22-09-2021
ct no. 05
Sl. 09
Sayandeep

W.P.A. 5301 of 2021

Bidisha Banerjee

-Versus-

State of West Bengal & Ors.
(Via Video Conference)

Mr. Chittapriya Ghosh
Mr. Goutam Acharya
Ms. Priyanka Saha

..... for the petitioner

Mr. Malay Singh
Mr. Raja Ram Banerjee

..... for the State

Mr. Sabyasachi Chatterjee
Mr. Pintu Karar

..... For the respondent No. 13

Ms. Koyeli Bhattacharyya

.... For WBBSE

Writ petitioner is an assistant teacher in Damkal Junior High School, South 24 Parganas and the respondent No. 13 is an assistant teacher working in Raghunathpur Balika Vidyalaya(H.S.), Hooghly. Writ petitioner accepted online proposal for mutual transfer as forwarded by the respondent No. 13 on 12th December, 2020. It has been submitted by Mr. Chittapriya Ghosh, learned advocate, appearing for the writ petitioner that such online proposal for mutual transfer by the respondent No. 13 and online acceptance of the said proposal by the writ petitioner resulted in issuance of transfer order by The President, West Bengal Board of Secondary Education on 6th January, 2021. In terms of the said mutual transfer order dated 6th January, 2021,

the writ petitioner was directed to join the post of respondent No. 13 in Raghunathpur Balika Vidyalaya(H.S.), Hooghly, on obtaining release order from her school and the respondent No. 13 was also directed to join the post of the writ petitioner in Damkal Junior High School after obtaining the release order from her school. It is submitted on behalf of the writ petitioner that in spite of issuance of this mutual transfer order dated 6th January, 2021, the mutual transfer could not be effected due to non-cooperation on the part of the respondent No.13 as the respondent No. 13 was not willing to join the post of the writ petitioner pursuant to the mutual transfer order dated 6th January, 2021. The grievance voiced on behalf of the writ petitioner is that since the respondent No. 13 did not join the post of the writ petitioner, she was unable to get the benefit of mutual transfer order dated 6th January, 2021 and her effort to be mutually transferred to post of assistant teacher in another school has been thwarted. In addition thereto, attention of the Court has been drawn to pages 43 to 45 of the writ petition wherefrom it appears that there was online proposal sent by the respondent No. 13 for mutual transfer on 12th December, 2020 which was duly accepted by the writ petitioner on the very same date and according to the writ petitioner after such proposal by the respondent No. 13 and acceptance by the writ

petitioner, the transfer order needs to be given effect to, specially, when after issuance of the said mutual transfer order dated 6th January, 2021, till date the same has remained unchallenged by the respondent No. 13.

Another limb of submission made on behalf of the writ petitioner is based on notification dated 8th September, 2021, whereby in terms of the relevant provisions of the West Bengal School Service Commission Act, 1997, certain amendments were made to the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Re-allocation) Rules, 2015; amended Rule 3(3) of the said Rules of 2015 prescribes in the event of refusal to join the transferred/preferred school after due recommendation by the authority the concerned teacher shall not be permitted to submit application before completion of 7 years from the date of such refusal. Placing reliance on such amended Rule 3(3), it is submitted on behalf of the writ petitioner that she will not be permitted to make application for her transfer as well as for mutual transfer for a further period of 7 years though the refusal is caused due to non-cooperation on the part of the respondent No. 13 in giving effect to the said mutual transfer order dated 6th January, 2021 and such refusal is not attributable to the writ petitioner rather this is the result of refusal to join the

transferred post on mutual basis by the respondent no. 13. In order to remove doubt, the writ petitioner has, in the meantime, made an attempt to submit online application for transfer upon logging in on Utsashree Portal and it was replied online by the system as follows:

“Your last transfer order has not been completed 5 years. So you are not eligible for transfer.”

In view of these facts, writ petitioner prays for implementation of the order of mutual transfer issued by the Board dated 6th January, 2021.

Per contra, Mr. Sabyasachi Chatterjee, learned advocate, appears on behalf of the respondent no. 13 and submits that she made online proposal for mutual transfer on 12th December, 2020 and without knowing the implication such approach was made for mutual transfer and she was not well acquainted with the system of making online application though she applied and as a result whereof mistakenly proposal was sent from the end of the respondent No. 13 to the writ petitioner. Considering the submissions made on behalf of the respondent No. 13, this Court granted opportunity to the respondent No. 13 to file affidavit explaining the steps taken by her on the date of making such online application and what steps she subsequently took. Pursuant to the previous orders of this Court

dated 1st September, 2021 and 8th September, 2021 two affidavits have been affirmed by the respondent No. 13 one on 6th September, 2021 and another on 21st September, 2021. This Court granted second opportunity to the respondent No. 13 to file affidavit since Court was not satisfied with the statements made by the respondent No. 13 in her affidavit affirmed on 6th September, 2021. Mr. Chatterjee, learned advocate, upon placing reliance on the letter dated 17th December, 2020 made by the Respondent No. 13 addressed to the Commissioner of School Education, has tried to impress upon this Court that though by mistake online proposal/application was made for mutual transfer on 12th December, 2020 but after intervening weekend, respondent No. 13 approached the Commissioner of School Education vide letter dated 17th December, 2020 to bring the fact of mistake committed by the respondent No. 13 to the knowledge of the Commissioner of School Education. Therefore, it is submitted on behalf of the respondent No. 13 that since it was a bona fide mistake on the part of the respondent No. 13 which she made while sending proposal for mutual transfer on 12th December, 2020 such conduct of the respondent No. 13 be condoned by passing necessary order.

This Court has considered the submissions made by the writ petitioner as well as respondent

No. 13 and also other respondent authorities and also has gone through the affidavits affirmed on behalf of the respondent No. 13 pursuant to the orders passed by this Court. On perusal of the statements made in the affidavits by the respondent No. 13 as well as page Nos. 43 to 45 of the writ petition, it is indisputable that the respondent No. 13 sent online proposal on 12th December, 2020 for mutual transfer and that was accepted by the writ petitioner on the same date which resulted in recommendation by the Commissioner of School Education vide memo dated 21st December, 2020 and ultimately upon completing the entire process, the President, West Bengal Board of Secondary Education issued the order of mutual transfer by issuing memo dated 6th January, 2021. After issuance of such order of mutual transfer, the respondent No. 13 has not challenged the said mutual transfer order. When the writ petition has been filed by Bidisha Banerjee for implementation of the said mutual order of transfer then Ms. Kakali Mondal has been made party as respondent No. 13. During course of hearing of the writ petition on behalf of the respondent No. 13, submission has been made that the conduct of the said respondent No. 13 be condoned since this was a bona fide mistake on her part on 12th December, 2020 and that fact was subsequently brought to the notice of

the Commissioner of School Education on 17th December, 2021 and it is also submitted on behalf of the respondent No. 13 that since there was mistake on her part, she is not willing to join her transferred post in Damkal Junior High School. Due such stand taken by the respondent No. 13 without throwing any challenge to the mutual transfer order from the month of January, 2021 till date, writ petitioner herein has faced unnecessary hardship and inconvenience. In addition thereto, due to such conduct of the respondent No. 13 in terms of the amended Rule 3(3) of the Rules of 2015, writ petitioner is barred to submit any application for transfer/mutual transfer for a further period of 7 years. Therefore, this Court finds it apposite to direct the respondent No. 13 to pay the cost of Rs. 50,000/- to the writ petitioner within a period of 15 days from date.

In addition thereto, since, this Court ought not compel the respondent No. 13 to join the transferred post in terms of the mutual transfer order dated 6th January, 2021 in Damkal Junior High School, since she is not willing to join, it is axiomatic to give necessary direction upon the respondent authorities to permit the writ petitioner to make application either online or offline for her transfer. If such application for transfer is made by the writ petitioner within fortnight from date the concerned respondent

authorities are directed to process the application of the writ petitioner in accordance with law within a reasonable time.

With the above directions, the writ petition stands disposed of.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Saugata Bhattacharyya, J.)