

Item No.23

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

01.12.2021
Ct-24

WPA 6393 of 2021
Sk. Amirul Momein

v.

The State of West Bengal & Ors.

Mr. Uday Shankar Chattopadhyay
Mr. Suman Shankar Chattopadhyay
Mr. Santanu Maji
Ms. Snigdha Saha
Mr. Pranay Basak
Ms. Trisha Rakshit
... for the petitioner.

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
... for MSC

Mr. Tapan Kumar Mukherjee, AGP.
Ms. Saheli Mukherjee
... for the State respondents.

The petitioner is a teacher of a Madrasah. He seeks transfer. The application of the petitioner seeking transfer was not accepted by the online portal when he mentioned his initial date of joining in service as August 1, 2011. Thereafter, he filed the online application mentioning his date of joining as August 18, 2018, which was accepted by the online portal.

It is the case of the petitioner that his seniority ought to be counted on and from his first date of joining

in service on August 1, 2011 and not from joining in the present school i.e. August 18, 2018.

The provision relating to transfer as appearing in Rule 33 of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of Persons for Appointment and Transfer to the Posts of Teachers and Non-teaching Staff) Rules, 2010 lays down that that an approved teacher in a recognized Non-Government aided Madrasah may be transferred from one Madrasah to another.

Rule 33(d) lays down that the vacancy against which the applicant is to be recommended for appointment on transfer, must confirm to the category and/or subject of the applicant's appointment in the present Madrasah.

In the instant case, the petitioner was initially appointed in the category English pass and his service was confirmed on and from August 1, 2011. Thereafter, the petitioner was appointed, being successful in the 6th SLST, 2013, in the category English (H/PG) and his service was confirmed on and from August 18, 2018. Presently, when the petitioner seeks transfer he is liable to be considered in the category English (H/PG) and not according to the category English pass.

According to Rule 33(d) the category in which the candidate may be transferred should be the same. Admittedly, there has been a change in the category in which the petitioner is serving. Previously it was pass category and presently it is honours/PG category. The Commission rightly mentioned that the seniority will be considered from the date of joining in the present Madrasah which is in English (H/PG) category.

Accordingly, there is no infirmity on the action of the respondent authorities.

No relief can be granted to the petitioner in the instant writ petition.

The writ petition fails and is hereby dismissed.

It will be open for the respondent authorities to consider the online application for transfer made by the petitioner in accordance with law taking into consideration his date of appointment as August 18, 2018.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)