

20.12.2021
Item No. 8
Ct. No.17
S.A.

WPA 13907 of 2021

Manoj Kumar Paul
-vs-
The State of West Bengal & Ors.

Mr. Ujjal Ray
...for the petitioner
Mr. Arindam Chattopadhyay
Mrs. Lipika Chatterjee
...for the State

Learned advocate for the petitioner submits that the petitioner filed one application for transfer through Utsashree Portal on 16.08.2021. As appears from Annexure P-6 (at Page 34) of the writ application, his application was sent back from the Head of the institution on the ground "SEVEN YEARS HAVE NOT BEEN COMPLETED FROM THE DATE OF REFUSAL OF LAST RECOMMENDATION".

From the supplementary affidavit filed today by the petitioner it appears that this was intimated to him by SMS on 26.08.2021 at 2.36 P.M. that his application for transfer had been sent back to him. Therefore, the decision of sending back the transfer application to the petitioner was taken up on 26.08.2021 or before that date and thereafter it was uploaded in the Utsashree Portal with the reason as quoted above.

Learned advocate for the petitioner by filing the supplementary affidavit has disclosed the amendment of the rule in the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 where Sub-Rule 3 of the above rule was substituted by way of amendment where the seven years time was mentioned. But this amendment came into effect from September 8, 2021. It does not have any retrospective effect and no such submission has been made on behalf of the State that this amendment has any retrospective effect. The amendment also shows that there is no mentioning that it will have retrospective effect.

Therefore, an application made by the petitioner on 16.08.2021 cannot be rejected by using a provision which came into effect subsequently on September 8, 2021. Therefore, the decision of the authority for sending back the application of the petitioner for not completion of seven years from the refusal of the last recommendation is not applicable to him.

Therefore, I direct the Commissioner of School Education to look into the matter afresh and to take appropriate steps in accordance with law in respect of the transfer application filed by the petitioner. On the ground shown as to the “seven years non-completion”, the transfer application cannot be returned.

The Commissioner of School Education is directed to look into the matter within a period of sixty days from the date of service of a copy of this order upon him and to pass an appropriate order in this respect within a period of thirty days thereafter.

With the above observation and direction, the writ application is allowed.

Urgent certified website copy of this order, if applied for, be made available to the parties upon compliance of the formalities.

(Abhijit Gangopadhyay, J.)