

16.11.2021
Item No.7
Ct. No.17
S.A.

WPA 14189 of 2021

Tapas Kumar Gain
-vs-
The State of West Bengal & Ors.

Mr. Subhrangsu Panda
Ms. Mithu Singha Mahapatra
...for the petitioner
Mr. Bhaskar Prasad Vaisya ...ld. A.G.P.
Mr. Ranjan Saha
...for the State
Mr. S. Acharya
Mr. Pradip Paul
...for the respondent Nos.8 & 9
Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
Ms. Debalina Chakraborty
...for the S.S.C.

Learned advocate for the petitioner submits that the petitioner applied for his transfer from the present school to any other school taking advantage of the notification published by the Director of School Education through Utshashree Portal. Such application was filed on 18th August, 2021. No step was taken by the school authority for giving him 'no objection' which is *sine qua non* for the process of transfer. It has been submitted by the learned advocate for the petitioner that the 'no objection' given by the school authority is sent to the District Inspector of Schools and then the District Inspector of Schools would send it to the Commissioner of School

Education to consider the application for transfer and for taking a decision. Thereafter, if the transfer is allowed, the School Service Commission and the West Bengal Board of Secondary Education will start taking steps.

Here, the school first, did not give the 'no objection' certificate on the ground that the school was busy in 'Duare Sarkar' Scheme introduced by the Government. Subsequently the school took a decision that the 'no objection' certificate could not be granted by the school as the petitioner is the only teacher in the subject Geography which comes in the group 'Social Science' and, therefore, the school would not grant the 'no objection'

This writ application was filed by the petitioner on 13.09.2021 and the learned advocate for the petitioner submits that he filed the application for transfer on 18.08.2021 through Utshashree Portal and, therefore, the circular issued as to the single teacher on 22.09.2021 by the Education Department is not applicable to him.

I have also found that the circular dated 22.09.2021 does not have any retrospective effect. Therefore, I hold that the application of the petitioner has to be decided in accordance with subsisting procedure before the said circular as to the single teacher dated 22.09.2021 was issued. In this view of

the matter, I direct the school to issue 'no objection' and to upload it into Utshashree Portal so that it can go to the District Inspector of Schools and the District Inspector of Schools is directed to send this application to the Commissioner of School Education. The Commissioner of School Education will consider the application taking into account all other factors required for recommendation of transfer and will take a decision within a period of thirty days from the date of receipt of the application and the 'no objection' certificate from the end of the District Inspector of Schools.

The school has placed some resolution of the School Managing Committee deciding not to give 'no objection' certificate and also a communication made to the concerned District Inspector of School intimating the school's decision which shall not stand in the way for considering this application by the Commissioner.

The school is directed to upload the 'no objection' certificate in the Utshashree Portal within a period of ten days from date. The District Inspector of Schools is directed to send the application through the Portal to the Commissioner of School Education by four days thereafter. I have already fixed the time period within which the Commissioner will take a decision on this application. I make it clear that the

objection of the school as to single teacher shall not stand in the way for taking a decision by the Commissioner of School Education as the application was made before 22.09.2021 circular as to single teacher.

With the above observation and direction, this writ application is disposed of.

The documents filed on behalf of the school as to the decision of the Managing Committee and as to the communication made to the concerned District Inspector of Schools dated 03.09.2021 and dated 30.09.2021 respectively, are kept on record.

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

(Abhijit Gangopadhyay, J.)