

Ct. 05
Item No.14
17.09.2021
(suvendu)

WPA 14486 OF 2021

(VIA VIDEO CONFERENCE)

Golak Chandra Biswas
Vs.
The State of West Bengal & Ors.

Mr. Arijit Bakshi
.....for the petitioner

Mr. Supriyo Chattopadhyay
Mr. Amritolal Chatterjee
.....for the State

Mr. Bhaskar Prasad Vaisya
Mr. Pinaki Bhattacharya
.....for the DPSC North 24 Parganas

The writ petitioner is a Primary Teacher, who is aggrieved by issuance of order of transfer dated 2nd September, 2021 whereby the writ petitioner has been asked to join the post of Assistant Teacher in South Barunhat Fp School, Primary/Jr. Basic School Hasnabad South Circle, within a period of fifteen working days from the date of issuance of the said transfer order.

Mr. Arijit Bakshi, learned advocate appears on behalf of the writ petitioner and submits that the transfer order dated 2nd September, 2021 is bad in law and this should have been issued considering the relevant provisions of the Right to Education Act, which is a Central Act, in stead of

following the provisions of the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 (hereinafter referred to as “said Rules of 2002), which is being a State legislation, is at lower echelon of legislation.

Considering the submissions made on behalf of the writ petitioner, this Court has enquired into the fact as to whether the relevant provisions relating to transfer, as contained in the said Rules of 2002, has been assailed in this writ petition. In answer to such query, Mr Bakshi has submitted that no such prayer has made in this writ petition.

The second ground of challenge against the said transfer order dated 2nd September, 2021 is that such transfer order has been issued without assigning any cogent reason in support of such transfer. An additional point has also been taken on behalf of the writ petitioner that the impugned order of transfer is mala fide but nothing has been demonstrated to this Court as to why such transfer order should be termed as mala fide.

Mr. Bhaskar Prasad Vaisya, learned Additional Government Pleader and Mr. Supriyo Chattopadhyay, learned Senior Government Advocate appear on behalf of the District Primary School Council, North 24 –Parganas, and the State respondents, respectively, and they have opposed

the writ petition on the ground that in terms of Rule 4(a) of the said Rules of 2002, such transfer order dated 2nd September, 2021 has been issued on administrative ground. Therefore, there is no illegality in issuance of such transfer order and in addition thereto, it has been submitted that the said impugned transfer order is not punitive one. It has also been submitted on behalf of the State respondents that the release order has already been issued on 15th September, 2021 by the concerned Sub-Inspector of Schools addressed to the Secretary, North 24 Parganas District Primary School Council, pursuant to the said transfer order dated 2nd September, 2021.

This Court has considered the rival contentions of the parties to this writ petition and also examined the relevant provisions relating to transfer of a primary teacher that is Rule 4(a) of the said Rules of 2002. On consideration of the said Rule 4(a), it is clear that the District Primary School Council is empowered to transfer a primary teacher on administrative ground. In consideration of the point taken on behalf of the writ petitioner relating to failure on the part of the respondent authorities to assign reason in support of such transfer, it is now well established that for

transferring an employee in accordance with the relevant Rules relating to transfer the authority is not required to assign reasons unless and until the transfer order is a punitive one. Upon considering the facts of this case, this Court does not find that the said order of transfer dated 2nd September, 2021 is mala fide.

Learned advocate representing the writ petitioner has relied upon a judgment of the Hon'ble Apex Court reported in AIR 1979 Supreme Court 1628 (Ramana Dayaram Shetty Vs. The International Airport Authority of India and Others) and paragraph 10 of the said judgment in support of the contention of the writ petitioner that the order of transfer is arbitrary in nature.

On careful perusal of the said judgment, this Court finds that the same is not relevant in the present facts situation since in this writ petition the writ petitioner has been transferred vide transfer order dated 2nd September, 2021 in terms of the relevant provisions of the said Rules of 2002.

In view of the above discussions, the writ petition stands dismissed without any order as to costs.

However, it is made clear that since the writ petitioner has challenged the order of transfer by filing this writ petition on 13th September, 2021, the time fixed by the Secretary, North 24 Parganas District Primary School Council, for joining the transferred post by the writ petitioner is extended for a further period of seven days from this day. Since release order has already been issued by the concerned Sub-Inspector of Schools on 15th September, 2021, if petitioner joins the transferred post, the concerned respondent authorities are directed to ensure that he ought not to face any impediment while joining.

All parties to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)