

Item No.6

16.12.2021
Ct-24

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

WPA 17282 of 2021
Dipika Bala Biswas
v.
The State of West Bengal & Ors.

Mr. Shamim ul Bari
Ms. Molly Saha
... for the petitioner.

Mr. Bhaskar Prosad Vaisya
Mr. Pinaki Bhattacharyya
... for DPSC, North 24 Parganas.

Mr. Santanu Mitra
Mr. Avishek Prosad
... for the State respondents.

The petitioner is aggrieved by the Office Memo dated October 7, 2021 issued by the Secretary, North 24 Parganas District Primary School Council whereby the petitioner being the head teacher, Mgm Gsf School No. 1 Primary/Junior Basic School, Barasat West Circle has been transferred on administrative ground to act as head teacher in Beraberi Fp Primary/Jr. Basic School Habra-II Circle in the same scale of pay until further order.

According to the petitioner as she is serving as head teacher of the school she may be transferred, if necessary, to a school where there is a requirement of a head teacher. The school to where the petitioner has

been transferred consists of only 125 students. As per the provisions of the Right of Children to Free and Compulsory Education Act, 2009 schools which have above 150 students require a head teacher.

The petitioner submits that her transfer order is also liable to be set aside as the same was issued by the Secretary of the North 24 Parganas District Primary School Council and not by the Council itself. It has been submitted that the Council is a body corporate and the Secretary of the said Council is not the competent authority to issue the order of transfer.

It is the further contention of the petitioner that the order is punitive in nature and ought not to have been passed without giving reasonable opportunity of hearing. The further case of the petitioner is that the school from where she has been transferred consists of 488 students and there is no surplus teacher in the said school.

It has further been contended that even if there are surplus teachers, the assistant teacher of the school may be transferred but not the headmistress.

The contentions of the petitioner have been opposed vehemently by the respondents. It has been submitted that the transfer order was passed on administrative ground for the purpose of better functioning of the school in question. It has further been

submitted that there is no bar in law to transfer the head teacher of a school.

It is the further contention that the Court ought not to interfere in the order of transfer.

Several decisions of the Hon'ble Supreme Court and this Court have been relied upon in support of the submission that the Courts should not interfere in the order of transfer.

The respondents rely upon the decision of the Hon'ble Supreme Court in the matter of Rajendra Roy vs. Union of India & Anr., reported in (1993) 1 SCC 148 paragraph 7 wherein the Court was pleased to hold that in a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the department.

In the case of State of Punjab & Ors. vs. Joginder Singh Dhatt reported in AIR 1993 SC 2486 paragraph 3 the Court held that it is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer.

In the case of State of U.P. & Ors. vs. Gobardhan Lal, reported in (2004) 11 SCC 402 paragraphs 7 & 8 the Court was pleased to hold that transfer of an employee is not only an incident inherent in the terms of

appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. The Court further held that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, shown to be vitiated by mala fides or is made in violation of any statutory provision, no interference could ordinarily be made with an order of transfer.

In the case of Airports Authority of India vs. Rajeev Ratan Pandey & Ors., reported in (2009) 8 SCC 37 paragraphs 5 to 10 the Court held in the matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing and the Courts do not substitute their own decision in the matter of transfer.

Reliance has also been placed upon an unreported order dated September 17, 2021 passed by a coordinate Bench of this Court in WPA 14486 of 2021 wherein the Court held 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.

According to the petitioner the facts and circumstances of the aforesaid cases are quite distinguishable from the facts and circumstances of the cast at hand.

Heard the submissions made on behalf of the parties.

The provision of Right of Children to Free and Compulsory Education Act, 2009 mentions about the pupil-teacher ratio that is required to be strictly followed by the schools for the first standard to fifth standard.

The petitioner is the head teacher of a primary school consisting of 488 students. The school to where the petitioner has been transferred consists of 125 students. The schedule in the 2009 Act mentions that the number of teachers to be maintained for a school having above 150 students only is five plus one head teacher. There is no requirement of any head teacher in respect of a school which consists of less than 150 students.

Admittedly in the instant case, the petitioner has been transferred as head teacher of a school with less than 150 students. The same could not have been done in accordance with the provisions of the Act of 2009.

The service of the petitioner is transferable will appear from the service conditions of the petitioner, but

the transfer can be made only if the same is in accordance with the concerned rules.

The law relating to the engagement of head teachers in schools bearing less than 150 students is clear that a head teacher is not required in such a school.

If in any event the petitioner is required to be transferred for administrative reasons, she could have been transferred to a school where there is requirement of a head teacher and not otherwise.

The submission of the petitioner that the transfer is punitive does not appear from the records annexed to the writ petition or from the report filed by the respondent authorities. Accordingly, the said contention is not accepted by the Court.

The fact that the Courts ought not to interfere with the order of transfer in usual course is settled law. But as it appears that the petitioner has been transferred to a school where there is no requirement of a head teacher the impugned order of transfer is set aside.

It will be open for the respondents to take steps strictly in accordance with the provisions of law, if required.

The writ petition stands disposed of.

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.)