

27.01.2021

Court No. 02
Item No. DL – 06
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(Appeal Disposed of)

MAT 1533 of 2019

with

CAN 1 of 2020

(CAN 10509 of 2019)

with

CAN 2 of 2019

(CAN 10510 of 2019)

The State of West Bengal & Ors.

Vs.

Olima Khatun & Ors.

Mr. Joytosh Majumdar, learned Government Pleader
Mr. Raja Saha, Advocate
Mr. Pinaki Dhol, Advocate

.....for the Appellants/State

Mr. Partha Sarathi Bhattacharyya, Senior Advocate
Mr. Raju Bhattacharyya, Advocate

.....for the Respondent No. 1

Time and again the Courts have imposed self-restraint in usurping the power of the administrative authority conferred under the statute/rules/subordinate legislation. The quasi-judicial authority loathed with the power of adjudication must act within the precincts of law and the provisions applicable thereto and should not travel beyond the periphery thereof. There is a fine distinction between the rights conferred upon the individual and the rights conferred upon the authority under a relevant statute. It is no gainsaying that an individual can do anything except forbidden by law whereas an authority cannot act unless it is conferred under the relevant statute or the provisions.

Indubitably, the petitioner has been appointed as an Assistant Teacher in Dalkhola Girls High School and is rendering services. An application was made as far back as in the year 2015 for transfer on medical ground relatable not only to the petitioner but to her husband

who suffered neurological problems and needs constant attention. The application further reveals that the husband is also appointed as Assistant Teacher in a School situated at Cooch Behar.

According to the petitioner Rule 4 of the West Bengal School Service Commission (General Transfer, Transfer on Special Ground and Reallocation) Rules, 2015 provides for a transfer on a special ground and the procedure has further been provided under Rule 7 thereof which is quoted as under:

7. Procedure for General Transfer on Special Ground under Rule 4(1)(a) and Rule 4(1)(b) –

- (1) *The teacher shall submit application with sufficient documents for consideration of the Managing Committee in connection with the transfer on medical ground.*
- (2) *The Managing Committee may, after examination of the prayer and after receiving views of the Medical practitioner of the committee, forward the prayer with resolution to the District Inspector of Schools (Secondary Education) who will forward after verification of vacancy as per option submitted by the teacher and non-teaching staff where he/she may desire to be transferred to the School Education Department.*
- (3) *The School Education Department, may after proper examination, recommend the prayer to the West Bengal School Service Commission and in case of inter-district reallocation of service, the Department shall cause necessary enquiry on vacancy report.*

It is axiomatic to record that an exhaustive provision has been incorporated in the said Rules pertaining to the consideration of the application seeking transfer on special ground or on medical ground. There appears to be three-tier system for consideration of such application intended to be filed by the aspiring candidates. The said application is first to be filed before the Managing Committee and a conscious

decision of the said Committee is required to be taken and then the said application would be routed through the Managing Committee to the District Inspector of School (Secondary Education) who in turn will also make a further examination of the documents and recommendation and forward the same to the School Education Department. The School Education Department will again examine the document and the recommendation and shall again transmit the same to the West Bengal School Service Commission for taking an appropriate step.

The moment the word 'consideration' is enshrined within the statutory rules, it is not an ideal or formal exercise to be undertaken by such authority but a conscious decision should be taken thereat by recording proper reasons. Recording of reasons is the hallmark of dispensation of justice.

Our attention is drawn to the resolution of the Managing Committee taken on August 10, 2016 wherein three applications filed by the aspiring candidates were considered and the penultimate paragraph contained the decision restricted to one of such aspiring candidates. There is neither any whisper nor any apparent consideration of the applications and the reasons for its refusal. It is the paramount duty of the Managing Committee to undertake the exercise strictly within the precincts of Rule 7 of the said Rules before venturing to decide the application and recommend the names for being considered by another authority. The recording of reasons is the heart and soul of a decision for the simple

reason that the High Court exercising writ-jurisdiction does not act as a Court of appeal or in other words whether the decision has been correctly taken or not but restricted its consideration on the circumference of the decision-making process. The moment the reasons are recorded it exposes the mind of the authority acting as a quasi-judicial authority and the aggrieved person will have a privilege of deciphering the reasons for refusal of his/her application. There is no hesitation in our mind that the Managing Committee has proceeded with closed mind and no reason can be deciphered from the resolution annexed to the said application.

As indicated in the opening paragraph of this order that the Court should be slow and circumspect while interfering with an order and all reasonable precautions should be taken into consideration whether the said Rules allows or forbids to do the same, or the authority have applied its mind or have wrongfully applied it or there is a complete silence thereupon.

We, therefore, cannot concur with the view expressed in the impugned order although we accept with humility the agony, pain and sufferance of the petitioner as perceived by the Hon'ble Single Judge.

The order impugned is thus set aside.

The matter is relegated back to the Managing Committee to consider the application afresh in the light of the provisions as contained in the said Rules as well as the observations recorded hereinabove and such application shall be disposed of within two weeks

from the date of communication of this order on priority basis and in segregation of any pending applications.

The appeal being **MAT 1533 of 2019** and the connected applications being **CAN 1 of 2020** (CAN 10509 of 2019) and **CAN 2 of 2019** (CAN 10510 of 2019) are accordingly **disposed of**.

The writ-petition is deemed to have been disposed of in the light of the disposal of the appeal.

(Harish Tandon, J.)

(Kausik Chanda, J.)