

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Krishna Rao**

MAT 3 of 2022

With

IA No. CAN 1 of 2022

Dipika Bala Biswas

Versus

State of West Bengal & Ors.

Mr. Joytosh Majumdar

Mr. Shamim-ul-Bari

.....For the Appellant

Mr. Jahar Datta

Mr. Milon Kumar Maity

.....For the State

Mr. Arabinda Chatterjee

Mr. Bhaskar Prasad Vaisya

Mr. Pinaki Bhattacharyya

.....For the DPSC North 24 Parganas

Heard on : 06.05.2022

Judgment on : 05.08.2022

Krishna Rao, J.:-

This appeal is directed against the order passed by the Ld. Single Judge in WPA No. 21508 of 2021 dt. 30.12.2021 wherein and where under Ld. Single Judge refused to interfere with the order of transfer issued against the appellant by the Chairman, North 24 Parganas District Primary School Council.

It reveals from record that the appellant was initially appointed as Assistant Teacher of Primary School on 25th December, 1998 and she was posted at Barabanglani F.P. School under Bongaon-II Circle, North 24 Parganas District. Subsequently, the appellant was transferred to Chandanpur Free Primary School under Barasat Circle on 22.11.2002. In the year 2011, the appellant was promoted to the post of Head Teacher and was transferred to Barasat M.G.M. G.S. Free Primary School under Barasat West Circle.

On 7th October, 2021 the appellant was transferred to Beraberi F.P. Primary/Junior Basic School under Habra Circle. Being aggrieved with the order of transfer, the appellant had preferred a Writ Application being WPA No. 17282 of 2021 and on 8th October, 2021, the Ld. Single Judge had passed an order of stay and directed the DPSC North 24 Parganas to file report specifying the reasons of such transfer and accordingly, the District Inspector of School had filed a report before the Ld. Single Judge and after considering the report, the order of transfer was set aside by passing the following order on 16th December, 2021:-

“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 concern rules.”

After the order passed by the Ld. Single Judge dt. 16.12.2021, the Chairman, North 24 Parganas District Primary School Council had issued an order of transfer of the appellant on 24.12.2021 by transferring the appellant to Subhasnagar F.P. School under the same circle. Being aggrieved with the order of transfer, the appellant had preferred a writ application and the Ld. Single Judge had dismissed the writ petitioner which is impugned in the instant appeal.

The impugned order of transfer reads as follows :

“OFFICE ORDER

“Dipika Bala Biswas, H.T. of Barasat Mahatma Gandhi G.S.F.P. School No.-1 under Barasat West circle is hereby transferred to Subhasnagar F.P. School under same Circle.

She should join the above post within 30.12.2021 and handed over the charge within 29.12.2021 and should report to the respective Sub-Inspector of Schools.

All concerned are informed accordingly.

*Sd/-
Chairman
North 24 Parganas District Primary School Councils*

Date. 24.12.2021

The appellant had challenged the said order of transfer on the ground that the Chairman has no authority and jurisdiction to issue impugned order of transfer.

Mr. Joytosh Majumdar, Ld. Counsel appearing on behalf of the appellant by referring the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rule, 2002 and submits that the District Primary School Council may either on its own motion or on an application from a teacher can transfer an approved teacher within its jurisdiction from one Primary School to another Primary School. Mr. Majumdar had relied upon Rule 4 and 5 of the said Transfer of the said Primary Teachers Rule, 2002 which reads as follows :

“4. Condition for transfer :- A Council may –

(a) on its own motion, or

(b) on an application from a teacher, transfer approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher is confirmed and has completed minimum two years of continuous service both in case of mutual or single transfer ;

Provided that the Council may, if it considers necessary for proper utilization of service of a primary teacher in the interest of education, transfer an approved teacher without maintaining any time limit of service.

Provided further that where there is a surplus teacher according to roll-strength as stated in rule 3, the Council may, on its own motion, transfer such approved teacher without maintaining any time limit of service by

way of rational adjustment of teacher in a primary school having deficit teacher in the following order of preference.

- (i) a primary school without an approved teacher,*
- (ii) a primary school having single teacher, and*
- (iii) other primary school having shortage of teacher.*

5. Procedure for transfer :

(1) A teacher seeking transfer under clause (b) of rule 4, shall submit his application for transfer with reasons thereof to the concerned Sub-Inspector of Schools during the month of December of each year and the concerned Sub-Inspector of Schools shall subsequently send such application with his specific views to the respective Council by January of the Succeeding year.

(2) Subject to sub-rule (3) the Council shall consider such applications and take a decision in respect of transfer by February and March of each year. Every transfer order shall be effected either at the end or at the beginning of the academic year.

Provided that if it is considered expedient to do so by the Council under exceptional circumstances the application for transfer may be considered at any time with the approval of the Board.

(3) The Council may, while processing the application for transfer of approved teachers, consider the applications of such teachers as stated below on the priority basis according to the following order of preference, namely :

(a) a physically handicapped teacher having more than fifty percent of handicappedness and such teacher possessing a supporting document issued by the competent authority :

(b) a female teacher who has to face serious inconvenience in attending the school regularly due to her present place of posting ;

(c) a teacher suffering from acute incurable disease like cancer, kidney ailment etc. and such teacher possessing a supporting document issued by the competent authority :

(4) After considering the application for transfer of an approved teacher, the Council may accept or reject the application for transfer and such decision of the Council shall be final.

(5) If the application of the approved teacher is accepted, the Council shall issue an order of transfer under the signature of the Secretary of the concerned Council and such order shall be communicated to the teacher and other concerned forthwith.

(6) On receipt of the order of transfer, the Sub-inspector of Schools of the Concerned Council shall immediately issue release order in favour of the teacher, so transferred, with a direction to join the new place of posting.

(7) The concerned teacher shall after receiving the release order, join the new place of posting as directed under sub-rule (6). A transferred teacher shall be entitled to the joining time as stated under rule 7 depending upon the distance between two schools by normal route.

(8) The transferred teacher shall at the time of joining the new place of posting submit a joining report to the concerned Sub-inspector of Schools who shall endorse a copy of the joining report to the Secretary to the Council.”

In terms of Rule 4, the Council may on its motion transfer an approved teacher within its jurisdiction. Therefore, the power of transfer specifically conferred upon the Council under the statute namely “The Transfer of Primary Teachers Rule, 2002, which cannot be used by any other authority including the Chairman.

In the present case, the Chairman has invoked the authority of the Council by transferring the appellant from one school to another School, which is not permissible under law. Rule 4 specifically authorized the council to transfer an approved teacher and in the instant case admittedly the Chairman had issued the order of transfer and North 24 Parganas District Primary School Council never took any decision for transfer of the appellant.

In these circumstances, the impugned transfer order cannot be sustained in the eyes of law.

In the previous writ petition the Ld. Single Judge specifically mentioned that *“If 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 teacher and not otherwise.”* In the impugned order,

there is no reason whether there is requirement of a head teacher in the said school.

In paragraph 27 of the writ application and in paragraph 17 of CAN No.1 of 2022 in the instant appeal the appellant has categorically mentioned that *“In the Barasat West circle there are at least 10 such schools where the student strength are less than 120 with existing Head teacher though under the Right to Children to Free and Compulsory Education Act, 2009, there is no requirement of Head Teacher since strength of student’s is less than 120.”* The said contention of the appellant is not denied by the respondents in their Affidavit in opposition.

Ld. Counsel for the respondents have also taken the ground that due to misbehaviour of the appellant with the her colleague teacher and on receipt of complaint from one Nazmin Akthar, Assistant Teacher and enquiry is initiated. From the enquiry report, it reveals that the Nazmin Akhter’s allegation are completely false and fabricated and the other assistant teachers did not want to accept the allegation that the Nazim Akhtar was mistreated for being a Muslim.

Ld. Counsel for the respondents relied upon section 53(3) of The West Bengal Primary Education Act, 1973 wherein the duties of Chairman is defined. Section 53(3) reads as follows :

“53. Duties of the Chairman:-

1.
2.
3. *The Chairman shall:*

- (a) Exercise general supervision and control over the Secretary, the Finance Officer and the staff appointed by the Primary School Council and post and transfer the members of the staff;*
- (b) Sanction all claims of travelling allowance;*
- (c) Take such action not inconsistent with any decision of the Primary School Council as he considers necessary for the proper functioning of the Primary School Council under the Act”*

The word “Staff” has been specifically defined under Section 2(xxia) as under:-

“2(xxia). “Staff means –

- i. In relation to the West Bengal Board of Primary Education, the employees appointed by the Board against posts sanctioned by the State Government, and*
- ii. In relation to a Primary School Council, the employees appointed by the Council against posts sanctioned by the State Government.”*

In the said Act, ‘teacher’ has been defined under Section 2 (xxia) as under:

“2 (xxia). “teachers” means a person who holds a teaching post in a Primary teacher’s Training on a regular and whole time basis and is paid wholly from the funds under the control of the State Government in the Education Department”.

We are of the view that Section 53(3) is not at all applicable in the case of teachers.

In view of the discussion above, we are of the considered view that the Chairman, North 24 Parganas District Primary School Council did not have the authority or jurisdiction to issue the impugned transfer order to the appellant. Accordingly, the impugned order of transfer and impugned order under appeal passed by the Ld. Single Judge in WPA No. 21508 of 2021 dt. 30.12.2021 stands set aside and quashed.

The appellant has already joined the transferred post without prejudice to her right and contentions. This Court now directs the respondent Council to allow the appellant to resume her duties at Barasat Mahatma Gandhi G.S.F.P. School No.1 under Barasat West Circle where she was discharging her duties before issuance of the impugned order dt. 24.12.2021 within one week from the date of communication of this order.

The Order impugned of the Hon'ble Single Bench dated 30.12.2021 stands thus set aside.

MAT. 3 of 2022 with **CAN 1 of 2022** stands accordingly **allowed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)