

Item No.4

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

19.01.2022
Ct-24

WPA 421 of 2022
Md. Kutubuddin Ahamed
v.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya
Mr. Samim Ahammed
... for the petitioner.

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

The petitioner, a primary school teacher, is aggrieved by the order of transfer dated January 3, 2022 whereby he has been transferred on administrative ground in the same scale of pay until further orders.

According to the petitioner he is aged about fifty-five years six months and as per the Memo dated September 13, 2013 issued by the Chairman, District Primary School Council, North 24 Parganas the most junior teacher as per MR of the concerned school will be treated as surplus teacher inter alia, except when (a) teacher crosses the age of fifty-five years, (b) teacher attacked by critical diseases.

The memo also mentions that if there are two or more surplus teachers in a school, then at the time of

fixing the proposed school, parameters like age, sex, residence may be considered.

The petitioner also relies upon the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 published on July 15, 2002 which lays down the condition for transfer of primary school teachers from one school to another within the jurisdiction of a Council.

Rule 4 of the said Rules mentions that a Council may on its own motion transfer a teacher provided if it considers necessary for proper utilization of service of a primary teacher in the interest of education, without maintaining any time limit of service.

It is the specific case of the petitioner that he has crossed fifty-five years of age and will be fifty-six years in April 2022.

It is the further case of the petitioner that he is suffering from various ailments and transferring him to a school which is more than 100 kilometers away will be prejudicial to his health.

It is the categorical case of the petitioner that a teacher of a primary school cannot be transferred only on administrative grounds. The transfer rules of primary teachers mention that a teacher may be transferred for the purpose of proper utilization of service and in the interest of education.

It has been submitted that the petitioner is not a surplus teacher in the school from where he has been transferred. There is no surplus teacher in the school where the petitioner is presently serving.

It is also the case of the petitioner that the order of transfer is mala fide as the petitioner has been transferred to a school where, keeping in mind the pupil-teacher ratio, there is no requirement of another teacher.

The learned advocate representing the District Primary School Council vehemently opposes the prayer of the petitioner.

It has been submitted that the service of the petitioner being transferable, there cannot be any reason to interfere with the order of transfer when the same has been made on administrative ground.

It has been mentioned that the petitioner has disclosed in the affidavit that he is fifty-five years of age and he has not crossed the age of fifty-five years as on date. It has also been mentioned that the petitioner has been transferred in the interest of education and the same has been referred to as transfer on administrative ground and the Court ought not to interfere with the order of transfer.

In the present case transfer of a primary school teacher is in dispute. It is not that the service of primary school teacher is required for administrative purposes.

The primary school teachers are required for teaching students in the primary school and their service is required in the interest of education. The Primary School Teachers Transfer Rules lay down that a teacher may be transferred in the interest of education for proper utilization of the services.

The petitioner herein is more than fifty-five years of age.

According to the office memo of the District Primary School Council, teachers who crossed the age of fifty-five years are not to be treated as surplus.

According to the learned advocate representing the Council, the petitioner is only fifty-five years and has not crossed fifty-five years of age.

It has been submitted by the petitioner that there are teachers who are junior to the petitioner in the school and the respondent Council has not taken into consideration the parameters as mentioned in the office memo of the Council. It has not taken into consideration the age, sex and residence of the teacher prior to passing the order of transfer.

The service condition of the petitioner lays down the provision according to which the order of transfer may be passed. There are specific grounds on which transfer may be made. 'Administrative ground' without mentioning the reason for which the primary school

teacher has been transferred cannot be accepted as a valid one.

The learned advocate for the Council has relied upon an order dated October 8, 2021 passed by a coordinate Bench of this Court in WPA 17282 of 2021 (Smt. Dipika Bals Biswas v. The State of West Bengal & Ors.) wherein the Court was of the view that reasons are to be disclosed before the Court and unless reasons are disclosed the order of transfer cannot be given effect to.

The order impugned in Smt. Dipika Bala Biswas (supra) was in respect of a primary school teacher who was transferred on “administrative ground”.

It is true that in a transferable service no specific reason is required to be mentioned at the time of passing the order of transfer, but at the same time if the order of transfer is passed without following the service rule of the employee concerned then the same does call for interference by the Court.

In the present case, prima facie, it does not appear that the order of transfer is either punitive or mala fide. But at the same it appears that the order of transfer was passed without following the provisions mentioned in Rule 4 of the West Bengal Teachers (Transfer of Teachers including Head Teacher) Rules, 2002.

In view of the above, the impugned order of transfer is remain stayed for a period of thirty days hereof.

The petitioner is directed to file appropriate application before the Council within a week hereof mentioning the reasons as to why he is not agreeable to be transferred to the proposed school. In the event, such an application is made by the petitioner, the same shall be considered by the Chairman of the Council strictly in accordance with the service rules guiding the petitioner, after affording the petitioner an opportunity of hearing to place his case. The petitioner shall forward all the supporting documents to the aforesaid respondent at the time of making the representation against the order of transfer.

The said respondent shall positively consider the representation filed by the petitioner within a week from the date of receipt of the same and pass a reasoned order and communicate the same to the petitioner within a week thereafter.

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.)