

06.06.2022.  
Court No.13  
Item No. 15  
ap

**W.P.A. No. 1144 of 2022**

**Dipak Kanti Biswas  
Versus  
The State of West Bengal & Ors.**

Mr. Asish Dutta,  
Ms. Gopa Biswas.

...For the petitioner.

Mr. Asish Kumar Guha,  
Mr. Naren Ghosh Dastidar.

...For the State.

Dr. Sutanu Kumar Patra,  
Ms. Supriya Dubey.

..For the WBCSSC.

The writ petitioner has applied for transfer under Rule 4(e) of the West Bengal School Service Commission (General Transfer, Transfer on Special Ground and Reallocation) Rules, 2015, on the ground that his father is suffering from Parkinson and dementia, since long.

The petitioner's application was rejected by the respondent authority on the ground that the petitioner was the only teacher in the School who is teaching Science and there is no other teacher available. The petitioner is therefore a "single teacher".

The respondents have relied upon a Circular of the Commissioner of School Education, West Bengal, dated 22<sup>nd</sup> September, 2021, based on which it was held that in the event the concerned Assistant Teacher is the only one teaching in a particular subject in the

School and there is no other teacher available, transfer to such teacher cannot be acceded to.

Counsel for the petitioner relies upon a decision of a Co-ordinate Bench of this Court dated 4<sup>th</sup> January, 2022, to the effect that such Circular of the State has no retrospective effect. Admittedly, the petitioner had applied for transfer prior to the coming into force of the Circular in question.

This Court has carefully considered the arguments of the Counsel for the petitioner and the respondents. It is indeed true that the Circular in question dated 22<sup>nd</sup> September, 2021, cannot have any retrospective effect. A larger issue that cannot be ignored is that an employee cannot have a vested right to be transferred to a place of his/her choice. The administrative exigency and necessity of the school and/or students cannot be ignored. The problem that is likely to be faced by the students of the said School, who will not have any other teacher to teach the Science subject, has to be factored in.

In that view of the matter, it is directed that the respondent authorities, particularly, the District Inspector of Schools (SE), Howrah, in consultation with the West Bengal Board of Secondary Education, shall consider appointing another teacher in the said School to impart Science or the subject being taught by the petitioner to the concerned classes.

It shall also be explored as to whether there is any other person willing to join the said School in which the petitioner is teaching, on voluntary transfer. Upon availability of such person, as indicated hereinabove, the petitioner's application for transfer may be considered.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***