

21 23.2.2022
Sc

W.P.A. 9 OF 2015

(Via Video Conference)

Sabyasachi Bandyopadhyay

Vs.

State of West Bengal & Ors.

Mr. Sudipta Dasgupta
Mr. Bikram Banerjee
Mr. Arkadeb Biswas
Mr. Arka Nandi
Ms. Dipa Acharya.

.... For the Petitioner

Mr. Tapan Kumar Mukherjee
Ms. Sangita Roy.

.... For the State

Mr. Kanak Kiran Bandyopadhyay

.... For the SSC

Mr. Deepan Kr. Sarkar
Ms. Ashima Daga
Mr. Aranya Sinha.

... For the Respondent
Nos. 5, 6

The petitioner is admittedly appointed in the post of Assistant Teacher in Baranagore Ramakrishna Mission Ashrama High School prior to 6th September, 2012 on the recommendation of the School Service Commission.

Mr. Sudipta Dasgupta, learned advocate appearing on behalf of the petitioner submits that on incorporation of Section 15A in the West Bengal School Service Commission Act, 1997 the schools run by Ramakrishna Mission Belurmath were kept outside the purview of the School Service Commission. It has further been contended on behalf of the petitioner that meanwhile the West Bengal School Service Commission (General

Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 [hereinafter referred to as the 'Rules of 2015'] has been introduced whereby benefit of 'Transfer on Special Grounds' and 'General Transfer' has been extended to the teachers appointed on the recommendations of the School Service Commission. Due to incorporation of Section 15A in the West Bengal School Service Commission Act, 1997 the petitioner is not getting the benefit of 'Transfer on Special Grounds' and 'General Transfer'.

Attention of this Court has been drawn to an order dated 6th January, 2022 whereby the benefit of 'General Transfer' and the 'Transfer on Special Grounds' as per the provisions of Rules of 2015 has been extended to teaching and non-teaching staff engaged in schools run by Ramakrishna Mission Belurmath provided they were appointed prior to 6th September, 2012.

On behalf of the petitioner it has been argued that in view of such order dated 6th January, 2022, the petitioner being an Assistant Teacher of a school run by Ramakrishna Mission Belurmath is entitled to get the benefit of 'Transfer on Special Grounds' as well as 'General Transfer' but it has also been submitted before this Court that in terms of Rules of 2015 there is an embargo in the matter of extending the benefit of transfer if the teacher concerned resides within 25 Kilometre radius from the location of the school where he is serving.

It has been contended that even if such benefit of transfer is extended to the petitioner, he will not be able to apply for transfer if he resides within 25 Kilometre distance from the school.

Mr. Dasgupta has relied upon a judgment delivered by a coordinate Bench dated 22nd January, 2022 on a writ petition being WPA 17232 of 2021 (*Haradhan Saren – vs.-State of West Bengal & Ors.*) wherein the coordinate Bench has held as follows :

“6. Therefore, for the teachers who were appointed in the schools run by Ramakrishna Mission Belur Math before 2012 when the amendment to the WBSSC Act, 1997 giving exemption to Ramakrishna Mission and other similar schools were given, the embargo of 25 kilometers is to be relaxed as a large number of teachers’ residence, including the petitioner’s is now within 25 kilometers of their present school i.e. a RKM school.

7. I have found that there is sufficient merit in the submission made by Mr. Dasgupta on behalf of the petitioner as the liberty of a teacher for transfer to another school cannot be non-existent only because such candidate was appointed is a RKM school. Further, if RKM schools’ teachers are bound by the 25 KMS embargo, the new found liberty of being transferred will remain elusive to them who reside within 25 KMS of their schools i.e. RKM schools.

Law cannot grant something in one hand and take away the same in the other.

Here the teachers of RKM schools have been given a right for the first time after 10 years (from 2012) to apply for transfer but if they are hit by the embargo of 25 KMS their right (who are residing within 25 KMS of the school) will remain illusive. Therefore the embargo of 25 KMS for the teachers of RKM schools shall not be applicable as of now so that they can enjoy the benefit of transfer granted by law now. For how many days this non applicability of embargo of 25 KMS shall remain in force is a matter to be decided by the Government in the Education

Department. Till it is decided by the government this embargo of 25 KMS shall not be applicable to RKM schools' teachers who were recommended by the School Service Commission. Every teacher of RKM schools recommended by SSC have 5 years teaching experience as after 2012 amendment introduced by Section 15A of the WBSSC Act giving exemption to RKM schools, no teacher was recommended by SSC for RKM schools.

8. Therefore I hold that for the teachers of RKM schools who were appointed in those schools before 2012 (when the exemption were given in the West Bengal School Service Commission Act, 1997) will not come within the embargo of the said 25 kilometers as has been laid down in the relevant rules for general transfer and general transfer on special ground till the Government in School Education Department decides the time limit for non-applicability of the 25 KMS embargo."

Mr. Deepan Kr. Sarkar, learned advocate is appearing on behalf of Baranagore Ramakrishna Mission Ashrama High School being the respondent nos. 5 and 6 and submits that this school is being run by Ramakrishna Mission Belurmath and therefore there is no impediment in applying the order dated 6th January, 2022 in case of transfer of teachers working in this school who are appointed prior to 6th September, 2012.

Mr. Kanak Kiran Bandyopadhyay, learned advocate appears on behalf of the West Bengal School Service Commission to whom this Court has posed a question whether the order passed by the coordinate Bench on 20th January, 2022 has been appealed against. However, this Court does not find any satisfactory answer.

The State respondent is represented by Mr. Tapan Kumar Mukherjee, learned Additional Government

Pleader and he has placed reliance upon the order dated 6th January, 2022 issued by the Governor whereby benefit of transfer has been extended to teaching and non-teaching staff working in the school run by Ramakrishna Mission, Belurmath.

This Court has heard the learned advocates representing the parties and also perused the order dated 6th January, 2022 and the judgment delivered by the coordinate Bench dated 20th January, 2022. In view of the order dated 6th January, 2022, this Court is of the view that there is no restriction in permitting the petitioner in getting the benefit of 'General Transfer' and 'Transfer on Special Grounds' in terms of the Rules of 2015 provided the petitioner is appointed prior to 6th September, 2012. Since the issue of restriction relating to distance in between the residence of the teacher concerned and the school where the teacher is working has already been decided by the coordinate Bench vide judgment dated 20th January, 2022, this Court need not dilate on this issue and the petitioner is permitted to apply for 'General Transfer' or 'Transfer on Special Grounds' irrespective of the distance in between the school and the residence of the teacher concerned. Petitioner is entitled to apply for transfer as aforesaid in accordance with law.

With the above observation the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously on usual undertaking.

(Saugata Bhattacharyya, J.)