

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA No. 2994 of 2021

**Prasad Kumar Samanta
Vs
The State of West Bengal & Ors.**

For the writ petitioner	:-	Mr. Sakti Pada Jana, Adv. Mr. Subhajyoti Das, Adv.
For DPSC, South 24-Parnagas	:-	Mr. Bhaskar Prasad Vaisya, Adv. Mr. Gourav Das, Adv.
Heard on	:-	30.03.2022
Judgment on	:-	13.04.2022

Amrita Sinha, J.:-

The petitioner is a primary school teacher. He is aggrieved by the transfer order dated 4th February, 2019 issued in his favour by the Chairman, South 24-Parganas DPSC. The petitioner has been transferred from Kedarpur State Plan Free Primary School to Chhoto Banasam Nagar Free Primary School both under Patharpratima East Circle.

The petitioner filed representation before the Council praying for withdrawal of the order of transfer. The representation of the petitioner not being considered by the Council, he approached this Court by filing writ petition being WP No. 22328 (W) of 2019 which was disposed of by the Court on 14th January 2020 by directing the Council to consider the representation upon granting an opportunity of hearing to the petitioner and to pass a reasoned order in accordance with law.

In compliance of the direction passed by the Court the Chairman of the Council passed reasoned order on 16th March, 2020. The prayer of the petitioner for withdrawal of the order of transfer stood rejected.

The petitioner is aggrieved by the same and challenges the same in the present writ application.

The impugned order of the Chairman mentions that as the petitioner is a surplus teacher in the first school, accordingly following the provisions of the Right of Children to Free and Compulsory Education Act, 2009 the petitioner was transferred following the memo issued by the Deputy Secretary, School Education Department, Government of West Bengal.

The case of the petitioner is that the school where he was serving had only 45 students in its roll with three approved teachers. The petitioner was acting as the Teacher-in-Charge of the said school and was the senior most teacher of the school. The third teacher of the school was brought on transfer in the year 2019 and it is only thereafter that the teachers became surplus compared to the number of students in the school.

It has been submitted that there was no requirement of the third teacher in the said school in 2019 itself and the third teacher was brought in only to root out the petitioner from the said school. It has been submitted that the principle of 'last come, first go' ought to have been followed. The teacher who joined the school last, ought to be transferred first.

The petitioner also submits that at the time of hearing before the Council, he was requested to supply names of four schools in the vicinity of his residence so that he may be transferred to one of those schools, if required. The petitioner, as per the request, submitted list of four schools where there is scope of appointment of further teachers, as the teacher-student ratio permits the same. Instead of transferring the petitioner to any of those schools, the Chairman intentionally and deliberately did not interfere with the order of transfer.

It has been contended that the order of transfer was mala fide and passed upon total non-application of mind.

Prayer has been made for setting aside the order of transfer dated 4th February, 2019 and the subsequent order of the Council dated 16th March, 2020.

The petitioner in his support has relied upon the judgment delivered by the Hon'ble Supreme Court in the matter of **Somesh Tiwari –vs- Union of India &**

Ors. reported in **(2009) 2 SCC 592** paragraph 16 on the issue that the order of transfer can be interfered with when the same is tainted with malice.

The petitioner prays for withdrawal of the order of transfer.

Learned advocate representing the respondent Council strongly opposes the prayer of the petitioner.

It has been submitted that the order of transfer was passed by the School Education Department not in respect of the petitioner alone but in respect of three hundred ninety teachers for the interest of primary education to maintain the student-teacher ratio of a primary school. The said decision was taken for rationalisation of primary teachers to ensure proper distribution of teachers among different primary schools in the State by way of transferring primary teachers from schools running with surplus teachers to the schools having deficit teachers. It has been submitted that the service of the petitioner is transferable and he has been transferred within the same circle where he was serving earlier.

It has been submitted that according to the provisions of law there is no bar in transferring a teacher on the basis of number of years that he put in service. The School Education Department published a list of three hundred ninety teachers who were surplus in their schools and accordingly they have been transferred en masse.

It has been denied that there was any mala fide intention while issuing the order of transfer in favour of the petitioner. It has been contended that it is for the employer to decide when and where to post an employee for extracting best services from him.

The respondents rely upon the judgment passed by the Hon'ble Division Bench of this Court on 23rd March, 2017 in **MAT 1575 of 2016 with CAN 8872 of 2016 (Sirajul Islam Mollah -vs- State of West Bengal & Ors.)** wherein the Hon'ble Appeal Court was of the opinion that a teacher belongs to a noble profession and he has a very rigorous responsibility of laying the foundation, by enabling character and morals in the young children. The teacher has more

responsibility than any other person in the society and he has to make sacrifice even at his own inconvenience for building up a strong nation.

Learned advocate also relies upon a judgment of the Hon'ble Supreme Court in the matter of ***State of Punjab & Ors. -vs- Joginder Singh Dhatt*** reported in ***AIR 1993 SC 2486*** wherein the Court held that it is entirely for the employer to decide when and where and at what point of time a public servant is transferred from his present posting. Ordinarily the Courts have no jurisdiction to interfere with the order of transfer.

Prayer has been made for dismissing the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties. The petitioner being a primary teacher is guided by the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002. Rule 4 of the said Rules lays down the condition for transfer. It mentions that a Council may, on an application from a teacher transfer an 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. It further mentions that the Council may, if it considers necessary for proper utilisation of service of a primary teacher in the interest of education, transfer an approved teacher without maintaining any time limit of service.

The said Rule further mentions that where there is surplus teacher according to roll strength, 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.

In the present case, the School Education Department by following the aforesaid Rule prepared a list of schools where there was surplus teacher and with the view to rationalise the teachers for proper utilisation of their service, decided to transfer the teachers from schools having surplus teachers, to the schools having

deficit teachers. As many as three hundred ninety teachers were directed to be transferred as they were found surplus in their respective schools.

As of now, there is no provision in the service rules of primary school teachers that, transfer can be made on the principle of 'last come, first go.' On the contrary, the transfer rules prescribe that transfer of an approved teacher may be made without maintaining any time limit of service, for proper utilisation of their service, in the interest of education. Relying on the aforesaid rule the petitioner was transferred. The same is certainly permissible in law.

It is settled law that an employee, whose service is transferable, do not have a vested right to remain posted at a particular place. It is for the employer to decide when and where to post a particular employee for extracting best services from him/her. Transfer being an incidence of service, Courts ought not to interfere with the same in a casual manner. Unless there is reasonable inference or mala fide action pleaded in the petition, the order of transfer ought not to be interfered with.

The petitioner has not pleaded that there has been mala fide at the time of passing the order of transfer.

The petitioner has been transferred following the principle of rationalization. He cannot point a finger on another employee to question as to why the other person has not been transferred. Transfer Rules applicable to the petitioner does not lay down that any time period has to be followed at the time of transferring an employee. On the contrary, it specifies that transfer may be made without maintaining any time limit of service.

The Court fails to reason as what could be the mala fide action of the employer in passing order of transfer of three hundred ninety teachers, in one go.

In the case of Joginder Singh Dhatt (supra) in paragraph 3 the Court held that it is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily, the Courts have no jurisdiction to interfere with the order of transfer.

In the case of ***Airports Authority of India vs. Rajeev Ratan Pandey & Ors.***, reported in **(2009) 8 SCC 37** the Court held that in the matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing and the Courts do not substitute their own decision in the matter of transfer.

In the matter of Sirajul Islam Mollah (supra) the Hon'ble Division Bench categorically mentioned that the teachers have a very rigorous responsibility for building up a strong nation.

In view of the above, the Court is of the opinion that the petitioner has not been able to prove mala fide on the part of the Council at the time of issuance of the order of transfer. The order of transfer has been passed for better utilisation of the service of the petitioner in the interest of education. Accordingly, the order of transfer is not interfered with by the Court.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)