

12 **29.04.**
2022
Ct. No. 04

Ab

FMA 263 of 2022
With
IA No. CAN 1 of 2021

Abhijit Das
Vs.
The State of West Bengal and others.

Mr. Soumik Ganguly,
Mr. Sourath Nandy,
Mr. Avik Kumar Das,
Mr. Dilip Kumar Sadhu.
... for the appellant.

Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly.
... for the State.

Mr. Bhaskar Prasad Vaisya,
Mr. Nilay Baran Mondal.
... for the respondent no. 6.

Pursuant to the order dated 22nd April 2022, Mr. Biswabrata Basu Mallick, learned Advocate appearing on behalf of the State, hands over a bunch of documents categorizing as a response to the queries raised in the said order.

The bunch of documents would reveal the total number of the applications, which were allowed, meaning thereby, the transfer order was passed. Astonishingly, it is revealed from the said response that 136 applications uploaded on the portal were rejected on the ground that there is a single regular teacher in the school. 4 applications were rejected on the ground that if the transfer is effected, the school would not have any teacher. However, 18 applications were rejected on the ground that the school does not have the surplus teacher. We are not concerned with the rest as it has been shown that they are rejected on other grounds.

The pivotal issue involved in the instant appeal is whether the rejection as to the application of transfer can be made solely on the ground that the school has one assistant teacher. Several Rules were relied upon by the respective parties touching upon the modalities and the mechanisms to be adopted not only for making an application on portal but also the conditions and the reasons for such transfer.

Initially, we did not find any ground in the applicable Rules or the norms that the application would not be processed if the total strength of the assistant teacher is one or abysmally low. However, considering the reality and the difficulties, which the pupils of the respective schools would face, we invited the attention of the respective Counsels, who owe allegiance to the society, to consider the same and express their views thereupon.

Such point took a backseat the moment our attention is drawn to the facts that the transfer application was allowed by the concerned authority even in a case when there is a single total strength of the assistant teacher in the said school.

Mr. Basu Mallick took time to take necessary instruction and to submit a response of the concerned official thereupon.

Today's response has not addressed such point raised on the earlier occasion but the arithmetical figures have been disclosed categorizing the queries, which appear to us to be ambiguous and intended to avoid the answer to such queries.

In a field of Service Jurisprudence, all the employees are to be treated in an uniform and similar fashion, more particularly, in case of transfer. The consideration and/or determination depends upon the special and mitigating circumstances, which may not be

the same. The moment the parameters have been set and a portal has been launched for making an application for transfer, if the grounds are one and the same, the uniformity and certainty in the decision is the virtue. Even Article 14 of the Constitution of India does not permit the State or the authorities to discriminate one from another if they stand on the same footing. The equality amongst the equal is the bedrock of Article 14 of the Constitution of India and any decision, which discriminates one from the another, within the homogeneous class is a patent example of offending the constitutional right guaranteed under Article 14 thereof.

The Government cannot adopt pick and choose policy by favouring one at the expense of another. The informed decision on an equal pedestal is the hallmark of fairness, transparency and the uniformity in the decision in order to avoid corrosion on discrimination. The cherry picking is required to be avoided, as the employees of the Government are to be treated equally provided they are the integral component of the homogeneous class.

The record would reveal that some of the teachers, who applied for transfer, were favoured with the order of transfer and the downloaded information from the portal would reveal the total strength of the assistant teacher to be '1'.

Mr. Basu Mallick tried to impress this Court in his usual rhetoric that in those schools there were also a head teacher and, therefore, the total strength of the teacher is more than '1'.

Ironically the said argument is counter-productive to the stand of the State. In the instant case as well, there is a head teacher and the assistant teacher, which make the appellant stands on the same footing that of the favoured teacher.

It is an apparent case of discrimination and we have no hesitation to say that the appellant has been treated differently and the action of the authority offends Article 14 of the Constitution of India.

The order impugned is, thus, set aside.

The authorities are directed to process the application for transfer uploaded on the portal by issuing the order of transfer within two weeks from the date of communication of this order.

All consequential steps required for due implementation of the said order shall be completed within two weeks therefrom.

With these observations, the appeal is allowed.

The connective application pending in the instant appeal is accordingly disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)