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23.03.2022
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 3104 of 2022

**Sudipta Giri
-versus
State of West Bengal & Ors.**

**Mr. Sakti Pada Jaana,
Mr. Subhajyoti Das.
...For the Petitioner.**

**Mr. Ratul Biswas.
...For the Board.**

**Mr. Kamal Mishra.
...For DPSC.**

**Mr. S. Nayak.
...For the State.**

The petitioner applied in the Utsashree Portal for general transfer. Her application was returned back on the ground that number of teachers is below three.

The petitioner has annexed the guidelines published by the School Education Department relating to online process of transfer of teaching staff. The said guidelines mention that the application for transfer will be accepted, if the conditions therein are fulfilled. There are certain exceptions to the provision for transfer. The grounds for exception have also been clearly mentioned in the said guidelines.

It appears from the said guidelines that the petitioner fulfils all the conditions mentioned therein. She has been confirmed in service with more than 5

years of satisfactory service. There is no order of suspension or disciplinary proceeding or judicial proceeding pending or contemplated against the petitioner.

The ground that has been assigned for not accepting the application for transfer is not available in the guidelines published by the School Education Department.

The Court in WPA 2497 of 2022 (Amitabha Jana -vs- The State of West Bengal & ors.) by an order dated 25th February, 2022 held that the submission of the Council regarding non-transfer of a teacher, if the students-teacher ratio is not maintained or if there is scarcity of teacher or there is only a single teacher, cannot stand in the way of a teacher to seek transfer when the same is permissible in law. It is for the Council to arrange teachers for running the school and the Council cannot oppose transfer of a teacher, as the service of the teacher is a transferable one.

Learned advocate appearing for the Council opposes the prayer of the petitioner and submits that if the petitioner is permitted to be transferred then the school will be left with only a single teacher.

The aforesaid submission of the petitioner is supported by the learned advocate appearing for the District Inspector of Schools, Purba Medinipur.

Both the learned advocates appearing for the respondents submits that if the remaining single teacher of the school remains absent, then the school has to be closed down.

The Government has formulated a guideline in its own wisdom according to which the transfer of a teacher is to be conducted. A dedicated online portal has also been set up by the Government to implement a transparent and error free online process for transfer in respect of all eligible teachers.

The petitioner happens to be a teacher eligible for transfer. Scarcity of teacher in school ought not to stand in the way of the eligible teacher for seeking transfer. The same is not supported by the guidelines for transfer as published by the State Government.

In view of the above, the instant writ petition is disposed of by directing the Purba Medinipur, District Primary School Council to reconsider the application filed by the petitioner for transfer strictly in accordance with the guidelines framed by the School Education Department, Government of West Bengal vide Notice No. 659-SE/S/1S-04/95 (Pt-II) dated 26th August, 2021.

A decision shall be taken by the aforesaid respondent at the earliest but positively within a period of four weeks from the date of communication of a copy of this order.

The said respondent shall intimate the petitioner the fate of her application for transfer immediately thereafter.

The petitioner is directed to forward a copy of the notice dated 26th August, 2021 along with the guidelines to the aforesaid respondent at the time of communicating the order of this Court.

The instruction given by the Secretary, Purba Medinipur District Primary School Council and the District Inspector of Schools (P.E.), Purba Medinipur dated 16th March, 2022 is retained with the records.

The reason given for rejecting the prayer of the petitioner for transfer stands set aside.

The writ petition stands disposed of.

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

(Amrita Sinha, J.)