

09.06.2022
Court No.13
Item No.72
AP

WPA 8555 of 2022

**Nibedita Gayen
Vs.
The State of West Bengal and Ors.**

Mr. Shuvro Prokash Lahiri

... For the petitioner.

Mr. Sourav Mitra

... For the WBCSSC.

Mr. Supriyo Chattopadhyay

Mr. Suman Dey

... For the State.

Affidavit of service filed in Court today be kept with the record.

The petitioner is aggrieved by rejection of the application of the transfer, by the head of the Rudrapur Siksha Sadan School. The ground on which the application of the petitioner was not forwarded was that the petitioner has not completed five years in the said institution, in terms of Rule 3 of Sub-Section (1) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015.

The brief facts are that the petitioner was working in Uttar Jhapordah Saradamoni Balika Vidyalaya. The said school had zero enrolment i.e. no students whatsoever. As a consequence whereof, the petitioner was transferred to the present institution by the Board, invoking provisions of Section 10C of the West Bengal School Service Commission Act 1997.

This Court is of the view that the transfer under Section 10C of the 1997 Act is based on the exigency of the Board and/or Commission. Such transfer cannot be equated with or be relied upon for the purpose of applying Rule 3(1) of the aforesaid Rules of 2015. The transfer under the Rules of 2015 is a voluntary transfer at the request of a Teacher.

In that view of the matter, the order of the head of the institution dated 16th April, 2022, shall stand set aside.

The petitioner shall be entitled to apply afresh through Utsashree portal for transfer on non-medical grounds, from the present school. Upon receipt of such application the head of the institution shall forward the same to the concerned District Inspector of Schools. The District Inspector of Schools in consultation with the Commissioner of School Education shall deal with the petitioner's application, strictly in terms of the Circular dated 3rd January, 2022 and the transfer Rules of 2015.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

