

26-09-2022
Item No.6
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.8624 of 2022
Swati Dolai Das
-vs-
The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. S.M. Ali
Mr. Sk. Imtiajuddim ...for the petitioner

Mr. Bhaskar Prasad Vaisya
Mr. Sagnik Chatterjee

...for the State Respondent Nos. 1 to 3

Mr. Sunit Kumar Roy

...for the Respondent Nos. 4 and 5

Affidavit of service filed by the petitioner be kept on record.

In the writ petition the petitioner states that she is an assistant teacher of Suri Deaf and Dumb School since April 1, 1999. The husband of the petitioner is a headmaster of a school at Berhampore, Murshidabad since August 19, 2009. Her son lives with her at Suri. Since there is no relative of her at Suri, she and her son feel insecure there. The child of the petitioner is suffering from behavioural problem. His treatment was started by a psychologist and a psychiatrist and this process of treatment is going on. Her father-in-law and mother are aged more than 75 years. For proper treatment of her son and to give him care and company of her family members, the petitioner sought for no objection certificate from the

school authority for her transfer from Suri Deaf and Dumb School to any other school either at Kolkata or nearby.

For the purpose of getting no-objection certificate she made an application to the school authority and duly filled in the prescribed form in that regard. But by a resolution dated November 24, 2017 adopted by the managing committee of the school it was decided that since the petitioner was the only assistant teacher of the school, no-objection certificate could not be accorded to her for her transfer. Under such circumstances, the petitioner seeks direction upon the school authority so that the no- objection certificate on her transfer is issued in her favour.

Learned counsel for the petitioner submits that in view of a Government Notification dated April 19, 2017 issued by the Mass Education Extension and Library Services Department, Government of West Bengal, the petitioner is eligible for transfer since her service is confirmed after completing five years of satisfactory service in the present place of posting. Learned counsel points out that issuing no- objection certificate does not imply that the order of transfer has been made. According to learned counsel the process of transfer is a long-drawn process and in end the concerned authority may allow her prayer or reject it considering the grounds as set out by the petitioner in her application.

Learned counsel for the school authority submits that while the school authority adopted the resolution, the petitioner as a member of the managing committee was present and endorsed the resolution.

As such, she is now estopped from taking the plea that she is entitled to get the no-objection certificate from the school authority. Learned counsel also submits that the school authority by making representations to the authority concerned sought for filling up of the teaching and non-teaching staff for the school, but to no effect. Learned counsel adhering to the resolution adopted by the school authority submits that if the petitioner, who is the only assistant teacher, is transferred, in that event the education of the students will be hampered to a great extent.

Learned counsel for the State respondents adopts the submission as advanced by learned counsel for the school authority.

In reply to the submission of the learned counsel for the school authority Mr. Ekramul Bari, learned counsel for the petitioner argues that the participation of the petitioner in the meeting of the managing committee or any act of her therein will not operate as estoppel against the statutory rules governing the transfer.

As it appears from the representation of the petitioner (Annexure P2, p.23), the petitioner sought for no- objection certificate for transfer for the purpose of her child's treatment who is suffering from behavioural problem. In her representation she narrated her other plight that her husband is now posted at a school at Murshidabad and her father-in-law and mother are aged persons.

Admittedly, the petitioner has been working in the said school since April 1, 1999 and her service has

been confirmed. It is evident from the documents on record that apart from making representation as above, she filled in the application in the prescribed form for transfer. The resolution dated November 24, 2017 adopted by the school authority indicates that the only objection of the school authority to issue the no- objection certificate is that excepting the petitioner there is no other assistant teacher in the school.

What I find, as regards the grounds of transfer she made in her representation, there is no demur to it on the part of the school authority.

In a decision in the case of **Managing Committee, Kholapota Prankrishna Haider Girls High Schools v. Nibedita Ray**, reported in **(2009) 3 CHN 626**, a Division Bench of this court has held that not releasing a teacher on the grounds that the students would suffer immense prejudice is not warranted by law.

In view of the decision supra and in terms of the Government Notification dated April 19, 2017, I feel that the school authority cannot stand in the way of issuing no-objection certificate in favour of the petitioner.

As submitted on behalf of the petitioner, I am of the view that the participation of the petitioner at the meeting by which the resolution dated 24th November, 2017 was adopted would not operate as estoppel against the statutory document relating to transfer of an assistant teacher.

The only ground taken by the school authority is that the education of the students would be affected

if the petitioner is transferred. Needless to say that to dispose of an application for transfer on getting no-objection certificate by the authorities concerned is a long drawn process. It is expected that in case the prayer of the petitioner is allowed by the authorities concerned, the concerned authority will take appropriate steps for filling up the post falling vacant on her transfer.

In view of the above the writ petition merits success and accordingly the writ petition is allowed.

The respondent Nos. 4 and 5 are directed to withdraw the resolution dated November 24, 2017 so far it relates to the transfer of the petitioner, issue no-objection certificate in her favour and forward the same to the District Mass Education, Extension Officer, Birbhum within seven days from date.

It is expected that the District Mass Education, Extension Officer, Birbhum as well as the Director of Mass Education Extension, West Bengal – the third and the second respondents respectively – will process and dispose of the petitioner's application for transfer as expeditiously as possible.

With the aforesaid direction the writ petition stands disposed of. No order as to costs.

Urgent certified copies of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

[Rabindranath Samanta, J]

