

01 05.12.2022
Sc Ct. no.22

WPA 10013 OF 2022

Haymabati Pan

Vs.

State of West Bengal & Ors.

Mr. Dilip Kumar Samanta
Mr. Biswajit Hazra
Mr. Archishman Sain
Mr. Arif Md. Khan.

.... For the Petitioner

Mr. Sourav Mitra
Mr. Suman Dey.

.... For the Respondent
No.3

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta.

.... For the Respondent
No.4

Ms. Tannistha Bandyopadhyay

....For the Respondent
Nos.5 & 6

Affidavit-of-service filed in Court is taken on record.

The writ petitioner presently is an Assistant Teacher at ***Mejia Girls' High School (H.S.), District-Bankura***. She sought for a ***transfer through Utsashree Portal principally on the ground of distance and on the ground of having a three-year's ward at present***.

The application was made on August 26, 2021, as would be evident from the ***Annexure-P6*** to the writ petition. From the same annexure it would appear also that the application was forwarded back to the relevant school authority on the ground that the transfer was not

possible because “**not within 10% ratio**” of the strength of the teachers in the school.

The petitioner contends that the junior teachers were transferred whereas she was not. Challenging the said alleged inaction on the part of the said authorities, this writ petition was filed.

Mr. Dilip Kumar Samanta, learned counsel appearing for the writ petitioner submitted that this **single post teacher** was not a criterion in the advertisement inviting transfer under which the petitioner applied.

Mr. Sourav Mitra, learned counsel appearing for the respondent no. 3 submitted that the **Utsashree Portal** is presently under suspension policy of the State till December 31, 2022 at least or until further direction. He submitted that this ratio of strength of the teachers is the principal criterion for considering the application for transfer of a teacher. Since the petitioner had disqualified to such criterion, her case was rejected and forwarded back to the relevant school authority and this was known to the petitioner.

Mr. Supriyo Chattopadhyay, learned State counsel appearing for the respondent no.4 referring to page 31 to this writ petition submitted that since the application was rejected and forwarded back to the relevant school authority, there is really no application pending for transfer before the appropriate State authority. This

submission was vehemently opposed by Mr. Samanta, learned counsel appearing for the petitioner.

Mr. Chattopadhyay further submitted that ***if the 10% strength of teachers of the school stood already transferred, there is no further scope for causing any transfer from that school***, such rule is prevailing from 2015 and is still in vogue.

Ms. Tannistha Bandyopadhyay, learned counsel appearing for the respondent nos. 5 and 6 has produced a document dated September 21, 2022 written by the school authority to the respondent no.4 informing about the shortage of teachers in the school at present. She further submitted that there is ***only one History teacher***, namely, the petitioner in the entire school. She submitted that if the petitioner is transferred in this situation, there shall be no teacher for the subject History in the school.

Mr. Samanta in reply, placed an order dated August 25, 2022 passed by a coordinate Bench in another writ petition in respect of another writ petitioner, in ***WPA 9268 of 2022***, the coordinate Bench did not accept the said ground of ***single teacher*** after the amendment of the ***Rule 2015***. He further submitted that this order dated August 25, 2022 is binding and there was no challenge thereto as no appeal was carried out.

After considering the rival contentions of the parties and after considering the materials on record this Court

is of the considered view that to consider a case for transfer of a teacher, the interest of the students of a school should be of a paramount interest. In the fact of this case it is clear that ***Annexure-P6*** to the writ petition specifically states that the application of the petitioner for transfer which was filed in August, 2021 through Utsashree Portal was considered by the relevant State authority and was forwarded back to the relevant school authority on the ground “***not within 10%***”. It was also mentioned in the said document that “***address proof document was not submitted***”.

Considering all these facts it appears to this Court that after disclosing all these facts the respondent no.3 through its appropriate authority shall decide the case of the petitioner on the basis of the existing records available with the respondent nos.5 and 6 who shall produce the same before the respondent no.3 to decide the issue.

The respondent no.3 shall issue a prior hearing notice of at least seven days to the petitioner, the respondent no.4 and the respondent nos. 5 and 6 and then after giving them an opportunity of hearing shall decide the issue with its reasoned order on the basis of the existing records, which are lying with the relevant school authority, strictly in accordance with law.

While deciding the said issue, the relevant school authority shall file a report before the respondent no.3

relating to the present teacher student ratio and the number of teacher present for the relevant subject which is being taught by the petitioner and the number of teachers for the same subject in the school.

The entire exercise, as directed above, shall be carried out and completed by the respondent no.3 through its appropriate authority positively within a period of six weeks from the date of communication of this order. The hearing authority then shall communicate its reasoned decision to the petitioner and all concerned within a further period of two weeks from the date of the said reasoned order to be passed.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

It is further made clear that this order shall not create any equity or right in favour of the petitioner if the petitioner is otherwise not eligible for her claim strictly in accordance with law.

On the above terms, this writ petition , **WPA 10013 of 2022** stands disposed of without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)