

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

Before:

The Hon'ble Justice Lapita Banerji

WPA No. 19024 of 2022

Subrata Chakravorty

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Kalyan Bandopadhyay, Sr. Adv.
Mr. Arjun Ray Mukherjee, Adv.
Mr. Sougata Mitra, Adv.
Mr. Rameshwar Sinha, Adv.

For the W.B.B.S.E. : Ms. Koyeli Bhattacharyya, Adv.

For the State : Mr. Raja Saha, Adv.
Ms. Piyali Sengupta, Adv.

Hearing concluded on : 01.12.2022

Judgment on : 21.12.2022.

Lapita Banerji, J.:- In this writ petition, the petitioner challenges a transfer order dated August 17, 2022 vide office order no. EST/197/2022, whereby the petitioner was posted from General Sections, Kolkata Office to the North Bengal Regional Office. The petitioner is an employee of the West Bengal Board of Secondary Education (in short, the Board). The petitioner claims that he is 55 years old and lives with his octogenarian, ailing mother and there is no one to look after her, except the petitioner.

2. The petitioner relies on an office order dated March 23, 2007 issued by the Secretary of the Board for challenging his transfer. As per the said office order a male employee shall not be usually transferred after attainment of 52 years of age. In the event, a transfer is made, the period of transfer for North Bengal Regional Office would not be for more three years, where the transferred place of posting is distant from home. Such a consideration is made in order not to disturb the familial responsibility of the employees.

3. Mr. Bandopadhyay, Learned Senior Counsel appearing for the writ petitioner submits that the petitioner should not have been transferred being more than 52 years of age. No employee is transferred after the said age. Furthermore, the petitioner's mother is unwell and is of an advanced age and there is no one to look after her in the petitioner's family. Hence, his familial responsibility should have been taken into account before effecting the order of transfer. He relies on the office order dated March 23, 2007 in support of his contention.

4. Mr. Bandopadhyay, relies on a judgment reported in **(1983) 4 SCC 582 (B.S Minhas Vs. Indian Statistical Institute and Others)** paragraphs 23 to 26, in support of his contention that the by-laws framed by the employer have to be taken into consideration in order to avoid arbitrariness and also for ensuring fair play.

5. Mrs. Bhattacharyya, submits that since the appointment of the petitioner in 1991, he has been serving at several offices of the Board in Kolkata. On November 22, 2013, he was transferred to Burdwan but there is no evidence of him joining the Burdwan Office. Within 6 days he was

transferred back to Kolkata. The earlier order dated November 22, 2013 was reversed immediately.

6. She submits that there is no mala fide intention in transferring the writ petitioner. The Secretary of the Board thought it necessary to transfer the petitioner, an Office Superintendent, since his services were considered necessary for smooth functioning of the North Bengal Regional Office of the Board. Periodical transfers of Officers/Staff were necessary to maintain the standard of efficiency in the Public Service.

7. From the additional report filed by Ms. Bhattacharyya in court on December 1, 2022, pursuant to the directions of this Court on November 10, 2022, it appears that various transfers have been effected in case of male employees who are above 52 years of age. Therefore, no absolute reliance has been placed on the office order dated March 23, 2007 by the Respondent authorities regarding non-transference of male employees over 52 years.

8. Mrs. Bhattacharyya, relies on a decision reported in **(1993) 4 SCC 357 (Union of India and Others Vs. S. L. Abbas)**, in support of her contention that transfer is an incident of Government Service and unless mala fide intention can be shown, a transfer order cannot be quashed. The recommendations vide office order dated March 23, 2007 are only in the nature of guidelines and do not have statutory force. Even in Clause 7 of the said office order it has been stipulated that notwithstanding anything contained therein, the President of the Board would be at liberty to effect transfer Under Section 28 (3)(a) of the West Bengal Board of Secondary Education Act, 1963.

9. Having considered the rival submissions of the parties and the materials placed on records this court finds:-

(i) Various male employees have been transferred from one Regional Office to the other or from offices at Kolkata to other Regional Offices after attaining the age of 52 years.

(ii) Therefore, there was no discrimination being meted out to the petitioner.

(iii) The petitioner has been serving in Kolkata Offices only, from the time of his engagement in 1991.

(iv) The fact that the petitioner's mother is an octogenarian and ailing is only a factor to be considered while recommending the transfer of the petitioner. The petitioner cannot claim violation of any fundamental/statutory right, since the recommendations made in the office order dated March 23, 2007 could not be followed in toto due to administrative convenience/exigency.

(v) The decision relied upon by Mr. Bandopadhyay in **B.S Minhas** (supra) is not applicable to the facts of the case. In that case, the by-law no.2 contained the procedure for appointment of a director stipulated that before recruitment, the vacancy for directorship should be suitably publicized. Since, there was no suitable publication relating to the vacancy for recruitment of the director, the Apex Court held that even if a by-law was framed for conducting the affairs of any employer, the same has to be complied with for avoidance of arbitrariness and for ensuring fair play.

(vi) **B.S. Minhas** (supra) does not relate to transfer of employees. It relates to recruitment of employees and factually is far removed from the

present case. The finding of the Apex Court was made in order to ensure transparency in the recruitment process.

(vii) In a recent decision of the Supreme Court reported in **2022 SCC online SC 297 (Sk. Nausad Rahaman Vs. Union of India and Ors)**, it has been reiterated that transfer is a condition of service and it is within the powers of the employer to take a policy decision either to grant or not to grant such transfers and the power of judicial review cannot be exercised to interfere with the policy decisions of that nature.

(viii) The policy decision taken by the employer is not under challenge in the present writ petition. In fact, the petitioner relies on the office order dated March 23, 2007 to challenge the order of transfer.

10. In the light of the discussions above, This Court finds that there is no male fide intention or arbitrariness or perversity in issuance of the transfer order dated August 17, 2002. No ground exists for setting aside and/or quashing of the said transfer order.

11. **WPA No. 19024 of 2022 is dismissed** without costs.

12. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

13. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)