

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE MR. JUSTICE ABHIJIT GANGOPADHYAY

WPA 20692 of 2021

Jayati Banerjee

-Versus-

The State of West Bengal & Ors.

For the petitioner : **Mr. Bikram Banerjee**
Mr. Sudipta dasgupta
Mr. Arka Nandi
Ms. Dipa Acharyya
Mr. Sutirtha Nayek

For the School : **Mr. Sakti Pada Jana**
Mr. Subhajyoti das

Heard on : **24.03.2022 & 21.04.2022,**

Judgment on : **29.04.2022**

Abhijit Gangopadhyay, J .:

1. This is a transfer application of the petitioner from her present school to another school. This is her 3rd application. First two applications, according to the petitioner, were rejected on grounds which are not tenable in the eye of law. The third rejection i.e. the

present one which has been returned from the end of the Head of the Institution on two grounds: (i) Single teacher (ii) more than 10 percent of number of teachers.

2. The petitioner assails this decision by saying that she is not at all a single teacher and never was a single teacher and because of the school's wrong notion, she was deprived of her transfer earlier. For the first time the School Service Commission returned her application as single teacher which was not at all the case. The petitioner's case gets support from a report which has been filed by the District Inspector of Schools, Secondary Education (D.I. in short) in compliance of the direction of this court wherein in the concluding part of the report of the DI it has been written on (18.04.2022) that "the petitioner is really not a single teacher of the school in the subject English".

3. Therefore, the petitioner is not a single teacher.

Now the question is whether her application was beyond 10% of the total number of teachers.

4. When the petitioner applied for 3rd time on 08.10.2021, there were 15 teachers in the school. Now a question is

raised by the learned advocate Mr. Jana, appearing for the School that the 10% of total member of teachers is to be counted from the very beginning i.e. starting point of Utsashree Portal. And therefore the petitioner is hit by Rule 6 (2) (d) of 2015 transfer Rules as amended and cannot be transferred.

5. Learned advocate for the petitioner contended that 10% of teaching staff cannot be counted from the beginning of the Utsashree Portal. The total number of teachers is to be considered with reference to the date of the application of the teacher whose application is being considered by the school or by the DI or by the SSC or by the court as the situation may be. Otherwise, for this 10 percent Rule a large number of teachers who want to be transferred will not get any benefit of transfer may be in their whole service period and the 10 % Rule would become meaningless. For example, if a school has 50 teachers on date of starting of Utshashree Portal and 10% of total strength of teacher i.e. 5 teachers are transferred then unless the school gets 5 teachers again the remaining teachers of the school will not get opportunity to apply for

transfer. The school may go to the full strength of 50 by not before 4/5 years which is not unusual and therefore in this 4/5 years the remaining teachers would not get any opportunity of transfer. This cannot be the intention of the rule makers. The 10% Rule is to be given, according to him, a reasonable meaning keeping in mind its social beneficial nature and the reasonable meaning of the Rule can be given only if it is held that the 10% is to be counted (10 % of total teachers in a school) on the date of accrual of right of a teacher of that school who wants to be transferred and transfer of no other teacher in the school at any other point of time in the past is to be considered.

6. Now, from the case of the petitioner it is found, which is an admitted position, when the petitioner applied for transfer in the month of October, 2021 there were 15 teachers in the school. Therefore, the school could have considered transfer of two teachers (10% of 15 teachers being 1.5) at that point of time. Apart from the petitioner another teacher of subject History applied for transfer. Though the school could forward two teachers'

applications at that point of time the school did not forward the application of the petitioner though it forwarded the application of the other teacher. Thus the petitioner has been again deprived of transfer.

7. I find that if we give a meaning to this 10% Rule, according to the submission made on behalf of the school, it will be an absurd proposition because once it is calculated that 5 teachers can be given transfer on the basis of the 10 % Rule at the time of initiation of the Utsashree Portal, then after transfer of 5 teachers, no other teachers will get the opportunity of transfer, even if the number of teachers is increased and unless the number reaches to 50 which may not happen during the service life of a teacher who needs a transfer.

8. Therefore, this 10% Rule is to be interpreted reasonably and beneficially which means that the 10% is to be calculated with reference to the date of the application of a teacher when his/her right to get transfer accrues and an application is made therefore. Accrual of right is to be translated into an action by making an application for transfer. As this is a matter of movement of a teacher

from one school to another real accrual of right is when an application for transfer is made. Before making an application of transfer real right does not accrue to a teacher. Now if we see the particular Rule of 10%, we will find as follows:

“(2) Upon submission of application, the authority of SMC shall -

(a).....;

(b).....;

©.....;

(d) **consider the total application(s) from school is not more than 10%(ten) of total teachers’ strength of school;**

9. Therefore, when the petitioner filed the application, two teachers could have been given green signal by the school for transfer; one was given but the petitioner, the other one, was not given the green signal by the school.

10. Therefore, I hold that the rejection of the petitioner’s application is bad and unreasonable in the eye of law because the petitioner’s application cannot be rejected on either of the two grounds; for single teacher and as hit by 10% Rule.

11. Therefore, I direct the school to forward the application of the petitioner to the D. I. by seven days from the date of communication of this order and the D. I. should forward the application to the School Service Commission by seven days thereafter from the date of receipt of the application forwarded by the school and the School Service Commission will take steps to transfer the petitioner, if she is otherwise eligible to get transfer, by two weeks thereafter.

12. The petitioner is granted liberty to file a fresh application only for the purpose of selecting other schools nearer to her residence for the reasons that the vacancies in the schools she selected may have been filled up in the meantime. However, if there is vacancy in the previously selected schools that can also be included in the fresh selection list of schools by the petitioner. However, under no circumstances the fresh list will include more than three vacancies.

The writ application is disposed of.

(Abhijit Gangopadhyay, J)

