

Sl No. 75
09.03.2022.
Ct No. 2

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction
(Via Video Conference)**

**WPA 7 of 2020
Smt. Smita Tarafdar
-versus
The State of West Bengal & Ors.**

Ms. Suman Sehanabis (Mondal)
Ms. Mousumi Das
... for the petitioner.

Mr. Subir Kumar Saha (AGP)
Mr. Ankan Mitra
... for the State respondents.

Mr. Amales Ray
Mr. Deborshi Dhar
... for DPSC, Cooch Behar.

The petitioner is aggrieved by the order of transfer issued to her on December 18, 2019 by the Chairperson, District Primary School Council, Cooch Behar.

The petitioner is a primary school teacher. She was serving in Shishu Shiksha Niketan (Pry) Veksir Danga Primary School. She has been transferred to Hemkumari Bajejama Newly Set-up Primary School.

The ground for transfer is administrative and in the interest of public service and primary education.

The petitioner challenges the order of transfer on the ground that the same was issued as per the order of the Joint Secretary, School Education Department. According to the provisions of law, it is only the Council which can pass an order of transfer and not for the Joint Secretary of the School Education Department to pass any order relating to transfer of a primary school teacher.

The next ground for challenge is that the school where the petitioner was serving has only fifty-six students and three teachers. The petitioner happens to be the second senior most teacher of the school. Even, though, there was no requirement of three teachers, the Council appointed one Nirupama Pramanik in the said school in September 2019 and thereafter issued the order of transfer to the petitioner in December 2019 treating her as surplus teacher.

According to the petitioner, the teacher who joined last i.e. the junior most teacher ought to have been transferred instead of the petitioner who happens to be the second senior most teacher of the school.

The petitioner's grievance is that she has a minor child to take care of and, accordingly, it will be very difficult for her to commute, on regular basis, to the transferee school which is very far off from her residence.

The petitioner has made representation before the Principal Secretary, Department of School Education, Government of West Bengal and also before the Sub-Inspector of Schools, Matha Bhanga-I Circle against the order of transfer. She alleges that none of her representations have been considered by the respondent authorities till date.

Learned advocate representing the Primary School Council submits that the petitioner was transferred in accordance with the provisions of West Bengal Primary School Education (Transfer of Teacher including Head Teacher) Rules, 2002.

The Council thought it fit to transfer the petitioner for proper utilization of her service. The school where the petitioner was serving had three teachers against fifty-six pupil, i.e. one teacher was surplus and accordingly the petitioner has been transferred to a school where the strength of the teachers is three against one hundred and eighty students.

The service of the petitioner is transferable and it is for the employer to decide as to who should be transferred where.

It has been denied that the order of transfer was passed at the instance of the Joint Secretary. The communication of the Joint Secretary, School Education Department has been annexed to the affidavit-in-opposition wherefrom it appears that it is a

general order passed by the School Education Department to all the District Primary School Councils whereby the Councils have been intimated that henceforth transfer and posting order of primary school teachers shall be issued by the Chairman of the Council only after obtaining prior approval from the School Education Department. The Chairperson of the District Primary School Council should submit proposal of transfer of primary school teachers under jurisdiction to the School Education Department in proper manner for obtaining NOC of the Department and the order of transfer shall be issued after clearance from the Department.

The Chairperson of the District Primary School Council forwarded a list of the teachers to the Secretary of the School Education Department for transfer in the interest of proper utilization of their services in accordance with the aforesaid Rules of 2002.

It is only after the Department issued clearance the petitioner was transferred to the Hemkumari Bajajama Newly Set-up Primary School.

It has been pointed out that according to the Rules of 2002 there is a provision for filing appeal before the Board within a period of thirty days from the date of receipt of the transfer order if the teacher is aggrieved by the same.

I have heard the submissions made on behalf of both the parties.

The petitioner being a primary school teacher, her service is transferable. The service of the petitioner has been transferred on administrative grounds.

According to the Rules of 2002, teachers may be transferred for the purpose of proper utilization of service and in the interest of education.

In the present case, the petitioner has been transferred from the school where admittedly there are surplus teachers to a school where there was requirement of another teacher. The petitioner, if aggrieved with the order of transfer, ought to have preferred appeal before the appropriate authority. Instead of preferring appeal before the Board the petitioner has preferred appeal before the authority which does not have the jurisdiction to entertain the said appeal.

It does not appear that there is any mala fide or arbitrariness in passing the order of transfer. Accordingly, the Court is not inclined to interfere with the order of transfer.

It will be open that the petitioner to prefer appeal before the West Bengal Board of Primary Education with the grounds and documents in support of her case.

In the event, such an appeal is made, the Board shall consider the same strictly in accordance with the relevant Rules at the earliest, but positively within a period of three weeks from the date of filing the appeal.

It appears that the impugned order of transfer has already been stayed by the order of this Court passed on January 13, 2020 and the said order of stay has been extended till the disposal of the writ petition. The appeal to be preferred by the petitioner may be considered by the Board without insisting on the period of limitation for filing the same, provided the same is filed within ten days hereof. In the event, the appeal is preferred beyond the period of ten days, the Board will be at liberty to consider the same in accordance with the relevant Rules.

The writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)