

Court No. 17

23.03.2022

(SL 1)

(S. Banerjee)

In the Circuit Bench of Calcutta High Court at
Jalapaiguri

(from the Principal Bench)

WPA 687 of 2022

Ramprosad Mondal

Vs.

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya
Mr. Sanjib Das

... for the petitioner

Mr. Supriyo Chattopadhyay
Mr. Suman Dey

... for the State

Let the affidavit of service filed in court today be kept with the record.

On the basis of urgency that the schools opted by the petitioner through Utsashree portal, may be filled up due to a mistake committed by the school as to 10% rule the petitioner will suffer immensely.

The petitioner submits that he has two children, one is 4 ½ years of age and the other is 3 years of age and he being the father, cannot take care of them and on some days when he returns home from his present school he only sees them sleeping. The petitioner has also submitted that he never neglects his duties as a teacher and he also want to perform his duties as a father to the children.

The petitioner applied for transfer to schools selected through Utsashree portal but the managing committee of the school has not considered the application and sent it back on the ground that the petitioner is not coming within the 10% of the total strength of teachers. It has been pleaded categorically in paragraph 29 of the writ application that there are 31 teachers in the school, so 10% of it should be 4 teachers as the number of teachers is to be considered as a whole number. The school has given no-objection to 3 teachers so the school still can give no-objection to one teacher and the petitioner submits that his application for transfer is to be considered by the school immediately as the school is making a mistake.

I find merit in the submission of the petitioner and I find from pleadings that there are 31 teachers in the school and the petitioner comes within 10% of those 31 teachers, i.e., 4 teachers can be allowed for taking transfer.

Therefore, the school's decision as to 10% is not reasonable and in my view, on the basis of pleadings, it is a mistake of the school for not forwarding his application to the next higher authority and the same is quashed and set aside.

I direct the school to process the application of the petitioner within a period of seven days from the date of receiving of a copy of this order. As the school is not present today, I direct the school to verify the number of teachers - whether it is 31 or less than that.

It has been stated from the Bar that the real number of teachers in the school now is 33 because two more teachers have joined in the meantime.

The petitioner has also prayed for one interim order with extreme humility that he has selected three posts in three schools for his transfer namely, Maynaguri High School, Salbari High School and Sariam Jasodhar High School in the subject of Bengali and any one post may be kept vacant in any of the school otherwise if he ultimately gets a transfer and if no post is vacant in any of those schools, the transfer application will be frustrated for no fault on his part. According to him it is the school's mistake.

Therefore, I direct that any one post in any of the three schools in the subject of Bengali (Honours/P.G.) should be kept vacant for a period of two months from date and I direct the school to send the application immediately with no-objection certificate uploading it in the portal after verifying the number of teachers - whether it is 31 or more than 31 or less than 31 - to the District Inspector of Schools.

The DI of schools is directed to take steps immediately by seven days thereafter to send it to the School Service Commission. If the Commission finds that the petitioner is otherwise eligible for transfer, the Commission will recommend him for transfer to any of the posts (if all posts are vacant in any one of those posts in subject Bengali (Honours/P.G.) or in the post which would be kept vacant by order of this court).

Learned advocate for the State Mr. Chattopadhyay has raised objections in respect of the number of teachers of the school, as the school is not present, and against keeping one post vacant in any of the schools.

I have considered his submission but I find there is some reasonableness in the prayer of interim order and that is why I am passing the interim order, though in the absence of the school, but I have granted the school the opportunity to check the actual number of teachers before processing the application by the petitioner.

The petitioner has given the number of teachers in the school as 31 in paragraph 29 of the writ application. This is to be checked by the school.

A copy from the Utsashree portal showing the return of the application by the head of the Institution to the petitioner has been produced before this court which is kept on record.

The petitioner is directed to serve a copy of this order immediately upon the school, the District Inspector of Schools and the School Service Commission along with a copy of the writ application, specially to the District Inspector of Schools.

With the observations and directions above, this writ application is disposed of.

(Abhijit Gangopadhyay, J.)