

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 1533 of 2022

Bijan Kumar Sikdar

Versus

The State of West Bengal & Ors.

Mr. Debottam Das

.....For the Petitioner.

Mr. Subir Kumar Saha

Mr. Momenur Rahaman

.....For the State.

Mr. Bikramaditya Ghosh

Mr. Nilay Chakraborty

.....For the School.

Heard on : 13.09.2022

Judgment on : 16.09.2022

Krishna Rao, J.:

In the instant writ petition, the petitioner prayed for a direction upon the respondent authorities for grant of No Objection Certificate to avail the benefit of transfer through Utsashree Portal.

Initially in terms of General Transfer Rule, 2015, the petitioner had applied for transfer on special ground and the name of the petitioner was recommended but the competent authority had refused to consider the case of the petitioner for transfer. Being aggrieved with the refusal, the petitioner had preferred a writ application being *WPA No. 1287 of 2021* and the same was disposed of with the direction upon the concern authority to consider the representation of the petitioner. In compliance of the order passed by the coordinate bench of this Court, the Commissioner of School had passed an order on 20th February, 2022 directing the petitioner to pursue his prayer through Utsashree Portal in terms of the Notification dt. 8th September, 2021.

After the order passed by the competent authority, the petitioner had made several application dt. 04.01.2022, 24.01.2022 and 18.01.2022 and the request made by the petitioner through Utsashree Portal were returned from the Head of the Department with the logging reason “*MC did not permitted*”. The petitioner had again made an application on 09.03.2022 and the same is still pending.

Vide Order dt. 13th July, 2022 this Court had directed the respondent No. 9 i.e. Head Master /Teacher In-Charge of the School to file report in the form of affidavit on or before 1st August, 2022 upon serving advance copy to the Learned Advocate for the petitioner as to why No Objection Certificate has not been issued to the petitioner. In spite of the direction passed by this Court, the respondent no. 9 has not submitted report and accordingly vide order dt. 09.09.2022, this Court had directed the respondent no. 9 to be

present before this Court on 13th September, 2022. In compliance of the order dt. 09.09.2022, the respondent no. 9 had appeared in person and filed her report in the form of affidavit. Paragraphs 4, 5 and 6 of the said report reads as follows:

- “4.** *I further say that in the subsequent academic year i.e., the present academic year, the writ petitioner has departed from his earlier stand and is now seeking transfer on other grounds. It may be mentioned that in the list of seniority, there are other teachers, who are senior to that of the writ petitioner and the said senior teachers i.e. (i) Shri Snehasis Sarkar and (ii) Smt. Anindita Narjinary had also sought for transfer in their preferred school through Utsashree Portal.*
- 5.** *I further say that keeping in view the number of students of the school and the number of teachers, the required NOC in respect of the said senior teachers, who are senior than the writ petitioner has yet not been issued. Presently, 31 teachers (including the Headmistress) are serving about 1642 students and any further transfer from the said school shall seriously affect the academic schedule of the school.*
- 6.** *I further say that keeping in view the present staff pattern and the teacher-student ratio, it would not be appropriate to issue the NOC in favour of the writ petitioner. In the preceding academic year, since the teacher-student ration was satisfactory, NOC was already issued to the writ petitioner. Further since No Objection Certificate as already sought by other senior teachers and have not been granted, the case of the writ petitioner for grant of NOC could not be considered unless the number of teaching staff increases.”*

Initially the respondents have notified the Rules namely “West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 and the same were amended on 8th September, 2021.

Rule 3, 4 and 5 of the said rule is relevant in the present case which reads as follows :

“3. Primary condition of General Transfer – (1) An incumbent shall be eligible for General Transfer only if he/she is confirmed in service and completed 5 (five) years of satisfactory service in that particular school and in particular post from which he/she seeks General Transfer. Experience, if any, in the previous school and in the previous post except the experience in the post and school from which he/she is applying, shall not be considered while continuing the experience in terms of score.

(2) No application under General Transfer shall be entertained if he/she intends to get transferred to a school within a distance of 25 KMs from the present school.

(3) Where an incumbent refuses to join his/her preferred school after due recommendation by the Commission, such incumbent concerned shall not be allowed to submit application before completion of 7 years from the above refusal.

Provided that an incumbent whose name has been recommended for General Transfer before coming into force of these rules, the application of such an incumbent for General Transfer shall not be disallowed under these rules.

(4) The General Transfer under these rules shall be available once in a year and a list shall be published in the website of the Central Commission and the remaining vacancies due to non-joining after publication of the list shall not be included in the list of General Transfer afresh.

4. Grounds for transfer. – An incumbent may apply online in the designated portal for transfer on following grounds:

- (a) Any incumbent of his/her son/daughter/spouse suffering from malignant disease/ severe heart disease/ renal failure/ thalassemia, replacement of organ/serious gynecological disorder causing serious problem in attending the school;
- (b) Physically disablement of 40 % or more as certified by competent authority;
- (c) Female incumbent facing serious problem in attending the school due to divorce or death of husband;
- (d) Incumbent of age 57 years and more and willing for home district posting;
- (e) Any other reasons.

5. Eligibility for General Transfer – (1) Any Teacher or non-teaching staff qualified as per provision of rule 3 of this Rules may be eligible for transfer to a post of Teacher or non-teaching staff of

another school of same category of post and for a Teacher of same subject under same category of reservation (Honours/ Post Graduate or Pass) and Post, as the case may be.

- (2) An incumbent opting for General Transfer shall be transferred to the same category of schools having Bengali or English or Hindi or Nepali or Oriya or Santhali or Telugu or Urdu, as the medium of instruction, as the case may be.*
- (3) A male incumbent shall not be eligible for General Transfer in a female vacancy and a female incumbent can prefer male/Co-ed/female vacancy.*
- (4) No incumbent shall be eligible to apply for a General Transfer who is left with less than one year of service from the date of his/her retirement on superannuation.*
- (5) The General Transfer shall be allowed to an incumbent, against whom no Judicial or Disciplinary proceeding is pending or contemplated and, who is not under suspension.*
- (6) The school authority of a particular school shall not forward applications received from more than 10 % (rounded up to next higher digit) of total number of teachers of that school. Priority shall be given first to the teachers senior in age.”*

In the report, the respondent no. 9 had taken two grounds for non consideration of the case of the petitioner namely:

- a. Other two teachers who are senior to the petitioner have also applied for transfer:*
- b. Only 31 teachers including headmistress are serving in the school to impart 1642 students and if any further transfer is made, academic schedule will be badly affected.*

In clause 5(6) it is mentioned that *“The School authority of a particular school shall not forward application received more than 10% (rounded up to next higher digit) of a total number of teachers of that school. Priority shall be given first to the teachers senior in age.”*

The Counsel for the petitioner handed over the documents wherein it reveals that the date of birth of the petitioner is 12th August, 1977, date of birth of Shri Snehasis Sarkar is 20th November, 1978 and date of birth of Smt. Anindita Narjinary is 2nd July, 1978, thus the ground taken by the respondent no. 9 that the senior teachers who are senior to the petitioner who had also applied for no objection is pending cannot be sustained.

As regard the second ground that only 31 teachers are available for 1642 students in the said school, the said ground is also not supported with any of the Rule specified either in Rule 2015 or the amended Rule of 2021.

In view of the above, this Court is of the view that the report submitted by the respondent no. 9 cannot be accepted. The respondent no. 9 is directed to provide No Objection Certificate to the petitioner forthwith.

WPA 1533 of 2022 is allowed.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)