

83 01.03.2023
Sc Ct. no.22

WPA 1082 OF 2023

Sayani Ghosh @ Sayani Parui Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Kallol Basu
Mr. Sabyasachi Jana
Mr. Souma Subhra Ray
Ms. Priti Kar.

...For the Petitioner

Ms. Sanghamitra Nandy
Mr. Parikshit Goswami.

....For the Respondent/
State

Mr. Sourav Mitra

....For the Respondent
Nos. 6 & 7

The petitioner claimed to be an **Assistant Teacher for the subject Biology, at present teaching at Gujarpur Surendranath Vidyapith (HS) [Boys, HS], District – Howrah**. She applied for transfer on February 17, 2022, which is prior to the Utsashree Portal was suspended. The petitioner sought for a transfer to a school so that she should not have to travel beyond 25 Kilometers since she is the mother of a girl child of about five-year-old.

The transfer application of the petitioner was rejected by the relevant school authority, **Annexure – P2 at page 32 to the writ petition** on the ground that no local arrangement could be made. This was a case of **‘General Transfer’**. The petitioner had impugned the said decision of the school authority through this writ petition.

Mr. Kallol Basu, learned counsel appearing for the writ petitioner submitted that as of right the petitioner's case should have been considered so that she should not have to travel beyond 25 Kilometer from her residence as per the "**Transfer Rules**" laid down.

Ms. Sanghamitra Nandy, learned counsel appears for the respondent nos. 1 to 3.

Mr. Sourav Mitra, learned counsel appears for the respondent nos. 6 and 7.

Considering the submissions made on behalf of the parties and considering the materials on record it appeared to this Court that in the meanwhile the latest **Transfer Notification bearing No.216/SE/S/10M-09/2023 dated February 10, 2023** had intervened.

From a plain and meaningful reading of the said recent notification on transfer dated February 10, 2023, there is no doubt in the mind of this Court that, while issuing the said notification the State Executive had taken into consideration the prevailing scenario for transfer in the education field considering the proportion between the teacher and students existing in a particular educational institution. In this regard for a more finer appraisal of the recent notification on transfer the relevant provisions which are also prevailing as statutory guidelines on transfer from the **West Bengal School Service Commission (General Transfer, Transfer on**

Special Grounds and Reallocation) Rules, 2015 (for

short, the said 2015 Rules) are quoted below:-

“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 counting 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 for three subsequent terms of General Transfer including intra-regional and inter-regional transfer:*

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 the General Transfer under these rules for the next year and such vacancies may be considered for the purpose of General Transfer afresh.*

4. General Transfer on Special ground

(1) *An incumbent belonging to the following categories may apply for transfer on any of the special grounds, namely:-*

(a) Any teacher or non-teaching staff or his/her son/daughter or spouse suffering from malignant diseases, heart diseases, renal failure, thalassemia, replacement of organ, serious gynecological disorder or physically disablement of 40% or more or to assist in proper treatment of self or his/her son/daughter or spouse;

(b) Any women teacher or non-teaching staff whose husband died prematurely or divorced or is a victim of crime;

(c) Teachers or non-teaching staff serving in Aided/Sponsored schools where the serving places of the spouses are away beyond 50KMs;

In respect of special ground mentioned in clause (a) of sub-rule (1), the State Government may cause medical enquiry for satisfaction on urgency of transfer of a teacher.

(3) In respect of special ground Victim of crime mentioned in clause (b) of sub-rule (1), the application may be considered, where FIR has been lodged and case has been instituted.

(4) In respect of special ground mentioned in clause (c) of sub-rule (1), 10% of the applications on this special grounds shall be considered by the West Bengal School Service Commission for recommendation in a year on receiving applications after publication of notice of General Transfer and only one member of the spouse may apply for general transfer under this special ground and priority shall be given to the senior most applicant serving maximum period in the present place of posting at a maximum distance to the proposed place of posting in comparison to others.

(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 two years 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 for 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”.

On a harmonious and abreast reading of the said provisions from the said 2015 Rules and the recent notification on transfer, this Court is of the opinion that there is no conflict between the said two, neither there is any intersect or overlay between the two. Further, a harmonious reading of the said provisions under 2015 Rules and the recent notification on transfer, would depict that considering the prevailing situation in the education system a balance was sought to be maintained between the strength of the students and the teachers in a school. The 2015 Rules was also not dehorse to such principle.

Inasmuch as, when a teacher has joined in his/her employment as a teaching employee, it had specifically undertaken to be transferred as per the decision of its

employer and to cause such transfer, the guidelines were framed in 2015 Rules. The said new notification on transfer had not altered the provisions under the said 2015 Rules. This Court is also not unmindful that at the time of framing of such Transfer Rules, the prevailing conditions are also taken into account, which changes from time to time. The said recent notification on transfer was issued, similarly after considering the present scenario in the education system. The State Executive who are the experts in the field had applied their mind on the prevailing situation on transfer and then issued the said recent notification on transfer.

To seek a transfer by a teacher is not a matter of right either under the relevant Rules under the said 2015 Rules or the said recent notification on transfer. It shall be evident that, the interest of both the teachers and students were considered. A balance was also required to be maintained between the said classes. With an inadequate number of teacher strength, a school cannot perform its job to protect the interest of the students by imparting education, where the strength of the students is large. In such a situation, definitely the interest of the students are required to be protected as the paramount consideration.

In the fact of this case, as recorded above, the transfer of the petitioner was rejected by the relevant

school authority on the plea that ***local arrangement could not be made.***

This Court is also of the firm opinion that, though the learned counsel for the petitioner had argued that the application for transfer submitted by the petitioner should have been and should be considered in the light of the prevailing Transfer Rules, that is, the said 2015 Rules ***only*** which was in vogue as on the date of submission of transfer application by the petitioner and the learned counsel for the petitioner submitted that the said recent notification of transfer dated February 10, 2023 cannot and would not have a retrospective effect but this Court shall not be unmindful as to the practical scenario prevailing on the education transfer system, considering which the said recent notification on transfer dated February 10, 2023 had intervened. This Court hereinabove has already observed that recent Transfer Rule dated February 10, 2023 does not have any conflict with the relevant provisions under the said 2015 Rules.

In view of the above, to subserve justice, the respondent no.3 is directed to consider the case of the petitioner ***in the light of the prevailing rules and regulations relating to transfer, and also after taking into consideration the recent notification of transfer dated February 10, 2023 as referred to above*** and then shall pass its reasoned order on the issue. The respondent no.3 shall give at least a seven

days' prior hearing notice to the petitioner and the respondent nos. 4 and 5 and then after giving them an opportunity of hearing shall pass the reasoned order in accordance with law.

The entire exercise as directed above, shall be carried out and completed by the respondent no.3 strictly within a period of six weeks from the date of communication of this order and the respondent no.3 shall then communicate its reasoned order to the petitioner and the relevant school authority within a further period of two weeks from the date of the reasoned order to be passed.

In the event the reasoned order goes in favour of the petitioner, the respondent no.3 shall take all necessary and consequential steps to give effect to the reasoned order and all other appropriate State authority must act accordingly in accordance with law to give effect to the said reasoned order.

It is made clear that this Court has not gone into the merits of the claim of the petitioner or the contention raised on behalf of the respondents in any manner and the parties shall be at liberty to urge whatever points they wish to urge by relying upon whatever records and documents they wish to rely upon before the respondent no.3.

It is further made clear that this order shall not create any equity or right in favour of the petitioner in the

event the petitioner is not eligible to receive her claim for transfer in view of the prevailing rules and regulations including the said recent notification of transfer dated February 10, 2023, strictly in accordance with law.

It is made clear that since the petitioner applied for transfer on February 17, 2022 much prior to September 29, 2022 when the Utsashree Portal was suspended, the case of the petitioner shall not be governed under such suspension.

The decision of the head of the institution rejecting the prayer for transfer of the petitioner dated September 15, 2022 stands **set aside and quashed and the issue shall be revisited in the manner and mode as directed above.**

Since affidavits are not called for, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

On the above terms the writ petition, **WPA 1082 of 2023** stands disposed of, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)