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WPA 2488 of 2023

Paramita Chakraborty

Vs.

The State of West Bengal & Ors.

Mr. Anjan Bhattacharya

Ms. Anita Shaw

... For the petitioner.

Mr. Himadri Sikhar Chakraborty

Mrs. Susnita Saha

... For the State/respondent nos.1-3.

Affidavit-of-service filed in Court today, is taken on record.

The petitioner claimed to be an Assistant Teacher for the subjects of Science Group presently working at **Sri Ramakrishna Sarada Peeth Girls' High School (H.S), District – Jhargram**. She applied for general transfer and the same was not accepted by the Utsashree Portal.

The petitioner moved this Court in the first round of writ litigation, being WPA 18140 of 2022 (for short the previous writ petition). By a Co-ordinate bench the previous writ petition was disposed of by an order dated August 30, 2022 with the following observation: -

“The matter relating to other teachers of the same institution at Belur Math, came up for consideration before a Co-

ordinate bench of the Court in WPA 1240 of 2022 (Nibedita Sinha Sarkar vs. The State of W.B. & Ors.) in order dated January 25, 2022. The Principal Secretary, School Education Department, Government of West Bengal, had permitted the petitioner therein to apply afresh for general transfer on special ground under the Transfer Rules, 2015, which was allowed by a recommendation dated June 1, 2022, issued by the West Bengal School Service Commission.

In that view of the matter, the writ petitioner shall be entitled to apply for general transfer on special ground under the Rules of 2015. Upon receipt of the application, the office of the Principal Secretary, the Head of the Institution, D.I. of Schools and the CSSC, shall act strictly in terms of the said Rules, 2015, and consider the petitioner's application for general transfer in terms thereof.

With the aforesaid observations, the writ petition shall stand disposed."

Pursuant to the direction of the previous Co-ordinate bench, the respondent no. 5 issued a communication dated

October 29, 2022 annexure 'P-2' to the writ petition. The observation of the respondent no. 5 is quoted below: -

“You are aware that online transfer through Utsashree portal has been suspended temporarily vide Notification No. 1293-SE/S/IS-04/95(Pt III) dt 29.09.2022. A good number of petitions of transfer of Assistant Teachers, arising out of various court cases are lying pending before the Commission, after suspension of portal.

In this situation, I am directed to request you to give your opinion over issuance of recommendation letter in favour of the candidate, in cases as stated above.”

The writ petitioner in this second round, claimed the following reliefs in the instant writ petition: -

“a) A writ of and/or in the nature of Mandamus do issue –

i) By directing the Commissioner, School Education Department to consider the case of the petitioner for transfer from the respondent school to any other school of her choice, near to her residence;

b) Writ of or in the nature of certiorari calling upon the respondents to certify and produce relevant documents of the instant case to this Hon’ble Court for rendering justice;

c) Rule NISI be issued in terms of prayers above;

d) Costs of and incidental to this application be paid by the respondents;

e) Such further or other order or orders be made and/or direction or directions be given as to this Hon'ble Court may deem fit and proper."

Mr. Anjan Bhattacharya, learned advocate appearing for the petitioner submitted that the suspension of Utsashree portal shall not affect the petitioner's right seeking transfer as the petitioner had applied for transfer much prior to the time when the Utsashree portal was suspended on September 29, 2022. The Co-ordinate bench also passed its order even prior in point of time on August 30, 2022 when the Utsashree portal was in vogue.

Mr. Bhattacharya submitted that the petitioner's application for transfer should have been considered and should be considered on the basis of the prevailing rules and regulations provided under the **General Transfer Rule, 2015**, which was in operation at the time when the application for transfer was made and the same is still in operation.

In course of the argument, this Court had referred to the recent **Notification bearing No. 216/SE/S/10M/09/2023 dated February 10, 2023** issued by the Principal Secretary, School Education Department (in short, the recent Notification on transfer) and raised a specific query to Mr. Bhattacharya, learned advocate for the petitioner, as to the applicability of the said recent Notification on

transfer in the fact and situation of this case. He submitted that the recent Notification on transfer cannot be construed to have a retrospective effect. The petitioner's case should have been considered and should be considered in view of the prevailing law and the guidelines for transfer which was prevailing as on date the application for transfer made by the petitioner. The petitioner should be governed by the provisions laid down under **General Transfer Rules, 2015**. The said General Transfer Rules, 2015 is still in vogue and has not been given go by under the recent Notification on transfer dated February 10, 2023.

Mr. Bhattacharya further submitted that, the subject school in this writ petition is an autonomous school. It does not require permission for appointment for its own teachers and it can appoint its own teacher on its own decision.

Mr. Himadri Sikhar Chakraborty, learned advocate appeared for the State/respondent nos. 1 to 3 submitted that, the relevant school authority has already reported before the jurisdictional District Inspector of School that **in the event the petitioner is allowed to be transferred considering the prevailing strength of the students, there shall be dearth of teachers and students' interest will tremendously suffer because of the inadequate number of teachers in the school**. He submitted that, the **pupil teacher**

ratio will be totally disturbed in the event the said transfer is allowed.

Regarding the recent Notification on transfer, learned State counsel, however, supported the application of the recent Notification on transfer dated February 10, 2023 in the fact of this case. He submitted that in the changed scenario unless the **pupil teacher ratio** is maintained, there shall be dearth of teachers, which shall prejudicially affect the interest of the students and as such, the interest of the students at large will suffer.

After considering the rival contentions raised by the learned advocates for the petitioner and the State/respondent nos.1-3 and after considering the materials on record, this Court first proceeds to consider the issue raised at **page 18** to the writ petition, as to whether the suspension of Utsashree portal would affect the transfer application submitted by the petitioner. **The Utsashree portal was suspended by an Executive decision of the State by way of Notification dated September 29, 2022.** Such suspension was extended from time to time by Notifications and ultimately **remained suspended till June 30, 2023.** The materials available on record clearly show that the Co-ordinate bench passed its order in the previous writ petition on August 30, 2022 to consider the case of the petitioner for transfer which

was admittedly prior to the suspension of the Utsashree portal dated September 29, 2022. It further makes evident that the application of the petitioner was made even prior to the said Co-ordinate bench's order, which was much prior to the date of suspension of Utsashree portal. The application was kept pending by the State Executive, for which the petitioner had no laches and shall not suffer. The petitioner's right to claim transfer, thus, on the ground of suspension of Utsashree portal shall not be affected at all in the facts of this case. The petitioner's application can be considered by the respondent no. 2.

Now, the question comes as to the **applicability of the recent Notification on transfer dated February 10, 2023.**

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 an 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;

(2) 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 *de hors* 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, from the submissions made on behalf of the State it was clear to this Court that, the relevant School Authority had already reported before the respondent no.2 that in the event the petitioner is allowed to be transferred, the strength of teacher considering the number of prevailing student at the relevant school will become inadequate.

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 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.

The submissions made on behalf of the State was also that the relevant school authority had already reported before the respondent no. 2 that in the event the petitioner is allowed to be transferred, the strength of teacher considering the number of prevailing students in the school will become inadequate.

In view of the above, the decision of the respondent no. 5 dated October 29, 2022 annexure 'P-2' at page 18 to the writ petition stands set aside and quashed and the case of the petitioner is permitted to be considered by the Commissioner, respondent no. 2 on its own merit.

To sub-serve justice, the respondent no. 2 is directed upon issuing, at least seven days' notice upon the petitioner, the school authority and the respondent no.10 to consider the case of the petitioner for transfer after giving them an opportunity of hearing in the light of the prevailing rules and regulations relating to transfer and **after taking into consideration the recent Notification on transfer dated February 10, 2023 as referred to above** and then shall pass its reasoned order on the issue.

The entire exercise, as directed above, shall be carried out and completed by the respondent no. 2 positively within a period of six weeks from the date of communication of the order and the respondent no. 2 shall communicate its reasoned decision/order to the petitioner and the respondent no. 10 and also the respondent no. 3 within a further period of two weeks from the date of the said reasoned order to be passed.

It is made clear that this Court has not gone into the merit of the claim of the petitioner and the case of the respondent no. 10 in any manner. The petitioner and the respondent no. 10 shall be at liberty to urge whatever points they wish to urge by relying upon whatever documents and records before the respondent no. 2.

Needless to mention that the respondent no.2 shall decide the case of the petitioner by applying its

independent mind and in accordance with law in the manner as directed above.

It is made clear that this order shall not create any equity or right in favour of the petitioner in the event she is not eligible to receive her claim for transfer in view of prevailing rules and regulations including the said recent Notification on transfer dated February 10, 2023, strictly in accordance with law.

In the event the reasoned decision goes in favour of the petitioner then the respondent no. 2 shall communicate the reasoned order to respondent no. 5, who shall take necessary and consequential steps to give effect to the said reasoned order forthwith and positively within a further period of four weeks after being communicated with the reasoned order.

On the above terms, this writ petition **WPA 2488 of 2023** stands disposed of, without any order as to costs.

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

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Aniruddha Roy, J.)

