

Item No.2
22.03.2023
Court. No. 19
GB

WPA 3120 of 2023

Ashim Tarafdar & Ors.
Vs
The State of West Bengal & Ors.

Mr. Pankaj Halder,
Mr. Subhendu Bhattacharjee

...for the Petitioner.

Mr. Manoj Malhotra,
Mr. Suman Dey

...for the State.

Md. Sarwar Jahan,
Ms. Mausumi Mitra,
Mr. Maidul Islam Kayal

...for the Respondent No.7.

The petitioners are the victims of an internal conflict in the policy of the Panchayats and Rural Development Department, Government of West Bengal and the School Education Department. The conflict is with regard to transfer of administrative control of Shishu Shiksha Kendras (SSKs) and Madhyamik Shiksha Kendras (MSKs) which were set up under the Paschimbanga Rajya Shishu Shiksha Mission, from the Panchayats and Rural Development Department to the School Education Department.

Thirty persons including the petitioners sought for inter-district transfer, while they were serving as Samity Education Officers. Such applications were made on the strength of the notification of the Department of Panchayats and Rural Development, Government of West Bengal dated March 2, 2012, which permitted inter-district transfer of employees of panchayat samitis and gram panchayats. The engagement as Samity Education Officers were done by the

panchayat samitis and subsequently their services were utilized to look after the affairs of SSKs and MSKs. Their applications were not processed due to the indecision of the departments.

A report had been called for from the Commissioner as it appeared to the Court that both the Panchayat Department and the School Education Department had disowned the Samity Education Officers. As a result of such unwillingness of both the departments to assume administrative control over these officers, their prayers seeking transfer, which is an incidence of service, have been kept in a state of limbo.

The Commissioner, Panchayats and Rural Development Department, has filed a detailed report in Court, which categorically states that the administrative control of the Samity Education Officers of panchayat samitis were transferred to the School Education Department vide an order issued under Memo No.4015 dated November 27, 2020 by the Panchayats and Rural Development Department. The Directorate did not have any jurisdiction to approve inter-district transfers of Samity Education Officers after the notification no.4015 dated November 27, 2020 had been published. The notification reads as follows:-

“Whereas the Shishu Siksha Kendras (SSKs) & Madhyamik Siksha Kendras (MSKs) are being run by the Paschim Banga Rajya Shishu Shiksha Mission (PBRSSM) under the Panchayats & Rural Development Department (P&RD Deptt).

Whereas the Government of the West Bengal has accorded approval for transferring the administrative control of SSKs and MSKs

to the School Education Department, Government of West Bengal.

It is hereby informed that the Administrative Control of Shishu Siksha Kendras (SSKs) & Madhyamik Siksha Kendras (MSKs), the entire administrative set up & human resources of Paschim Banga Rajya Shishu Shiksha Mission will be transferred from the Panchayats & Rural Development Department, Government of West Bengal to the School Education Department, Government of West Bengal with effect from 01.12.2020.”

With regard to the transfer of one such Samity Education Officer, the Commissioner has specifically stated that the prayer for transfer had been initiated prior to the notification dated November 27, 2020 and hence, vetting had been given. The Principal Secretary, School Education Department, Government of West Bengal by a letter dated December 22, 2022 informed the Secretary to the Government of West Bengal, Department of Panchayats and Rural Development that the issue of administrative control and management over the Samity Education Officers should be once again assessed and revisited as it was only logical that the management of SSKs and MSKs and financial support to the employees of such Kendras should be borne by the Panchayats and Rural Development Department.

Such decision of the Principal Secretary, School Education Department is based on an observation that two permanent posts under Panchayats and Rural Development Department which were created solely for looking after the SSKs and MSKs programmes were still under the Panchayats and Rural Development Department and their salaries were

being paid by the said department. The School Education Department also expressed that major issues had cropped up which were posing administrative imbalance while running the programmes by the said department. Hence, the decision was taken to retransfer the entire administrative control of the SSKs and MSKs to the panchayat department.

In the midst of such serious policy making endeavour, the petitioners have been made the scapegoats. It is an unfortunate situation that the authorities have shirked their responsibilities. When the petitioners were appointed and were working under the panchayat department they were entitled to seek transfer in terms of memo of the Panchayats and Rural Development Department. They were admittedly at one point of time under the control of the Panchayats and Rural Development Department and similar transfers had been allowed. Their pay comes from the said department. It is also a matter of record that the School Education Department has not officially accepted the administrative control over such persons.

Hence, the Court is of the view that the Chief Secretary to the government of West Bengal must look into the matter and take necessary decisions with regard to a simple prayer for transfer made by these persons on various grounds. The eligibility to seek transfer will be assessed individually on the basis of the grounds and the documents that each candidate can place. However, shrugging off the responsibility to take a decision, is not acceptable. It is also on record that two persons had been transferred even after

the memo dated November 27, 2020 had been published. When such prayer seeking transfer had been filed or initiated, is not on record. It is the contention of the petitioners that prior to the initiation of transfer of Smt. Shatabdi Barman, the petitioners had asked for their transfer. The applications of the petitioners are dated 2017 onwards.

Hence, the Court does not find any reason as to why a differential treatment shall be made in case of the petitioners at least in the matter of consideration of their applications for transfer.

The Chief Secretary to the Government of West Bengal is directed to nominate an officer to decide the applications for transfer on their own merits and the inter-departmental conflict shall not be a ground for not entertaining the applications for transfer. The authority shall be nominated by the Chief Secretary to deal with the matter within a period of two weeks from date of communication of this order. Such authority will take up the individual cases of the petitioners herein and issue necessary orders keeping in mind the case of Smt. Shatabdi Barman. The nominee of the Chief Secretary shall intimate the results of the applications of the petitioners for transfer to each of the petitioners within a period of two months thereafter.

It is a matter of record that all the documents which were filed by the petitioners seeking transfer, had already been considered. A list had been prepared by the Mission Director, Paschimbanga Rajya Shishu Shiksha Mission and

forwarded to the Commissioner of Panchayats and Rural Development Department.

This order is being passed upon the Chief Secretary and is restricted only for the purpose of a decision with regard to the transfer of the petitioners in the interim period, until the Departments of Panchayats and Rural Development and School Education Department resolve the issue with regard to the administrative control over the SSKs and MSKs.

The nomination of an officer by the Chief Secretary, Government of West Bengal to decide the transfer applications, shall not be construed as a recognition by the Government of West Bengal or a decision of the Government of West Bengal that the department to which such nominee belongs, would be the controlling department of the SSKs and MSKs.

Accordingly the writ petition is disposed of.

However there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)