

Item-149.	03-08-2023	MAT 573 of 2023 CAN 1 of 2023
sg	Ct. 8	Sonali Biswas Versus The State of West Bengal & Ors.

Mr. Subir Sanyal, Adv.
Mr. Tanmoy Chattapadhyay, Adv.
...for the appellant
Mr. Saktipada Jana, Adv.
Mr. Subhajyoti Dhar, Adv.
...for the School
Mr. Sourav Mitra, Adv.
...for the CCSC
Mr. Avishek Prasad, Adv.
...for the State

1. The appeal is arising of an order dated February 27, 2023 passed in a writ petition.
2. The appellant is an Assistant Teacher in Sanskrit (Pass) of Dharmada K.K. High School (H.S.), since her confirmation of service on and from 7th March, 2014. Initially she filed an application to the Education Department for transfer in 2016 to a school nearby to her resident due to serious disablement of her child. The said prayer was rejected. Thereafter, she applied on 25th August, 2021 through Ushasree Portal seeking transfer in an identical manner. The said prayer was rejected by the respondent no.4 on September 8, 2021 on the ground of single teacher. This decision of the D.I. is under challenge.
3. We have heard the learned Counsel for the appellant, School, Commission and the State.
4. Mr. Saktipada Jana, learned Counsel appearing on behalf of the School authorities has submitted that having regard to the pupil-teacher ratio, it would not be in the interest of the

school to allow such transfer.

5. The learned Counsel for the Commission has submitted that this is a requirement of rationalization of teachers and it is very difficult to find on the subject teacher in the rural areas.
6. The learned Counsel for the State submits that a rational view is required to be taken with regard to transfer.
7. However, it is not disputed that the application for her transfer was required to be considered under the transfer Rule 2015 and admittedly, on the date when she filed an application, there was no amendment to the Transfer Rules. However, the decision that was taken by the D.I. was on a complete misreading of the Transfer Rule of 2015. If the teacher is able to establish that she qualifies for a transfer, the un-amended Rule provides for a procedure to be followed to fill up vacancies. The D.I. seems to have been provided on the basis of the amended Rule introduced on 8th September, 2021.
8. In view thereof, we set aside the order passed by the D.I. and direct the Commissioner of the School Education to decide the application for transfer in terms of Transfer Rules of 2015 within a period of four weeks from the date of commination of this order by either of the parties.
9. It is needless to mention that in the event the Commissioner decides that the petitioner is eligible for transfer, the School Authority should be directed to take immediate steps for filling up the said vacancy that would result from such transfer upon declaration of vacancy by the D.I.
10. We make it clear that in the event the appellant is qualified

for transfer, the entire process to fill up vacancy should be completed by December, 2023 and till such time, the appellant shall discharge her duty as a teacher of the said institution.

11. With the above directions, the appeal and the application are, accordingly, disposed of. However, there shall be no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)