

Court No. 22

28.6.2023

(Item No. 8)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 5945 of 2016

Salma Ghyas

VS

The State of West Bengal & Ors.

Mr. Shamim Ul Bari

Ms. Keya Sutradhar

... for the petitioner

Mr. Shankar Ranjan Sen

... for respondent No. 13 & 14

This is an assigned hearing matter of 2016 upon affidavits.

Mr. Samim ul Bari, learned counsel appeared for the petitioner.

Mr. Shankar Ranjan Sen, learned counsel appeared for respondent Nos. 13 and 14.

None appeared for the rest of the respondents.

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

The petitioner at present is an **Assistant Teacher** at **Kolia Amir Ali High School (H.S.), District – Howrah**. The claim for transfer from this school to another is a long standing claim of the petitioner.

In the previous round of writ litigation **W.P. No. 18999 (W) of 2015**, a co-ordinate bench by its order dated **August 21, 2015** at **page 85** to the writ petition disposed of the previous writ petition with a

direction upon the relevant authority to decide and dispose of the claim of the petitioner by passing a reasoned order.

Pursuant to the said direction made by the co-ordinate bench as stated above, the concerned Principal Secretary by its order dated **February 29, 2016, Annexure P-22** at **page 96** to the writ petition rejected the claim of the petitioner.

The relevant observation from the said impugned order dated **February 29, 2016** is quoted below:-

“And whereas, the Administrator of the Kolia Amir Ali High School (H.S.), Howrah has furnished a report to this Department dated 24.09.2015 with copy to the DIS(SE), Howrah, wherein, it has been stated that Salma Ghayas got her divorce on 16.01.2013 i.e. prior to joining Kolia Amir Ali High School (H.S.), Howrah and she had chosen the school at the counseling (date of joining in the Kolia Amir Ali High School (H.S.), Howrah was 24.12.2013 i.e. 11 month after divorce) after due application of her mind. As such in the instant case she cannot take her plea of divorce to claim transfer on Special Ground.

Thus, this Department has considered all the aspect of her prayer for transfer on Special Ground and hereby regrets the said prayer for the aforesaid reason.”

The first paragraph of the said impugned order began with the reference of the provisions laid down under **Sub-rule 1(b) to Rule 4 (for short, the**

relevant Rule) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (for short, 2015 Rules).

Mr. Samim Ul Bari, learned counsel for the petitioner referring to the said relevant Rule from the said 2015 Rule submitted that, ***any woman teacher or non-teaching staff whose husband died prematurely or divorced or is a victim of crime*** can seek for a transfer in terms of the Rule. He submitted that, the relevant Rule did not impose any restriction upon any woman teacher, as the petitioner in the instant case, any time frame within which such a teacher had to seek transfer. He further submitted that, there is no restriction also as to the number of times such a teacher could seek transfer on the ground of divorce.

On facts Mr. Bari submitted that, initially petitioner was appointed at one **Ultadanga United Girls' High School, Kolkata in the year 2011** as a **Pass Graduate Teacher**. Thereafter she appeared in a subsequent selection process as an aspiring Post Graduate Teacher after acquiring her higher academic qualification of Post Graduation. After being selected she was appointed on **December 24, 2013** at the present school. Thus the petitioner had applied for the first time seeking a transfer from the present

school on the ground of “**divorce**” and the impugned order was passed rejecting her claim. He submitted that, in view of the strict construction of the said relevant Rule of the said 2015 Rules, she is eligible and entitled to get such transfer on the ground of divorce.

Mr. Shankar Ranjan Sen, learned advocate appearing for respondent Nos. 13 and 14 referring to the relevant Rule from the said 2015 Rules submitted that, the Rule contemplated a situation where a woman teacher gets divorced during the continuation of her employment and to take such contingency into account the Rule was provided for. He submitted that, admittedly the petitioner joined in the present school on **December 24, 2013** and the divorce of the petitioner took place on **January 16, 2013**, which was much prior to the date of joining of the petitioner at the present school. He then submitted that, after being divorced the petitioner received the said appointment without any objection and as such the operation of the provisions of the said relevant Rule would not apply in the facts and circumstances of this case.

In reply, Mr. Bari submitted that, the relevant Rule came into effect in 2015. When the divorce took place the petitioner was in her employment in the erstwhile school and subsequently after qualifying

another selection process she had joined into the present school. Mr. Bari submitted that, on the date of divorce the said 2015 Rule being not there, there is no question of applying the said Rule as on that date.

After considering the submissions made on behalf of the parties and after considering the materials on record this Court scrutinized the said impugned order dated **February 29, 2016, Annexure P-22** at **page 96** to the writ petition keeping in mind the settled principle of law that, this Court in exercise of its judicial review power over the impugned order has a limited jurisdiction only to look into the decision making process of the hearing authority who passed the impugned order and whether any glaring perversity appears from such impugned order.

On perusal of the said relevant Rules from the 2015 Rules this Court is of the view that, though there was no restriction imposed as to the time of occurrence of divorce in the Rule but in the facts of this case it is an admitted fact that, the incident of divorce of the petitioner had happened much prior to the date of joining of the petitioner at the present school as narrated above. The petitioner while joining the present school did not raise any such plea for placement at a suitable school on the ground of divorce, even if, no such provision being there in law at that juncture. The petitioner had accepted the

appointment at the present school much after her divorce took place and consciously agreed to serve the school as a divorced woman teacher. The petitioner subsequently cannot avail of the ground for divorce as a reason for her seeking transfer.

On a plain reading of the said **Sub-Rule 1(b) to Rule 4** from the said **2015 Rules** in the light of the entire scheme of the **2015 Rules** and the object thereof, it appeared to this Court that, if a **literal interpretation** is given thereto, the end result would be not in conformity to achieve the object of the **2015 Rules**. In the facts of the instant case, the petitioner was divorced much prior to her joining in the employment under the said second selection process at the present school. If the sole reason for seeking transfer, as in the instant case, “**divorce**” only, then such divorce ought to have taken place during the employment tenure of the petitioner in her second employment, when due to divorce the petitioner would have been compelled to shift her place of residence or for any other consequential reason which would give arise to a situation inconvenient for the petitioner to attend the present school. Such change of situation due to her divorce during her employment might compel a woman teacher to seek for transfer as it might be inconvenient for her to attend the present school, then only claim for transfer by a divorced

woman teacher would be in sync with the object of the transfer Rules and, therefore, a **purposive interpretation** of **Sub-Rule 1(b) to Rule 4 of the said 2015 Rules** should be given while considering the case for transfer on the ground of divorce, as in the facts of the instant case. Else, the object of the said relevant rule and the application thereof would become meaningless and contrary to the scheme of the said **2015 Rules**, which could not have been the intention of the rule framers.

From the reliefs claimed in the said writ petition more specifically from prayer (a) and (b), thereto it would evident that, the petitioner claimed setting aside and quashing of the said impugned order dated February 29, 2016 and not beyond that.

In the light of the reliefs claimed by the petitioner in the instant writ petition the impugned order needs to be assessed and not beyond that. In view of the foregoing discussions and reasons, this Court is of the considered view that, the impugned order is well versed with sufficient reasons and was passed on consideration of all the relevant materials before it and also in correct application and proper understanding of the relevant rule. There was **no infirmity** in the decision making process of the hearing authority. There was **no infirmity** in the said

impugned order dated **February 29, 2016, Annexure P-22** at **page 96** to the writ petition.

In view of the above, the **impugned order dated February 29, 2016 stands affirmed.**

Resultantly, this writ petition being **W.P.A. 5945 of 2016** stands dismissed.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)