

Court No.22

18.4.2023

(Item No. 31)

(AB)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A. 9247 of 2023

Naznin Sultana

VS

The State of West Bengal & Ors.

Mr. Syed Nurul Arefin

Ms. Saswati Chatterjee

Mr. Rahul Singh

Ms. Rashmi Binayak

.... For the petitioners

Mr. Gouranga Kumar Das

Ms. Iris Rahaman

.... For respondent No. 9

Ms. Chaitali Bhattacharya

Mr. Kartik Chandra Kapas

... for the State

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

The writ petitioner at present is working as an **Assistant Teacher** at **Sagar Moinuddin High Madrasah (H.S.), District – South 24-Parganas.**

The petitioner applied for General Transfer giving her respective preference in terms of the instruction for **General Transfer 2023 dated March 22, 2023** issued by the respondent No. 4, **Annexure P-11** at **pages 57 to 59** to the writ petition. The conditions for transfer, *inter alia*, provided that the portal for General Transfer 2023 would open from **March 28, 2023, 6.00 P.M. onwards** and the last date of submission of online application for General Transfer was fixed as **April 18, 2023, i.e.,** till today.

Referring to the process of **filling up online General Transfer application form and step II there under**, Mr. Arefin, learned counsel for the petitioners submitted that, there was a requirement of a signature to be put by the Secretary/Administrator/Headmaster/Super/Teacher-in-charge of the concerned Madrasah with official seal and only thereafter the application can be uploaded and processed further. The petitioner contended that the relevant Madrasah authority had not complied with this provision to enable the petitioner to proceed with her transfer proceeding through online mode. The petitioner also submitted representation dated **April 4, 2023** before the relevant Madrasah authority, **Annexure P-13** at **pages 61 and 62** to the writ petition.

Mr. Arefin, learned counsel for the petitioner further referred to **West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of persons for Appointment and Transfer to the Posts of Teacher and non-teaching staff) Rules, 2010 (for short, the said 2010 Rules)** and submitted that there was no provision whatsoever reserving any right for the relevant Madrasah not to accord its approval or consent or not to comply with the performance on its part as directed under the said instruction for applying for General Transfer 2023 on any ground, including the ground for dearth of

teachers. It is the obligation of the Madrasah to act in terms of and comply with its obligation in terms of the instruction for General Transfer 2023 to enable the petitioner to apply for General Transfer through online mode and for consideration of the petitioner case by the relevant State authorities. Learned counsel for the petitioner further submitted that, there is no provision whatsoever reserving any right for the relevant Madrasah to hold its performance as mentioned in the said transfer condition for any reason whatsoever.

Mr. Arefin, learned counsel submitted that, arising out of the 2021 General Transfer notification at **page 22** to the writ petition the petitioner was restrained from applying therein and filed a writ petition before this Court being **WPA 1145 of 2022**. The said writ petition was dismissed by an order dated **August 25, 2022**. Being aggrieved thereby, the petitioner carried out an appeal being **MAT 1830 of 2022** which is pending. **The petitioner undertakes before this Court, not to press the said appeal any further and had agreed to withdraw the same. Upon submission of an order of withdrawal of the said appeal before the respondent No. 5, he shall proceed on the application of the petitioner for transfer.**

Mr. Gouranga Kumar Das, learned counsel appearing for respondent No. 9 submitted that, **there are total 300 number of students at the Madrasah**

and the petitioner is a Teacher for History (Post Graduate). He submitted that, at present there are five Teachers total in number. Out of which 2 had applied for transfer. Mr. Gouranga Kumar Das contended that because of this reason the Madrasah authority could not perform its obligation for allowing the petitioner's transfer. On transfer of the petitioner, the Madrasah will be dearth of teachers and ultimately the interest of the students shall suffer irreparably.

Ms. Chaitali Bhattacharya, learned State counsel appeared for respondent Nos. 1, 6 and 7. She submitted that other than the said 2010 Rules there are no other Rules and Regulations prevails upon the issue of transfer in case of a Teacher of Madrasah.

After considering the submissions made on behalf of the appearing parties and after considering the materials on record and on a meaningful reading of the said 2010 Rules, it appeared to this Court that, there is no provision contemplated or embodied in the said 2010 Rules which could take care of the situation, where in the event of transfer there shall be a severe dearth of Teachers and the interest of the students shall suffer and shall be prejudiced. There is no such checks and balance in the said 2010 Rules.

However, coming to the context of the instant writ petition, this Court is also of the view that, if the petitioner is otherwise found eligible for General

Transfer strictly in accordance with law, she cannot be forced to serve her present Madrasah because of the dearth of Teachers in the relevant subject.

For those reasons the respondent No. 9 shall take steps and issue the relevant “No Objection” in terms of the stipulations mentioned in the instruction for applying for General Transfer 2023, **Annexure P-11** at **pages 57 to 59** to the writ petition to enable the petitioner to uphold her online application in terms of the format mentioned in **Annexure P-12** at **page 60** to the writ petition.

The concerned Madrasah shall apply before the respondent No. 5, for filling up the vacancy for the post of the petitioner in her respective subject at the said Madrasah forthwith in accordance with law and the respondent No. 5 shall take all further and consequential steps upon receiving such application from the relevant Madrasah positively with utmost expedition.

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

Since Mr. Gouranga Kumar Das, learned counsel had represented the respondent No. 9 and considering the time constraint mentioned above, he shall instruct his client to do the needful even without waiting for the server copy of this order.

After considering the writ petition, it appeared to this Court that, this Court being a Constitutional Court must also convey its view to the appropriate policy framers to look into the matter so that a **proper transfer policy** can be adopted by way to maintaining a checks and balance, so that the interest of the students in the Madrasah shall not suffer for dearth of Teachers.

Ms. Chaitali Bhattacharya, learned counsel representing the State in this matter is requested to bring the issue to the wisdom of the learned Advocate General of the State.

On the above terms, this writ petition being **WPA 9247 of 2023** stands disposed of.

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.)