

Court No.22

18.4.2023

(Item No. 30)

(AB)

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

W.P.A. 9246 of 2023

Zillar Rahaman & Anr.

VS

The State of West Bengal & Ors.

Mr. Syed Nurul Arefin
Ms. Saswati Chatterjee
Mr. Rahul Singh
Ms. Reshmi Binayak

.... For the petitioners

Md. Sarwar Jahan
Mr. Sk. Nayeemul Haque

.... For respondent No. 4

Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar

For Madrasah Service Commission

Mr. Sudipto Panda
Ms. Munmun Tewary

... for the State

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

This writ petition has been filed at the instance of two individual writ petitioners and the Ad Valorem Court fee has also been paid.

Both the writ petitioners are working as **Assistant Teachers** at **Ramnagar High Madrasah (H.S.), District – Murshidabad.**

Both the petitioners applied for General Transfer giving their respective preferences in terms of the instruction for **General Transfer 2023 dated March 22, 2023** issued by the respondent No. 4, **Annexure P-6** at **pages 24 to 26** 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 petitioners contended that the relevant Madrasah authority had not complied with this provision to enable the petitioners to proceed with their transfer proceeding through online mode. The petitioners also submitted representations before the relevant Madrasah authority, **Annexure P-8** to the writ petition.

Mr. Arefin, learned counsel for the petitioners 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 petitioners to apply for General Transfer through online mode and for consideration of the petitioners' case by the relevant State authorities.

Mr. Sarwar Jahan, learned counsel appearing for respondent No. 8 submitted that, **there are total 3110 number of students at the Madrasah and the petitioner No. 1 is a Teacher for English (Post Graduate) and petitioner No. 2 is the Teacher for Bengali (Post Graduate). He submitted that, the total sanction strength of teaching staff for the said school is 40 in numbers whereas the available teaching staffs are of 21 in numbers. Out of such 21 numbers, 4 had applied for transfer.** Mr. Sarwar Jahan contended that because of this reason the Madrasah authority could not perform its obligation for allowing the petitioners' transfer. On transfer of the petitioners, the Madrasah will be dearth of teachers and ultimately the interest of the students shall suffer irreparably.

Mr. Prosenjit Mukherjee, learned counsel appearing for the respondent Nos. 3 and 4 referring to the said 2010 Rules submitted that, there is no provision whatsoever reserving any right for the

relevant Madrasah to hold its decision as mentioned in the aforesaid condition for any reason whatsoever.

Mr. Sudipto Panda, learned State counsel appeared for respondent Nos. 1, 5 and 6. He 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, he cannot be forced to serve his present Madrasah because of the dearth of Teachers in the relevant subject.

For those reasons the respondent No. 8 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-6** at **pages 24 to 26** to the writ petition to enable the

petitioners to uphold their online applications in terms of the format mentioned in **Annexure P-7** at **pages 27 and 28** to the writ petition.

The concerned Madrasah shall apply before the respondent No. 3, for filling up the vacancy for the post of the petitioners in their respective subjects at the said Madrasah forthwith in accordance with law and the respondent No. 3 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. Sarwar Jahan, learned counsel had represented the respondent No. 8 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.

Mr. Sudipto Panda, 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 9246 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.)