

Court No.
26.4.2023
(Item No. 207)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 10210 of 2022

Suvadip Ghorai

VS

The State of West Bengal & Ors.

Mr. Anjan Bhattacharyya

Ms. Anita Shaw

Ms. Priya Khatun

.... For the petitioner

Dr. Sutanu Kumar Patra

Ms. Supriya Dubey

... For SSC

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

The petitioner applied for transfer on **May 5, 2022** by way of a representation made before the respondent Nos. 2 and 5, as the petitioner was not eligible to apply through Utsashree Portal, since he did not complete the requisite qualifying period of five years of continuous service. The petitioner joined in service as Assistant Teacher on **September 27, 2018**. The principal ground for transfer as appeared from the application of the petitioner at **page 37** to the writ petition was that the petitioner had to travel 250 KM to and fro from his residence to his present school, **Jhilimili High School (H.S.)** in the **District Bankura**. The claim of the petitioner is that his wife is also an Assistant Teacher who has to travel near about 250 KM to and fro from her residence to school. They have a 2½ years old child.

On the above facts, the petitioner applied for transfer.

Drawing attention to the Gazette Notification dated **September 8, 2021** containing amendment to the Transfer Rule 2015 and specifically referring to amended Rule 4 containing the ground for transfer, Mr. Anjan Bhattacharya, learned counsel for the petitioner submitted that the case of the petitioner was covered within the meaning and scope of **“Any other reasons”** mentioned in **Sub-rule (e) to amended Rule 4 in the said Gazette Notification. He then referred to the amended provisions of Rule (2) (e) to Rule 6 from the said Gazette Notification** and submitted that, the relevant authority had power to dispense with the provision of clause (c) and (d) of the said Rule 6 sub-rule (2) for application made on the ground mentioned in Rule 4 (a-d).

The petitioner claimed transfer.

Dr. Sutanu Kumar Patra, learned counsel appeared for respondent Nos. 4 and 5.

Considering the submissions made on behalf of the parties and considering the materials on record the first issue needs to be considered with utmost importance is that **Rule 3(1) of the Transfer Rules 2015** provided a specific embargo that a Teacher who had not completed his five years of complete service was not eligible to apply for transfer. From a reading of the said provision, it appeared to this Court that, such provision was a mandatory requirement for applying for transfer by a Teacher.

Rule 2015 also prescribed a specific provision that a Teacher who had to travel beyond 25 KM became eligible to apply for transfer but on a joint reading and harmonious construction of the said Rule, this Court is of the view that, when a Teacher applied for transfer on the ground of travelling of distance, the mandatory pre-condition is that such a Teacher must qualify the pre-condition that, such a Teacher must complete the period of five years embargo of continuous service. In the facts of this case there was no medical ground at all on which the petitioner sought for transfer.

For the foregoing reasons and discussions, since the petitioner had not completed the mandatory pre-requisite of five years of completion of service, the application of the petitioner seeking transfer is totally devoid of any merit and frivolous. Resultantly, this writ petition is also devoid of any merit.

The writ petition being **WPA 10210 of 2022** 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.)