

Court No. 22
03.10.2023
(Item No. 31)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 10976 of 2023
+
IA No: CAN 1 of 2023
(ASSIGNED)

Sanjukta Chakraborty
VS
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee
Mr. Subhrajit Saha
Mr. Badrul Karim
..... for the petitioner
Ms. Koyeli Bhattacharyya
.... For the WBBSE.
Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
..... for the WBCSSC.

This is an assigned writ petition.

Mr. Sabyasachi Chatterjee, learned counsel,
appears for the petitioner.

Dr. Sutanu Kumar Patra, learned counsel
appears for West Bengal Central School Service
Commission.

Ms. Koyeli Bhattacharyya, learned counsel,
appears for West Bengal Board of Secondary
Education.

None appears for the State.

The petitioner is an **Assistant Teacher**. The
petitioner was serving at **Indrani Memorial Girls’
High School, District – Kolkata** for the subject
English. She joined there in **05.10.2001** on transfer
from the erstwhile school 2 as would be evident from
pages 22 and 23 Annexure – P-2 to the writ petition.

Referring to **Annexure P-3 at pages 24** to the writ petition learned counsel for the petitioner submits that, pursuant to a recommendation for transfer issued by the **West Bengal Central School Service Commission (for short, the Commission) dated April 18, 2023** the petitioner was sought to be transferred at **Rajnagar Srinath Gram Bani Vidyapith (H.S.), District – South 24- Parganas**. On instruction learned counsel for the petitioner submits that, the consequential transfer order has not yet been received by the petitioner.

The petitioner has challenged the transfer policy of the State which was issued in terms of a notification bearing No. **216/SE/S/10M-09/2023 dated February 10, 2023, Annexure P-5 at page 28** to the writ petition. Learned counsel for the petitioner further refers to a memo bearing No. **670-SE(S)/IM-14/98 dated September 4, 1998** issued by the **Deputy Secretary, Education Department** and submits that, the transfer order that was issued for the petitioner was in violation of the provisions made there under and the factors mentioned in the said memo dated **September 4, 1998** was not considered at all before causing the said transfer recommendation for the petitioner. Mr. Chatterjee further submits that, while issuing the said recommendation for transfer the bare minimum staff pattern as required to be followed by the State was

not at all followed. He submits that, the State authority does not have any data with regard to such bare minimum staff pattern in the public domain to which the petitioner can access. He further submits that while causing the transfer, the State has also violated the various provisions including the intra District wise transfer laid down under the said transfer policy dated **February 10, 2023**. While causing the transfer the State has not considered the personal predicament to be faced by the petitioner.

Dr. Sutanu Kumar Patra, learned counsel appearing for the Commission has referred to clause 7 from the **notification No. 227-ES/S/IS/4/95 dated March 12, 2018** which runs as follows:

“7. In case of any dispute arising in the process of effecting transfer under section 10C of the West Bengal School Service Commission Act, 1997, the matter may be referred to the Commissioner of School Education, West Bengal.”

In view of the operation of the said **clause 7** the dispute may be raised by way of a comprehensive representation before the Commissioner School Education, State of West Bengal for its decision.

Ms. Koyeli Bhattacharyya, learned counsel appearing for the Board adopts the submission of Dr. Patra as recorded above.

After considering the submissions made on behalf of the parties appearing today and upon perusal of the materials on record, it appears to this

Court that, to apply the said transfer policy dated **February 10, 2023** read with the said memo dated **September 4, 1998** as referred to above, several fact finding materials are required to be gone into. On a true construction of **clause 7** from the said State notification dated **March 12, 2018**, this Court is of the view that, there is a wide amplitude engrafted under the said provision to consider of the factual materials those are required to be considered to give effect to the transfer of the petitioner.

The order dated **September 20, 2023** has already been passed by this Court in this writ petition.

It appears that, the petitioner has already made a representation dated **August 20, 2023** before the Commissioner School Education, at **page 30 to IA CAN No. 1 of 2023**. The Commissioner School Education shall issue a hearing notice positively within a period of two working days from the date of communication of this order upon the petitioner indicating the time, venue and place of hearing to the petitioner and then after giving an opportunity of hearing to the petitioner shall decide the issue by passing a reasoned order strictly in accordance with law.

It is made clear that, this Court has not gone in to the merits of the claim of the petitioner canvassed in the writ petition in any manner. The

petitioner shall be at liberty to urge whatever points it wishes to urge by relying upon whatever documents and records before the Commissioner School Education.

While considering the issue the Commissioner, School Education shall also take into account the judgment of the Hon'ble Division Bench upholding the vires of the provision laid down under **Section 10C** of the **West Bengal School Service Commission Act, 1997**, inter alia, in the matter of **Rabin Tudu Vs. State of West Bengal & Ors., WPA 13628 of 2018 dated July 27, 2023**.

The entire exercise as directed above shall be carried out and completed by the Commissioner, School Education positively within a period of **15 working days from the date of commencement of the first day of hearing** without granting any unnecessary adjournment. The Commissioner then shall communicate its reasoned order to the petitioner positively within a period of **three working days** from the date of the said reasoned order to be passed.

It is made clear that, this order shall not create any equity or right in favour of the petitioner, if the petitioner is not eligible to receive its claim strictly in accordance with law.

In the event, the reasoned decision goes in favour of the petitioner, the Commissioner School Education shall give immediate effect thereto by

taking all necessary and consequential steps in accordance with law **positively within a period of two days** from the date of passing the said reasoned order.

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

On the above terms and with the above directions, this writ petition being **WPA 10976 of 2023** along with the connected application being **IA CAN No. 1 of 2023** stand 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.)