

22.09.2023
Item No. 13
Crt.No.22
b.r.

WPA 11088 of 2023
CAN 1 of 2023

Pally Majumder @ Bhandary
-vs-
The State of West Bengal & Ors.

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.

Mr. Santanu Kumar Mitra
Mr. Ganga Prasad Mukherjee
.... For the State.

This is an assigned writ petition.

Mr. Subharajit Saha, 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.

Mr. Santanu Kumar Mitra, learned advocate, appears for the State-respondents.

The petitioner is an **Assistant Teacher**. The petitioner was serving at **Haltu High School, District – Kolkata** for the subject **Geography**. She joined there in **01.07.2011** on transfer from the erstwhile school as

would be evident from **page 22 Annexure-p2** to the writ petition.

Referring to **Annexure P-4 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 19, 2023** the petitioner was sought to be transferred at **Taranagar BTC Vidyamandir HS, 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-6 at page 32** 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. Saha 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.

Subsequently, the petitioner has received a transfer order by virtue of the Notification dated August 24, 2023. Challenging the same, the petitioner has filed an interlocutory application being CAN 1 of 2023 in this writ petition. The petitioner has also made a representation dated **September 5, 2023 annexure-H at page 39** to the said CAN 1 of 2023. The said representation is also pending.

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.

Accordingly, to sub-serve justice the petitioner shall be at liberty to make a comprehensive representation within **three days** from date before the Commissioner, School Education. After receiving the said representation

from the petitioner, the Commissioner, School Education shall issue a hearing notice positively within a period of **two working days** 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 bypassing 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.

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 11088 of 2023 along with CAN 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.)