

September 25, 2023
ARDR (19)

MAT 875 of 2022
+
CAN 2 of 2022

Prasad Kumar Samanta
Vs.
The State of West Bengal & ors.

Mr. Sudipta Dasgupta,
Ms. Dipa Acharyya,
Mr. Sutirtha Nayak

...for the Appellant.

Mr. Sagnik Chatterjee,

...for the Council.

Mr. Bhaskar Prasad Vaisya,
Mr. Gourav Das,

...for the State.

The transfer of the appellant on the ground of surplus teacher is the subject matter of challenge in the writ petition by the appellant. The petitioner is a primary school teacher. He is aggrieved by the transfer order dated 4th February, 2019 issued by the Chairman, South 24 Parganas DPSC. The petitioner has been transferred from Kedarpur State Plan Free Primary School to Chhoto Banashyam Nagar Free Primary School, both under the Patharpratima East Circle. The petitioner is serving the said institution for the last nine years.

The learned single Judge in deciding the said issue had relied upon the West Bengal Primary Education (Transfer of Teacher including Head Teachers) Rules, 2002. Rule 4 of the said Rules lays down the condition for transfer. It mentions that a council may on an application from a teacher transfer an approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher is confirmed and has completed minimum two years of

continuous service. It further mentions that the council may if it considers necessary for proper utilisation of service of a primary teacher in the interest of education, transfer an approved teacher without maintaining any time limit of service. The said Rule further mentions that where there is surplus teacher according to roll strength the council may on its own motion transfer such approved teacher without maintaining any time limit of service by way of rational adjustment of teacher in a primary school.

Learned single Judge was of the view that the school education department following the aforesaid rule prepared a list of schools where there was surplus teacher and with the view to rationalise the teachers for proper utilisation of their service, decided to transfer the teachers from schools having surplus teachers to the schools having deficit teachers and in the process, almost 390 teachers were directed to be transferred as surplus in their respective schools and the writ petitioner being one of them cannot complain of such transfer and in absence of such malafide.

Learned single Judge was of the further view that the petitioner has been transferred following the principle of rationalisation and he cannot point a finger on another employee to question as to why the other person has not been transferred.

Having regard to the reason for transfer read with the report filed by the Chairman, DPSC, South 24 Parganas, we are of the view that the reason for such transfer in absence of any indication that the school where he is required to be transferred would be benefited by such

transfer, we are of the view that the Chairman is not justified in transferring the petitioner as surplus teacher since he became a surplus by reason of appointment of Ranajit Mal in the said school and not prior thereto as after the joining of Ranajit Mal total teacher strength became three.

Although, a teacher has no vested right to continue in the school indefinitely but if he is declared surplus by reason of an appointment of a teacher in absence of any reason like the requirement of the appellant more needed in the transferee school, we are of the view that such transfer may not be permissible. Experienced teacher in an existing school may benefit of the student than a new incumbent to the said post. However, it does not mean a teacher would continue to remain in the said school till his retirement. On such consideration, we direct the Chairman to reconsider the issue with regard to the transfer of the appellant to any other school. If it is found that his service is required in the transferee school for the educational institution and the students in the said institution would be benefitted the transfer order can be continued and confirmed.

However, he should not be pushed out to accommodate a new incumbent.

We however, do not found malafide in the said decision of the Chairman but having regard to the fact that the manner in which he was declared surplus may not be proper, we direct the Deputy Secretary, Director of School Education to take a decision in this regard in consultation

with the Chairman, District Primary School Council, South 24 Parganas. The school authority shall provide all available records to the Deputy Secretary in order to enable him to take decision in this matter. The interest of the students at stake, we direct the Deputy Secretary to take such decision within four weeks from date. We however, record that the appellant has joined the transferred post in the meantime.

The appeal succeeds. The impugned order is set aside.

(Uday Kumar, J.)

(Soumen Sen, J.)