

Court No.
30.01.2023

(Item No. 6)

(AB/SC)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 10682 of 2022

Prapti Chakraborty
VS
The State of West Bengal

Mr. Biswarup Biswas
Mr. Gora Chand Samanta
.... For the petitioner

Mr. Sourav Mitra
Mr. Suman Dey
.... For respondent Nos. 5 & 6

Ms. Koyeli Bhattacharyya
.... For WBBSE

Mr. Biswabrata Basu Mallick
Mr. Sayak Chakraborty
... for the State

Mr. Sarwar Jahan
Mr. Shahzad Noor Thander
.... For respondent No. 11

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

The petitioner claims to be an **Assistant Teacher** at **Churaman P.C. High School (H.S.), Uttar Dinajpur** for the subject **“Sanskrit”**. Through **Utsashree** portal she applied for transfer thrice as would be evident from the **General Transfer** application status and the allied documents at **pages 51 to 55** to the writ petition. The first transfer application was submitted by the petitioner on **August 12, 2021** before the head of the institution which was sent back to the petitioner on **September 2, 2021** on the ground of **“Single Teacher”**. The second application was submitted by the petitioner on

September 24, 2021 which was rejected by the head of the institution on the ground **“Out of 10%”**. The third application the fate of which is impugned in the instant writ petition was submitted by the petitioner on **February 10, 2022** and the head of the institution rejected the same on the ground **“out of 10%”**.

Mr. Biswarup Biswas, learned advocate appearing for the writ petitioner relying upon the gazette notification dated September 8, 2022 submitted that in terms of sub-Rule 2 to Rule 6 of the **West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Re-allocation Rule), 2015 (for short, the Transfer Rule, 2015)** provided the duties and obligations of the School Managing Committee of the relevant School. According to him, if the School Managing Committee after verifying the service records and details of the applicant considered the number of subject Teachers and roll strength, if resultant vacancy of the school in particular subject become zero for not commensurate with roll strength, the School Managing Committee shall not forward the application. The School Managing Committee was also consider that the total applications from the School should not be more than 10% of total Teachers strength of the School.

Mr. Biswas submitted that in the event, after recording its satisfaction the School Managing Committee sent the application of the applicant to the jurisdictional District Inspector of Schools, then he shall carry out his obligation in terms of the statutory provisions prescribed under the said Rules and so on by the other authorities. For the purpose of time schedule, Mr. Biswas had relied upon another gazette notification dated **December 22, 2021** at **page 42** to the writ petition. He submitted that, such time stipulation was never followed. Relying upon the gazette notification dated **December 22, 2021** at **page 44** to the writ petition, learned counsel for the petitioner submitted that, all the Rules and Guidelines for transfer of teachers were relaxed in favour of the teachers gradually with the passage of time so that the teachers can opt for transfer in course of their employment day by day. Relying upon another gazette notification dated **January 3, 2022** at **page 47** to the writ petition Mr. Biswas submitted that, even this “**Single Teacher**” stipulation was also relaxed under certain circumstances mentioned therein. Relying upon another gazette notification dated **January 3, 2022** at **page 49** to the writ petition the learned counsel for the petitioner submitted that, even the said 10% concept was also relaxed under certain given circumstances mentioned in the said gazette notification.

Learned counsel then submitted that, the rejection of the case of transfer of the petitioner on third occasion which is impugned in this writ petition on the ground **“out of 10%”** as shown by the head of the institution in view of the said gazette notifications and the relaxation of the provisions for transfer, could not and cannot succeed in the eye of law. He submitted that, on a harmonious reading of the provisions laid down under the gazette notifications issued by the State authority from time to time referred to above, it would be clear that all such provisions were made **for the benefit** of the Teachers and were relaxed from time to time and the ground shown for rejection for transfer of the petitioner, **“out of 10%”** is accordingly not sustainable. It was the obligation of the head of the institution of the School to send the application only after proper verification of records to the jurisdictional District Inspector of Schools who should have carried out his obligation thereafter in terms of law and the provisions laid down under the said **Transfer Rule of 2015** strictly in compliance with **Rule 6** read with **Rule 4** there under. Such being not done the petitioner became aggrieved and filed the instant writ petition.

Mr. Biswas further submitted that, the suspension of **Utsashree** portal by virtue of the said executive direction dated **September 29, 2022** read with the further executive instruction dated

December 29, 2022 would have no effect in the fact of the case of this writ petition and he submitted that, this suspension were totally unauthorized, illegal and without jurisdiction as by way of issuing the said administrative instructions to suspend the **Utsashree** portal, the State executive could not have altered and amended the provisions laid down under the said **Transfer Rule of 2015** or could not take away the right of the petitioner created there under. The executive instruction cannot override the statutory provision. He submitted that, this being a point of law goes at the root, the petitioner was not even required to challenge this, it can be taken in cognizance of by this Court, if the point is raised during argument.

In support of his contentions Mr. Biswas had relied upon the following judgments:

- (i) ***In the matter of: Md. Jamiruddin Biswas and others Vs. District Inspector of Schools (S.E.), Nadia and others reported at 2002(3) Calcutta High Court Notes 284;***
- (ii) ***In the matter of: Akhtar Hossain Chowdhury Vs. State of West Bengal reported at 2013 (2) Calcutta High Court Notes 632;***
- (iii) ***An order dated January 15, 2018 passed by a co-ordinate Bench, in the matter of: Sanjay Kumar Dhara Vs. The State of West Bengal & Ors., W.P. No. 30928 (W) of 2017 and***

(iv) An order dated July 21, 2022 passed by a co-ordinate Bench, in the matter of: Anup Mahar Vs. The State of West Bengal & Ors., W.P.A. No. 3632 of 2022.

Mr. Sarwar Janhan, learned advocate appeared for respondent Nos. 10 and 11 drew attention of this Court to the averments made by the petitioner in **paragraph 6** at **page 5** to the writ petition and submitted that, the ground for transfer on which the petitioner applied and opted for transfer was **“ANY OTHER REASONS”** as mentioned in **Rule 4(e)** of the said **Transfer Rules of 2015** and not within any of the Rules under **4(a) to 4(d)** of the said Transfer Rules. Referring to the gazette notification dated **December 22, 2021** at **page 44** to the writ petition he submitted that, all the relevant relaxations of the Transfer Rules as contended on behalf of the writ petitioner were made in respect of the cases under **Rules 4(a) to 4(d)** of the said **Transfer Rules, 2015** and not under **4(e)** of the said Transfer Rules. Referring to the gazette notification dated **January 3, 2022** at **page 59** to the writ petition Mr. Sarwar Jahan submitted that, the provisions made thereunder were for the Schools only where **sanctioned strength** of Teacher is **five or less than five and the Teachers of such Schools in a dire need of transfer but due to School level limit of 10% of total strength, not able to apply for**

transfer. He submitted that, the School to which the petitioner belongs to had a **sanctioned strength of Teaching staff of 42.** Therefore, the said notification dated **January 3, 2022** at **page 49** to the writ petition had no application in the fact of this case and the petitioner cannot claim any advantage thereof.

Mr. Jahan in course of his argument had relied upon **Section 10(c)** of the **West Bengal School Service Commission Act, 1997** as amended from time to time and submitted that, notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the State Government in the interest of education or in the interest of public service for administrative reasons may direct the commission through guidelines or general instructions, to make recommendation for placing the service of **any Teacher** including the Assistant Headmaster or Assistant Headmistress or any non-teaching staff from one school to another School against any sanctioned post. He submitted that, the writ petition is devoid of merit and should be dismissed.

Mr. Sourav Mitra, learned counsel appearing for respondent Nos. 5 & 6 adopted the entire submissions made by Mr. Sarwar Jahan and in addition relying upon the gazette notification dated **January 3, 2022** at **page 47** to the writ petition and the gazette notification dated **January 3, 2022** at

page 49 to the writ petition, submitted that the absolute discretion with application of mind for considering the case of transfer was vested with the jurisdictional District Inspector of Schools as also with the other State authority, when they were obliged to apply their mind ***in fit cases***. He further submitted that, since the third application, the fate where of is challenged in the writ petition has lost its life on March 1, 2022 when the head of the institution rejected the same on the ground ***“out of 10%”*** and was returned to the petitioner, no transfer application of the petitioner survives in the ***Utsashree*** portal.

Mr. Biswabrata Basu Mallick, learned State counsel appearing for the respondent nos. 1 to 4 adopted the submissions of Mr. Sarwar Jahan, learned counsel for the respondent nos.10 and 11 and in addition referring to the ***gazette notification dated September 29, 2022*** submitted that ***Clause (3)*** thereunder specifically mandated that an application for ***“General Transfer”*** shall not be entertained by the concerned school authority if the ***Pupil-Teacher Ratio*** (hereafter the PTR) of the school fallen deficient as per the norms laid down in the ***Right of Children to Free and Compulsory Education Act, 2009*** and other ***Government Orders*** for the time being in force. On account of proposed transfer taking into account the factual figure that total strength of the students in the school is ***1502***

and the existing teacher strength is **25** though the sanctioned total teacher strength is **42**, hence, the **PTR is 1:60**. This is not a permissible PTR where transfer could be effected.

After considering the rival contentions of the parties and on perusal of the materials on record, this Court at the outset, thinks it fit to reproduce the relevant averments of the writ petitioner made in the writ petition on oath. Paragraph 6 of the writ petition runs as quoted below :

*“6. Your petitioner states that the crux of the instant writ application is that in spite **of submission of application for transfer on special ground by the petitioner on the “ANY OTHER REASONS” Ground before the respondents under UTSASHREE portal** the Teacher-in-Charge/Head of the institution of Churaman P.C. High School (H.S.) as well as the DI of Schools SE Uttar Dinajpur returned the said application taking the plea that the petitioner is the single teacher in that particular subject i.e. Sanscrit and on the ground often percent of teacher. Therefore the respondent authorities are not able to forward the prayer of the petitioner to the next level for such transfer of the petitioner. It is pertinent to mention here that the total approved teaching staffs, para teachers and contractual teacher of the school are as follows:-*

Subject	Permanent teacher	Para teacher	Contractual teacher
English	5	1	0
Bengali	5	0	0
Maths	1	0	1
Physical Science	0	0	0
Life Science	1	0	0
Geography	3	1	0

History	2	0	1
Physical Education	2	0	0
Arbi	1	1	0
Sanskrit	1	1	0
Economics	1	0	0
Education	1	0	0

Assistant headmaster cum Teacher-In-Charge – 1”

On a careful consideration and meaningful reading of the said averments of the petitioner it appeared to this Court that, the petitioner applied for transfer on the ground “**ANY OTHER REASONS**”. Such ground is provided under **Rule 4(e)** of the said **Transfer Rule of 2015**. The rest of the grounds for transfer are provided for under **Rules 4(a) to (d)** of the said **Transfer Rules of 2015**.

From a meaningful reading of the provisions laid down in the **gazette notification dated September 29, 2022** it is clear that, in the event a transfer application is made on medical ground and on other grounds, referred to in **Clauses (a) to (d) of Rule 4 under the said Transfer Rules of 2015**, may be considered **without any restrictions**. There was **no such relaxation provision made for the application made under Rule 4(e) of the said Transfer Rule of 2015**. The change in the **Rule 4(e) of the Transfer Rule of 2015** was made under the said gazette notification to the extent that transfer on such ground can be considered **twice in an academic year, i.e. summer and winter vacation**

of the schools as the case may be, so that the academic interests of the students not hampered.

Inasmuch as, from a meaningful reading of the said **gazette notification dated January 3, 2022 at page 49 to the writ petition** it also appeared to this Court that, the same shall apply for a school where the **sanctioned strength of teacher is 5 or less**. In the present case, the school where the petitioner is teaching has a sanctioned strength of **42** teachers. Therefore, this **gazette notification dated January 3, 2022 at page 49 to the writ petition** has no manner of application or relevance in the facts of this case.

In view of the above, this Court is of the firm view that, there is no infirmity whatsoever in the impugned decision rejecting the transfer application of the petitioner and the same stands affirmed.

In view of the foregoing reasons and discussions this writ petition, **WPA 10682 of 2022** being devoid of any merit stands dismissed, without any order as to costs.

Last but not the least, while dealing with the transfer matters this Court has found that, there is an alarming situation. It is true that though right to opt for transfer is not a vested right of a teacher as settled in law but since the provisions and Rules are made for transfer of a teacher under which a teacher can opt for transfer, such provisions also cannot be ignored.

A reasonableness and balance must work together. The teachers are employed to impart education to the students, the future of the nation. So the interest of the students must be of paramount importance while considering the case of transfer of a teacher. The discretion of the State authority has to be exercised judiciously and squarely within the framework of law relating to transfer but equally keeping in mind that the interest of the students should be of paramount importance where the Pupil-Teacher Ratio must have a crucial and decisive role to be weighed.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)