

Court No.
07.02.2023

(Item No. 100)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 12071 of 2022

Sk. Mustak Habib
VS
The State of West Bengal & Ors.

Mr. Sk. Rejaul Alam
.... For the petitioner
Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
.... For the State
Mr. Syed Nurul Arefin
.... For respondent No. 8
Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar
.... For Madrasah Service Commission

The petitioner claimed to be working as an **Assistant Teacher** for the subject **Physical Education** at **Chandrakona Islamia High Madrasah** since November 3, 2008. The petitioner applied for transfer under the **General Transfer Scheme** on **March 23, 2021**. The petitioner claimed that, the respondent No. 10 was appointed at S.M.I. High Madrasah, Paschim Medinipur. The petitioner claimed that bypassing the petitioner, the respondent No. 10 was appointed which was not permitted in law. Thus being aggrieved by, the petitioner filed this writ petition.

Pursuant to the direction made by this Court the respondent No. 3 initially filed an affidavit report affirmed on September 20, 2022 (the first report) and subsequently another affidavit report was filed by the respondent No. 3 affirmed on November 30, 2022 (the second report). The petitioner filed its exception

affidavit to the second report affirmed on February 6, 2023. The petitioner in its exception affidavit contended that the respondent No. 10 had joined at the S.M.I. High Madrasah on July 5, 2022 whereas his appointment was approved on June 30, 2022.

Mr. Prosenjit Mulherjee, learned counsel appearing for respondent No. 3 relying upon his two affidavits report submitted that, at the time when the petitioner applied for transfer the vacancy list was published for General Transfer in which no vacancy was available at the relevant S.M.I. High Madrasah, Paschim Medinipur. As such the question of accommodating the petitioner on transfer at S.M.I. High Madrasah, Paschim Medinipur did not arise at the relevant point of time. He submitted that, the respondent No. 10 was appointed as a fresh candidate after being selected in **6th SLST, 2013**. He submitted that, the fresh appointment of respondent No. 10 cannot be equated with a case of the petitioner for transfer.

Mr. Mukherjee further submitted that, at present the entire transfer process is stopped for the time being and unless further notified by the State authority such transfer process will not commence again.

Mr. Syed Nurul Arefin, learned advocate appeared for S.M.I. High Madrasah, Paschim Medinipur. He submitted that, the respondent No. 10

had joined the S.M.I. High Madrasah on June 30, 2022 as a fresh candidate.

Considering the rival contentions of the parties and considering the materials on record this Court is of the view that, transfer is not a matter of right. From record it appears that, at the relevant point of time when the transfer was sought for by the petitioner there was no vacancy available at S.M.I. High Madrasah, Paschim Medinipur for considering the case for transfer.

In view of the foregoing discussion and reasons this Court is of the firm view that, this writ petition is totally devoid of any merit. There was no infirmity in the decision of the State authority in rejecting the prayer for transfer made by the petitioner.

Resultantly, this writ petition being **WPA 12071 of 2022** stands dismissed.

There shall, however, be no order as to costs.

However, in future, if the State authority notifies for General Transfer, the petitioner may avail of the opportunity strictly in accordance with law.

However, this order shall not create any equity or right in favour of the petitioner in any manner.

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.)