

Court No. 22
09.01.2023
(Item No. 1)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 17011 of 2021

Smt. Tanushree Mohanta
VS
The State of West Bengal & Ors.

Ms. Sutapa Chatterjee
..... for the petitioner
Mr. Jahar Lal De
Mr. Jahar Dutta
.... For the State
Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
.... For WBCSSC
Ms. Koyeli Bhattacharyya
.... For WBBSE

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

The petitioner claimed to be an **Assistant Teacher** for the subject **Education** at **Baharlal PLS High School (H.S.), District – Malda**. She sought for a transfer on the ground of travelling of substantial distance from her residence. On March 4, 2016 **Annexure P-1** to the writ petition, the petitioner from the relevant school authority had asked for the “No Objection Certificate”. The school authority by its letter dated **March 17, 2016, Annexure P-3** to the writ petition submitted the relevant records and documents for the general transfer of the petitioner before the respondent No. 9. The respondent No. 6 informed the respondent No. 9 as to the vacancy status by its communication dated August 14, 2019, **Annexure P-5** to the writ petition. The petitioner then

submitted a representation through its advocate dated August 26, 2021, **Annexure P-8** to the writ petition. The petitioner claimed transfer and her case had not yet received the attention of the respondent No. 9.

Dr. Sutanu Kumar Patra, learned counsel appearing for the respondent Nos. 6 & 7 placed a Government notification bearing **No. 1801-SE/S/10M-45/2022 dated December 29, 2022.**

The content of the said notification is quoted below:

“Whereas, the State Government vide Notification No. 1298-SE/S/10M-45/2022 dated 29.09.2022 has temporarily suspended the transfer portal (Utsashree) upto 31/12/2022:

And whereas the West Bengal Central School Service Commission vide No. 1704/6967(II)CSSC/ESTT/2022 dated 20.12.2022 requested the School Education Department to extend the suspension period of Utsashree portal till 30/06/2023 due to ongoing recruitment process and related issues.

And whereas the competent authority in the School Education Department has considered the request and accepted the same.

Now therefore, in exercise of power conferred by proviso to Rule 4 of the West Bengal School Service Commission (General Transfer, Transfer on Special Ground and Re-allocation) Rules, 2015, the Governor is pleased to extend temporary suspension of on-line transfer application and processing of online transfer applications till 30.06.2023 or until further order.

This is issued with the approval of the Competent Authority of this Department.”

From a close scrutiny of the said notification, it appears to this Court that, though the **“Utsashree”** portal had been suspended by the decision of the relevant State authority till **June 30, 2023** but the **“Utsashree”** portal was introduced on and from **August 26, 2021** whereas the application seeking transfer submitted by the petitioner was much prior thereto and the petitioner was running from pillar to post since 2016 on the said issue of transfer.

This Court is of the firm view that, the said notification suspending **“Utsashree”** portal dated **December 29, 2022** would have no effect in this particular case of the petitioner.

After considering the submissions made on behalf of the appearing parties and on perusal of the materials on record to sub-serve justice the respondent No. 9 is directed to consider the representation of the petitioner dated August 26, 2021, **Annexure P-8** to the writ petition upon giving at least seven days prior hearing notice to the petitioner and the relevant school authorities, respondent Nos. 10 and 11 and then after giving them an opportunity of hearing shall decide the issue with its reasoned order/decision.

While taking decision on the issue the relevant school authority must place in writing in the form of a report how many students are being taught at the school for the subject **“Education”** for which the

petitioner was a teacher and how many numbers of teachers are available in the event the petitioner is allowed to obtain transfer and whether such available number of teachers according to the school authority would be sufficient or not to take care of the students at the relevant school for the said subject.

The entire exercise as directed above shall be carried out and completed by the respondent No. 9 positively within a period of eight weeks from the date of communication of this order. The respondent No. 9 then shall communicate its reasoned decision/order to the petitioner and the respondent Nos. 10 and 11 positively within a further period of two weeks from the date of the said reasoned order to be passed.

In the event, the order of transfer goes in favor of the petitioner, then the vacant position that would be created due to the transfer of the petitioner shall be filled up strictly in accordance with law to protect the interest of the students at large at the school. In course of the hearing the respondent No. 9 shall also verify from the record whether the petitioner subsequently had applied through the “**Utsashree**” portal or not. In the event, it is found that, the petitioner had applied through “**Utsashree**” portal also then the petitioner will have to withdraw of its said application for transfer under **Utsashree** portal.

It is made clear that this Court has not gone into the merit of the claim of the petitioner in any

manner. The petitioner and the respondent Nos. 10 and 11 will be at liberty to urge whatever points they wish to urge by relying upon whatever documents and records before the respondent No. 9.

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

It is further made clear that, this order shall not create any equity or right in favour of the petitioner, in the event, she is not otherwise eligible to receive her claim for transfer strictly in accordance with law.

On the above terms, this writ petition being **WPA 17011 of 2021** stands 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.)