

21.09.2023
SL No.13
Court No.8
(gc)

**MAT 1433 of 2022
CAN 1 of 2022**

**Kumaresh Ghosh
Vs.
The State of West Bengal & Ors.**

Mr. Shuvro Prokash Lahiri,
Ms. Tithi Mazumder,
Mr. Rajesh Naskar

...for the Appellant.

Mr. Bhaskar Prasad Vaisya, A.G.P.,
Mr. Sagnik Chatterjee,

...for the State.

Dr. Sutanu Kr. Patra,
Mrs. Supriya Dubey

...for the W.B.C.S.S.C.

1. The appellant is aggrieved by the order dated 10th August, 2022 as his prayer for transfer prior to December 20, 2021 were returned by the competent authority on the ground that he is a single teacher in Howrah Jogendra Siksha Mandir and this view was affirmed by the learned Single Judge. The Coordinate Bench in deciding the appeal on 15th May, 2023 directed the School Service Commission to apprise the Court considering the following three aspects:-

“First, whether a teacher being temporarily transferred to another school from a school having zero enrollment, can be treated under the category of single teacher concept.

Secondly, whether continuous service of five years concept can be applied in the instant case where a teacher has been transferred on

temporary basis to another school from a school having zero enrollment.

Third, whether the appellant, who was holding a substantive post can be placed on a temporary basis to the post which is below in rank to the substantive post.”

2. The Secretary of the West Bengal Central School Service Commission has filed an affidavit disclosing the views of the Additional Secretary to the Government of West Bengal School Education Department answering the queries in the following manner:-

“1. Since Jogendra Smiriti Shiksha Mandir, Howrah found as “0” enrolment school, service of the teachers and non-teaching staff has temporarily been taken for the Satshi School, Howrah, including petitioner in the interest of education. They remain the part of the parent school i.e. Howrah Jogendra Smiriti Shiksha Mandir. As such, there is no transfer of teacher from one school to other but it was mere temporary arrangement to utilise the teacher for academic needs. Since it is not a transfer, the concept of single teacher, (which is applicable for application based transfer under General Transfer Rules, 2015 framed under Section 10B of the SSC Act) does not arise in the instant case.

2. Under section 10B as well as General Transfer Rules, 2015, for being eligible for transfer one has to complete 5 years of service. Service utilization is not transfer. It can be seen that the petitioner was administratively transferred on 3/12/21 from Jogendra Smiriti

Shiksha Mandir (the parent school) to Sankrail Abhay Charan School, Howrah, although his service was utilised by Satsi School Howrah at material point of time. For counting the 5 years service, at material point of time (till he administratively transferred to Sankrail Abhay Charan School, Howrah) his service in Jogendra Smiriti Shiksha Mandir should be taken into account.

3. For better and effective utilization of teachers who is getting salary from public fund, can be used for academic interest of the students under temporary arrangement. By this temporary arrangement his posting remain with parent school with his unchanged service profile but service is utilised in a different school. As such there is no question of lowering of rank indeed. Teacher Rationalization Policy of School Education Department vide No.216 dated 10/2/23 says for service placement of teacher in fit cases.”

3. In the light of the aforesaid observation, the application for transfer of the appellant is required to be decided afresh.
4. The District Inspector of Schools (S.E.), Howrah shall indicate the vacancies with an option to the writ petition to choose his desirable school within two weeks from the date of communication of such vacancies to the writ petitioner and on the basis of the option to be exercised, the D.I. shall process the same and forward it to the West Bengal Central School

Service Commission for issuing the recommendation to the West Bengal Board of Secondary Education in order to enable the Board to issue the transfer order.

5. The entire process shall be completed within a period of three months from date.
6. The appeal succeeds.
7. The impugned order is set aside.
8. Accordingly, the appeal and the application stand disposed of.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Prasenjit Biswas, J.)

(Soumen Sen, J.)