

Item - 9. 18-12-2023

MAT 1806 of 2023
CAN 1 of 2023

sg Ct. 8

Sourav Bhattacharya
Versus
The State of West Bengal & Ors.

Mr. Ujjal Ray, Adv.
Mr. Sk. Abdur Rahim, Adv.
...for the appellant
Mr. Jayanta Samanta, Adv.
Mr. Parikshit Goswami, Adv.
...for the State respondents

1. We have heard the learned counsel appearing for the parties.
2. The appeal is arising out of the judgment and order dated 29th August, 2023 passed in WPA 7705 of 2023. In the writ petition the petitioner has challenged the action of withholding the petitioner's transfer application by the respondent School Service Commission without any ground as such. The writ petitioner is an Assistant Teacher of Amtala Matimam High School, Amtala, South 24 Parganas in the subject History. He applied for transfer through Utsashree Portal on his wife's medical ground, as would be evident from the General Transfer status and the documents disclosed in the writ petition. The last transfer application was submitted on 18th September, 2022 before the Head of the Institution. It appears that the managing committee of the school on consideration of the application had expressed their no objection to release the petitioner, also, the District Inspector of School (S.E), South 24 Parganas, being satisfied with the positive recommendation

of the CMOH concerned with respect to the petitioner's wife's medical condition, forwarded the petitioner's transfer application to the respondent School Service Commission on 20th December, 2022 which is withheld by the respondent School Service Commission till date without showing any ground.

3. Learned Single Judge was of the view *"The application of the petitioner is now pending consideration before the West Bengal School Service Commission. The petitioner is praying a direction upon the said authority for disposal of his application. The operation of the Portal is now under suspension, therefore, the Commission has no scope to consider the said application of the petitioner. In view thereof, WPA 7705 of 2023 is dismissed without any order as to costs"*
4. Learned counsel for the appellant has relied upon the decision of the coordinate bench presided over by one of us (Soumen Sen, J.) in ***FMA 1082 of 2019 (Amar Jana Vs. West Bengal Central School Service Commission, Secretary & Ors.)*** decided on 22nd December, 2020, submits that the application for transfer has to be considered on the basis of relevant circular prevalent at the relevant point of time and not in the subsequent circular unless it is made specifically retrospective. In any event, the record would reveal that the writ petitioner was entitled to the benefit of transfer having regard to the rules existing and applicable to him at the time of rejection of his application.

5. Mr. Sourav Mitra, learned advocate representing the Central School Service Commission submits that since the Uthshashree Online Portal is under suspension, the petitioner's transfer application could not be considered till date.
6. We are not unmindful of the fact that in view of the Right of Children to Free and Compulsory Education Act, 2009 it is the obligation of the State to implement the provisions of the said Act. We cannot lose sight of the fact that there is a need for rationalization of policy of the teacher.
7. The service condition gives right to claim transfer on fulfillment of certain conditions. An application for transfer has to be considered on the basis of existing and/or prevailing rules. We do not find any material to withhold the said application of the petitioner by the School Service Commission on the ground of suspension of Uthshashree online portal. However, once a teacher fulfills the eligibility criteria, the authority must take steps to fill up the resultant vacancy as per the norms existing at the relevant point of time by way of local arrangement or by recruiting a permanent teacher for the said post within a reasonable time.
8. In view thereof, we feel that the issue can be decided by the Central School Service Commission being the appropriate authority to decide the said issue.
9. Under such circumstances, we direct the Chairman, West Bengal Central School Service Commission to consider the application for transfer of the petitioner on verification of

the record and production of relevant documents by the school authorities. It is needless to mention that the application for transfer shall be considered on the basis of existing norms prevalent at the relevant point of time and not on the basis of any subsequent circular. The interest of the students would also be a relevant consideration.

10. The order under challenge is set aside.
11. The Chairman, West Bengal Central School Service Commission shall decide the issue within six weeks from the date of communication of this order by either of the parties upon giving an opportunity of hearing to the writ petitioner and the school authorities and decide the matter by passing a reasoned order to be communicated to the petitioner within one week thereafter.
12. Under such circumstances, the appeal succeeds.
13. The appeal being MAT 1806 of 2023 is accordingly disposed of.
14. In view of disposal of the appeal CAN 1 of 2023 is also disposed of.
15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)