

17.02.2023
Court No.13
Item No.24
AP

**CPAN 1026 of 2022
In
WPA 17061 of 2021**

**Shipra Barikdar
Vs.
Shri Subhra Chakrabarti and Ors.**

Mr. Ujjal Ray

... For the Petitioner.

Mr. Ujjal Ray, learned counsel for the petitioner, has made extensive submissions. It is submitted that the 2015 Rules cannot be applied retrospectively to an applicant like the petitioner.

It is further submitted that since the petitioner is not covered under the Rules, the District Inspector of Schools was bound to process the petitioner's application instead of looking for a local arrangement to fill up any vacancy that is likely to be created by the petitioner's transfer.

It is also submitted by Mr. Ray that many teachers similarly situated as the petitioner have been accorded the benefit of transfer where the District Inspector of Schools, did not apply the local arrangement Rule at all.

It is further submitted by Mr. Ray that to apply the local arrangement Rule in the case of the writ petitioner would amount to creating a class within a class and, therefore, the actions of the District Inspector of Schools apart from being illegal are also contumacious.

In the instant case, admittedly the District Inspector of Schools has taken steps for making local arrangement to find a suitable teacher from nearby schools to accommodate the vacancy that would be created if the petitioner is transferred.

A unique situation arises which the Court must take judicial notice of. In respect of teacher, where either he or she is the only teacher in the subject in the school seeking transfer, or where there are more than one teachers for the same subject but the school has a very large number of students, the effect of transfer without making a provision for the replacement teacher would cause a very serious prejudice to the students and their education.

The right of the students, to proper instruction and education, cannot be overemphasized. It has now been recognized as a fundamental right under Article 21 A of the Constitution. In fact, it is the State's responsibility to ensure that students are not deprived of education in any manner.

The unilateral transfer of a teacher, albeit not coming under the 2015 Rules without making a local arrangement to replace him/her, would cause immense hardship and prejudice to the students in question.

In the above circumstances, while it is indeed true that the 2015 Rules requiring local arrangement, cannot be strictly applied to the petitioner, the conduct of the

District Inspector of Schools in attempting to look for a teacher in place and stead of the petitioner cannot seriously be faulted.

In the above circumstances, this Court is of the view that the action of the District Inspector of Schools, being in the interest of the students on the school, must be approved by this Court.

The District Inspector of Schools shall continue to make efforts to look for a replacement teacher, as he has already done. If such replacement teacher is found, the District Inspector of Schools shall process the petitioner's application for transfer and forward the same to the School Service Commission, offline.

The contempt application shall stand disposed of.

Rule, if any, shall stand discharged.

There will be no order as to costs.

Interim orders, if any, shall stand vacated.

All parties are to act on a server copy of this order duly downloaded from the official website of this court.

(Rajasekhar Mantha, J.)