

77 11.01.2023
Sc Ct. no.22

WPA 23914 OF 2022

Surongama Sinha Roy

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari
Mr. Sk. Imtiaj Uddin.

.... For the Petitioner

Ms. Sayantee Bhattacharjee.

.... For the State

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey.

....For the WBCSSC

The dispute pertains to transfer of an Assistant Teacher from ***Thakurnagar Balika Vidyalaya, District – North 24 Parganas*** to ***Madhyamgram APC Balika Vidyalaya, District - North 24-Parganas***.

The writ petitioner on or about August 4, 2021 applied through Utsashree Portal seeking transfer. Such application of the petitioner was sent back on August 14, 2021 as the petitioner failed to submit the necessary “**No Objection**” certificate from the relevant school. The petitioner came to this Court by way of a writ petition being ***WPA 20974 of 2021***. The previous writ petition was disposed of by a coordinate Bench on June 3, 2022 when the State authority was directed to consider the case of the petitioner in terms of the ***Transfer Rules of 2015***.

Pursuant to the said direction of the coordinate Bench the respondent no.5 recommended the name of the

petitioner for transfer at the **Madhyamgram APC Balika Vidyalaya, District - North 24-Parganas** by a Memo dated August 30, 2022 on September 2, 2022. The West Bengal Board of Secondary Education had also issued the appointment order with a direction upon the respondent no.8 to issue the release order and such release order was also issued in favour of the petitioner on **September 6, 2022**.

The petitioner was allowed to join at the said transferee school on September 7, 2022. On September 29, 2022 the petitioner received a communication from the transferee school that there was no vacancy or sanctioned memo for the subject – **Computer Application** in that school. The transferee school also informed that existing teacher was there for the subject, working since 2013. The communication issued by the respondent no.6 dated September 29, 2022 also revealed that there was no vacant post in the said transferee school at which the petitioner was transferred. As a result, the petitioner could not join the said transferee school and could not perform her duty arising out of her employment. The petitioner made several representations before the State authority and no heed was paid thereto.

In such circumstance the petitioner filed the instant writ petition.

The petitioner also affirmed a supplementary affidavit on November 10, 2022. The said supplementary

affidavit disclosed the orders passed by the respondent no.5 dated November 3, 2022 and November 4, 2022, ***Annexure R-2*** to the supplementary affidavit directing the petitioner to join again at its old transferor school, i.e., ***Thakurnagar Balika Vidyalaya, District – North 24 Parganas.***

Mr. Ekramul Bari, learned advocate appearing for the petitioner submitted that the State authority upon due consideration of everything issued the transfer order and ultimately transferred the petitioner at the said transferee school, viz. ***Madhyamgram APC Balika Vidyalaya, District - North 24-Parganas*** and then again issued the said order for re-transferring her at her original school.

Mr. Bari submitted that this was a clear arbitrary action on the part of the State authority in view of the fact that the State authority was obliged to ascertain the actual vacancy position of a particular school before uploading it on the Ursashree Portal and only thereafter the appointment letter should have been issued. There is no fault on the part of the petitioner.

Dr. Sutanu Kumar Patra, learned advocate appearing for the respondent nos. 4 and 5 submitted that since the Utsashree Portal is under suspension by way of a notification dated December 29, 2022 till June 30, 2023, no further step can be taken on the issue for the time being.

Ms. Sayantee Bhattacharjee, learned advocate appearing for the respondent nos. 1, 2 and 6 submitted that only upon ascertaining the proper vacancy for the relevant subject the transfer can be effected.

After considering the rival submissions made on behalf of the appearing parties and upon perusal of the materials on record, it appears to this Court that the State authority had already recommended the transfer of the petitioner and the necessary appointment letter was also issued in favour of the petitioner to join at the transferee school at **Madhyamgram APC Balika Vidyalaya, District - North 24-Parganas** as stated above. The State authority cannot contend anything to the contrary at this moment. The suspension of the Utsashree Portal is an executive decision of the State at its discretion for which the petitioner should not suffer in the facts and circumstances of this case, where the appointment letter was already issued in favour of the petitioner and the petitioner had joined the **Madhyamgram APC Balika Vidyalaya, District - North 24-Parganas** school accordingly. For a mistaken executive action the petitioner should not suffer. It was the obligation of the State executive prior to issuing of the appointment letter to ascertain the actual vacancy position for the relevant subject, where the petitioner was recommended for transfer. There was a clear non-

application of mind and arbitrary exercise of discretion on the part of the State in this case.

In view of the above, this Court is of the firm view that, the petitioner shall immediately be allowed to join her original school, viz. ***Thakurnagar Balika Vidyalaya, District – North 24 Parganas*** and consequently **the respondent nos. 7 and 8 are directed to allow the petitioner to join the said *Thakurnagar Balika Vidyalaya, District – North 24 Parganas* with an immediate effect after compliance of the necessary formalities in this regard and positively within a period of seven days from the date of communication of this order. Thereafter, the respondent no.6 shall positively within a period of six months search out a vacant post for the relevant subject at a school where the recommendation of transfer, already made in favour of the petitioner, should be given effect to and the petitioner shall be transferred at such school. The respondent nos. 4 and 5 thereafter shall carry out all the necessary formalities in this regard. Strictly in accordance with law.**

It is further made clear that the entire time period since the last day of working of the petitioner at the ***Thakurnagar Balika Vidyalaya, District – North 24 Parganas*** before her transfer and/or till the date she would join there again in terms of this order

shall be taken into account as her employment tenure in accordance with law.

With these directions, this writ petition, **WPA 23914 of 2022** stands allowed on the above terms, without any order as to costs.

Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)