

12 18.12.2023
AN Ct. No. 08

MAT 1964 of 2023
With
IA No. CAN 1 of 2023

Anita Murmu
vs.
State of West Bengal & Ors.

Mr. S. P. Lahiri
Ms. Tithi Mazumder
Mr. Rajesh Naskar

... for the appellant

Mr. B. P. Vaisya
Mr. Ranjan Saha

... for the State

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey

... for the WBCSSC

We have heard learned counsel for the parties at length.

The appellant is aggrieved by the order dated 29.08.2023. The appellant was an Assistant Teacher at Bally Gajendra Balika Vidlaya, Howrah. She prayed for transfer on the ground of distance from her residence in the present school i.e. 74 kilometers. The school where she was working also did not have any student in 2017. The school also indicated that the school did not have any objection if the appellant is transferred.

In the order dated 07.02.2022 passed by Abhijit Gangopadhyay, J., a similar prayer was allowed after hearing learned counsel for the parties. His Lordship has recorded that during the pendency of the writ petition, the petitioner filed another application for transfer on

12.08.2021 which was rejected and the reason was not shown to her why it was rejected. Her second application for transfer was also rejected on 17.08.2022 without showing any reason. It would be useful to refer to the observations given by the learned Single Judge in this regard which is as follows:

“On instruction the learned advocate for the State has intimated today that the applications of the petitioner were rejected on ground of single teacher as has been given in amended Rule 6(C) of the amended Transfer Rules of 2015. But this amended rule came into effect from September 8, 2021 and it does not have any retrospective effect. Subsequently one clarification was also issued by way of a circular by the Education Department dated 22nd September, 2021 which is also without any retrospective effect. In the meantime the petitioner has been transferred by the Board by an administrative order dated 1st December, 2021 and, according to the petitioner, she has been transferred to a school which is also 74 kilometers or more from her present residence. However, when the petitioner applied for her first transfer and also the second transfer before the amendment of the General Transfer Rules of 2015, there was no reason for rejecting the petitioner’s transfer applications on the ground of single teacher. Prior to the amendment of the Rule by way of Gazette Notification dated September 8, 2021, there was no impediment for transfer of a single teacher. Therefore, the subsequent administrative order passed by the Board without disclosing the reason by the Education Department as to rejection of her two applications consecutively when there was no student in the school, is of no effect. More so, because prior to that the petitioner applied for transfer.

After filing the application for transfer as the reason has not been shown to the petitioner for rejection of such application, such rejection cannot have any effect and the same is quashed and set aside. Therefore, administrative order dated 1st December, 2021 cannot also be given any effect as the petitioner’s application for transfer, in such facts and circumstances are held to be pending as there is already an

application for transfer before three months of the date of the administrative order issued by the Board.

Therefore, I direct till the petitioner is transferred to any school nearer to her residence against her transfer application in Utsashree portal, her working in the school where she has been transferred by way of an administrative order will not create any impediment for her transfer to any such nearby school. Because the petitioner has joined the transferred school, having no alternative, by administrative order without prejudice to her rights and contentions. The transferred school is also 75 kilometers away from his residence and thus her situation for travelling the distance (earlier it was 74 kilometers) has not been improved.

Despite giving one opportunity to the Board it has not come up with any report which is deprecated.

I direct the concerned District Inspector of Schools (SE) to take further steps forthwith for transfer of the petitioner from her present school to a school nearer to the residence of the petitioner.

This matter is not disposed of. It will appear on 28th February, 2022 for further report from the petitioner as well as from the respondent State.”

Thereafter, the matter was disposed of on 20.02.2022 by directing the West Bengal Central School Service Commission to take steps immediately by 7 days from the date of communication of the copy of the order and so that the petitioner could get transfer to the school nearby to her residence. The Court has also expressed anguish with regard to the delay in finding a suitable school for her.

However, in deciding the said writ petition, the learned Single Judge dismissed the writ application on the ground of suspension of the portal without advertng it to

the earlier order passed in the same proceeding. The earlier order passed in the same proceeding ought to have been implemented and we do not appreciate for dismissing the writ petition after a mandatory order has been passed by the learned Single Judge directing the West Bengal Central School Service Commission to take steps to enable her to get transfer to a school nearby to her residence. There is no question of reconsideration of the said order. There is no reason for reconsideration of the said decision as that order by that time had attained finality.

In view of the aforesaid observations and directions, we **dispose of** the appeal by directing the West Bengal Central School Service Commission to take appropriate steps positively within a period of 8 weeks from date. It is needless to mention that the appellant shall cooperate with the Commission in exercising her option with regard to the schools.

Consequently, the connected application is also disposed of.

(Uday Kumar, J.)

(Soumen Sen, J.)