

17.11.2023
Sl. No.19
srm

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

W.P.A. No. 2458 of 2023

Kumaresh Mondal

Vs.

The State of West Bengal & Ors.

Mr. Gouranga Kumar Das,
Mr. Debojit Kundu,
Mrs. Matan Chakraborty

....for the Petitioner.

Mr. Hirak Barman,
Ms. Bedashruti Bose

.....for State-respondents.

Mr. Amales Ray,
Ms. Osmita Mukherjee

...for the respondent Nos.3 &4

Affidavit-of-service is taken on record.

The order impugned before this Court is a decision of the Secretary, Primary School Council, Coochbehar dated April 6, 2023. The petitioner's eligibility for inter-district transfer was considered and rejected. It was stated in the order that the petitioner, who was an Assistant Teacher of 108 Chhoto Kuchlibari 5th Plan Primary School under the Mekhliganj Sought Circle, was not entitled to be

transferred as he had not completed five years of continuous service.

In my opinion, such embargo or bar is found in Rule 6 of the West Bengal Primary Teachers Transfer Rules. However, the said rule was wrongly applied in this case as the bar would apply in case a teacher, who has been transferred, seeks another transfer within a period of five years from the previous transfer. In other cases, the teacher is required to complete two years of service upon being confirmed and approved as an Assistant Teacher. Yet, the petitioner's application to the Council cannot be processed, as the Council does not have any jurisdiction under the rules to transfer the petitioner. The petitioner seeks inter-council/inter-district transfer.

Thus, although the order impugned is set aside, the petitioner's case for inter-council transfer has to be decided in terms of Rule 8 of the said Rules. It is the West Bengal Board of Primary Education, which is authorized under Clause (k) of Section 19(1) of the West Bengal Primary Education Act, 1973, to transfer any teaching staff within the jurisdiction of one Primary School Council to a primary school within the jurisdiction of another Primary School Council.

Thus, the petitioner is granted liberty to apply before the competent authority of the West Bengal Board of Primary Education, in accordance with law. If such application is made, the same shall be processed and disposed of in accordance with the law and the rules applicable.

The entire exercise shall be completed within a period of three months from the date of receipt of the petitioner's application.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)