

20.11.2023
Sl. No.22
srm

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

W.P.A. No. 2482 of 2023

Sukanta Das

Vs.

The State of West Bengal & Ors.

Mr. S.P. Lahiri,
Mr. Debajit Kundu,

....for the Petitioner.

Mr. Hirak Barman,
Mr. Pretam Das

.....for State-respondents.

Mr. Bikramaditya Ghosh

...for the SSC.

Affidavit-of-service is taken on record.

The petitioner has challenged the reasoned order dated June 6, 2023 passed by the Commissioner of School Education, West Bengal.

On the prayer of the petitioner, a learned coordinate Bench of this Court disposed of a writ petition being WPA No.2699 of 2022, directing the Commissioner of School Education to consider and dispose of the representation of the petitioner dated January 22, 2021, by which the petitioner prayed for general transfer.

According to the petitioner, the rules permitted such transfer. Reliance has been placed on Rule 3(2) of West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation), Rules, 2015 (hereinafter referred to as the said Rules).

According to the rules, the primary conditions for general transfer are as follows:-

- a) An incumbent shall be eligible for general transfer only if he/she have been confirmed in service and had completed five years of satisfactory service in particular school.
- b) No application under general transfer can be entertained if the person intends to be transferred to a school within a distance of 25 kms. from the present school.
- c) When an incumbent refuses to join his/her preferred school after due recommendation by the commission such incumbent shall not be allowed to submit an application for subsequent transfers.

The petitioner contends that the ground for rejection was that the petitioner had not applied for transfer on special grounds. According to the authority, Rule 4 would be applicable in this case.

The petitioner contends that eligibility for general transfer shall be governed by Rule 3(2) and Rule 5 of the said Rules. Further reliance has been placed on guidelines issued in favour of the applicants who seek transfer in secondary and higher secondary schools. Clause 3(iii) is relevant for the purpose. Clause 3(iii) of the guidelines, inter alia, provides that no application for transfer shall be entertained if the applicant intends to be transferred from a school situated within the distance of 25 kms. from the present posting.

The petitioner contends that the petitioner sought for transfer to any school in the district of Malda. The distance between Malda and Coochbehar is more than 300 kms. and as such, there cannot be any impediment in praying for transfer on account of distance alone. The petitioner also relies on Clause 4(e) of the guidelines which provides that other reasons for transfer can also be considered by the authority.

Under such circumstances, this Court finds that the order impugned suffers from the following irregularities:-

- a) The petitioner had applied for general transfer which shall not be governed by provisions of transfer on special grounds, but shall be

considered on the basis of the Rule 3(2) and the Rules discussed hereinabove.

- b) The authority could not have recused from considering the matter, as he was directed by this Court.
- c) Further, the notification of September 8, 2021 shall not be applicable in this case as the Utshasree portal has not only been suspended, but the petitioner's application had been pending prior to the introduction of the notification.

Under such circumstances, the order impugned is set aside. The Commissioner of School Education, West Bengal is directed to consider the application for a general transfer mentioned by the petitioner and not as a transfer on special ground. Whether the petitioner's reasons are found to be adequate, sufficient and satisfactory are left to be decided by the authority. However, the authority is required to take a decision in this regard as already directed by a learned coordinate Bench.

The issue shall be decided upon hearing the petitioner and the school authorities, if necessary. A reasoned shall be passed and communicated to the petitioner.

The vacancy position as available to the petitioner shall be shown to the petitioner for his option, if the petitioner's case for transfer is accepted by the authorities.

The entire exercise shall be completed within a period of three months from the date of communication of this order.

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.)