

31.01.2024
Item No.10
Court No.11
Avijit Mitra

**MAT 2 of 2024
with
IA No. CAN 1 of 2024**

**Mosammath Rajina
-versus-
State of West Bengal & ors.**

Mrs. Usha Maity,
Mr. Sakya Maity
...for the appellant
Mr. Sirsanya Bandyopadhyay,
Mr. Arka Kumar Nag
...for the State
Mr. Pulak Ranjan Mandal,
Ms. Bandana Mandal,
Mr. Subhrangsu Panda
...for the WBCSC

The present appeal has been preferred challenging an order dated 8th December, 2023 passed by the learned Single Judge in the writ petition being WPA 27228 of 2023.

Ms. Maity, learned advocate appearing for the appellant/writ petitioner submits that without disclosing any independent reason, the learned Single Judge has refused to interfere with the order impugned in the writ petition being an order dated 23rd November, 2023 passed by the respondent no.2. The order impugned in the present appeal, thus, being a cryptic one is not sustainable in law.

She submits that the order dated 23rd November, 2023 has been passed by the respondent no.2 without appreciating the scope and ambit of the proviso to Rule 3(1) of the West Bengal College (Transfer of Employees) Rules, 2017 (hereinafter referred to as the said Rules) and the severe hardships faced by the appellant, as detailed in her

application for transfer. Such arguments, as advanced, were glossed over by the learned Single Judge and no finding was returned on the same.

Drawing our attention to a document annexed at page 223 of the supplementary affidavit, Ms. Maity submits that prayer of teachers towards transfer on special ground, who had rendered lesser period of service than the appellant, had been allowed by the authorities but a different yardstick had been applied in the case of the appellant. Such discrimination, as practiced, ought to have been interfered with by the learned Single Judge.

She further submits that the West Bengal College Service Commission (hereinafter referred to as the said Commission) has already taken steps to fill up the vacancies opted by the appellant at Chhatna Chandidas Mahavidyalaya, Bankura and Hijli College at Kharagpur, Paschim Medinipur and unless an *interim* protection is granted restraining the Commission from filling up the respective vacancies in the above colleges, the appellant will suffer irreparable loss and injury.

She contends that the appellant's college upon considering her prayer had already issued granted '*No Objection Certificate*' and such fact negates the finding that in the event the appellant's prayer is allowed, the said college would be facing inconvenience. Reliance has been placed upon unreported judgments delivered in the cases of *Pijush Kanti Das Vs. The State of West Bengal & ors.*, *Suvadip*

Ghorai Vs State of West Bengal & Ors. and Tripti Biswas Vs The State of West Bengal & Ors.

Per contra, Mr. Mandal, learned advocate appearing for the Commission submits that the appellant's prayer for transfer was rejected by a reasoned order and as such the learned Single Judge rightly refused to exercise discretion in her favour. The Commission has already completed the selection process and the *interim* order, as prayed for, would be prejudicial to the interest of the candidates, who have been selected.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the appellant had not yet completed five years of service. Upon emerging to be successful in the selection process, she chose the vacancy in the post of Assistant Professor of Sociology at Pakuahat Degree College, Malda (in short, Pakuahat College) and joined the said post.

The appellant sought for transfer in view of the inconveniences faced by her in attending her duties at Pakuahat College in Malda which is about 500 kms away from her native place at Bankura and about 450 kms away from her husband's place of posting at Raja N.L. Khan College, Paschim Medinipur. Due to such long travelling distance she was also not being able to look after her child, who is only 5 years of age and her ailing father-in-law at Bankura. The above grounds were duly considered by the respondent no.2 in the backdrop of the fact that the other

Assistant Professor of Sociology in the Pakuahat College, who is senior to the appellant is a cancer patient and she had also applied for transfer.

The teacher-pupil ratio in Pakuahat is 1:46 whereas in Chhatna Chandidas Mahavidyalaya, Bankura it is 1:37 and in Hijli College at Kharagpur, Paschim Medinipur is 1: 11. Considering such teacher-pupil ratio, the respondent no.2 arrived at a finding that the appellant's transfer would lead to an imbalance in teaching-learning process.

In the said conspectus, the respondent no. 2 rejected the appellant's prayer for transfer and considering the reasons detailed, the learned Single Judge rightly refused to exercise discretion in favour of the appellant.

It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgments upon which reliance has been placed by the appellant, in our opinion, are distinguishable on facts.

For the reasons discussed above, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.)(Tapabrata Chakraborty, J.)