

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Harish Tandon
And
The Hon'ble Justice Prasenjit Biswas.

MAT 160 of 2024
With
IA No. CAN 1 of 2024

Partha Ghosh
Vs.
The State of West Bengal and others.

For the Appellant : **Mr. Sudip Ghosh Chowdhury.**

For the State : **Mr. Bhaskar Prasad Vaisya,**
Mr. Sagnik Chatterjee.

For the WBCSSC : **Dr, Sutanu Kumar Patra,**
Ms. Supriya Dubey.

Heard on : 2nd July 2024

Judgment on : 2nd July 2024.

The Court:

Successive applications for transfer are taken out by the appellant starting from the year 2021 on the ground of distance. Admittedly, the petitioner/appellant joined the present school in the year 2013 and was discharging his duties since then. No case has been made out that from the first day of joining the school, the petitioner/appellant is feeling inconvenience in embarking a journey

of such a long distance, which was felt after a gap of nearly eight years.

A sense has inculcated in us that a desperate attempt is resorted to get the transfer from the said school to a school, which the appellant thinks is situated near to his residence. Incidentally, a plea of non-adherence of the pupil-teacher ratio is also projected by the appellant. According to him, there are three teachers in the same school imparting education to eight pupils whereas the Rule mandates the maintenance of one teacher against the forty pupils.

The first application taken out on 8th August 2021 was rejected by the authority on 6th September 2021 on the ground that the petitioner/appellant being the single teacher of the said subject, the prayer for transfer cannot be acceded to. The subsequent application filed on 1st February 2022 was also rejected on the ground that his earlier application had been rejected and, therefore, the further prayer for transfer cannot be entertained and/or accepted.

An argument was advanced that at the time when the first application was taken out, there was no amendment brought into the relevant Rules i.e. the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as “said Rules”) imbibing the concept of the single teacher as a bar and/or hurdle in processing an application for transfer and, therefore, the application for transfer should be decided on the basis of an un-amended Rules. Rule 3 of the said Rules provides that an incumbent shall be eligible for general transfer provided he or she is confirmed in service and satisfactorily completed five years of such service in a particular school.

The only embargo one can see is under sub-rule (2) of Rule 3 of the said Rules prohibiting the transfer from a school to another school within a distance of 25 kilometers. The modalities to process the said application is provided under Rule 6 thereof, which on a meaningful reading does not confer any inchoate right into the incumbent to get transferred in a school of his choice. There is no prohibition provided in the aforesaid Rules that the authority shall not take a conscious decision on the said application and have to succumbed to the ipse dixit of the aforesaid provisions, more particularly, the moment the eligibility criteria is fulfilled, the transfer is inevitable.

The management and administration of the school lies with the authority, who has its constitutional obligation to impart education by establishing the schools within their territorial jurisdiction. The recruitment of teachers in such educational institutions also lies with the authorities. The State in its wisdom may frame the Rules not only in relation to the service conditions of those teachers but also for transfer of those teachers from one school to another, as the transfer is an incident of service. It is, thus, a discretion vested upon the authorities to take a conscious decision considering an application for transfer taken out by the teacher in a pragmatic and reasonable manner, more particularly, taking into account the realities and the difficulties faced by the seeker of justice.

Imparting education to the pupils of the country is a constitutional obligation of the State and the administration and management lies with them with an avowed object of not impeding upon the education imparted to those children.

The meaningful reading of the provisions contained in Rule 3 and Rule 6 do not imbibe within itself the ground for rejection of

prayer for such transfer and once the discretion is left with the authorities, any ground taken, which the authority feels to be reasonable and rational, cannot be impinged in the Court of Law.

The scope under the judicial review is limited in case of a transfer as the decision must withstand and pass the muster of test of reasonability. The discretion exercised by the authorities must be reasonable as opposed to capricious, whimsical and arbitrary exercise of such power. In this regard, we invited the attention of the Counsel for the appellant to elect the application for transfer, which received rejection, as we find that several applications for transfer, which were rejected by the authorities, were challenged in the writ petition. The Counsel for the appellant elected to squeeze the scope of the writ petition to the last application for transfer taken on 1st February 2022 based upon the distance.

It is arduously submitted by the Counsel for the appellant that the State Government issued a Notification being No. 09/SE dated 3rd January 2022

SE/S/IS-04/95 (Pt.III)

incorporating the mechanism and the modalities with regard to the processing the application for transfer filed by the respective teachers. According to the Counsel for the appellant, since the last application for transfer was filed after the said Notification dated 3rd January 2022, the authorities cannot take recourse to an un-amended provision of the said Rules and, therefore, such decision needs interference.

The said Notification dated 3rd January 2022 was issued by the Government as large number of applications was taken out by the teachers for transfer when they are the single teacher in the subject and on a transfer being effected, the education of the children shall be greatly affected in absence of a teacher in the said

particular subject. By the said Notification, the Government was also considering the plight of such teachers, who deserve to be transferred on a valid ground but because of such embargo that there would be no teacher in the particular subject, the Government decided to issue such Notification providing an interim and/or stop gap measures to combat such situation in the following:

“In the event a single subject teacher makes application for transfer, the SMC will not reject the application and will inform the DI(SE) about such application. The DI(SE) will immediately discuss the matter with the CSE. In fit cases, the DI(SE) will take urgent step in time bound manner to search for a teacher on the same subject from nearby schools and make local arrangement so that the teacher of the other school attends the school wherefrom the teacher concerned has applied for transfer on limited days of the week on a temporary basis till such time a permanent teacher on that subject joins. The DI(SE) will inform such arrangement to the CSE who shall inform the matter to the Chairman of WBCSSC. President of WBBSE and School Education Department CSE will ensure such arrangements in 7 days time immediately. The DI(SE) will communicate such arrangement to the school concerned and the HOI in question will forward the application of the teacher to the DI(SE). The DI(SE) will then forward the case to the WBCSSC for consideration. WBCSSC will suitably recommend the case for transfer to the WBBSE and the Board will issue transfer order accordingly.

This remains in force until further order.”

According to the Counsel for the appellant, since the aforesaid procedures have not been adopted and the rejection is on the ground of single teacher, the said order needs interference.

The quoted excerpts from the said Notification dated 3rd January 2022 leaves beyond cavil of doubt that the embargo created earlier for transfer of a single teacher in a particular subject has been diluted to some extent, but it does not dispense with the

discretion bestowed upon the authorities to reject the application for transfer.

The expression “in fit cases” has to be construed in the proper perspective and its applicability in suitable cases deserving the transfer to be effected. Any other meaning of “in fit cases” would go against the administrative intend and would frustrate the very purpose for which the said Notification was issued. The modalities and mechanisms, as provided in the above quoted excerpts, are activated only after a conscious decision is taken by the authorities that the ground for transfer comes within the ambit of “a fit case” and the prayer for transfer is required to be allowed and the interim and/or stop gap measures should be adopted and/or adhered to in the manner as provided in the said Notification.

It would be opposed to a policy adopted by the Government if the interpretation sought to be assigned by the appellant is accepted that the moment the application for transfer on the ground of distance is taken out, the same has to be processed and should be routed in the manner as provided in the said Notification dated 3rd January 2022. The mannerism in which the application has to be routed should pass through the regour of “fit cases” and not every application should be dealt with in earlier manner. The moment the authorities decided that the application does not come within the four corners of the said “fit case”, the other modalities are not required to be activated nor adhered to, as submitted by the appellant.

As indicated herein above, in order to bring a case within the peripheral of the “fit cases”, the authorities must take a pragmatic and reasonable decision and having done so, the scope of judicial review becomes limited and such case does not deserve to be interfered with under Article 226 of the Constitution of India.

A plea of disproportionate teacher-pupil ratio is also taken by the Counsel for the appellant before us, which, in our opinion, does not deserve any merit. The teacher-pupil ratio adopted by the Government is after an elaborate discourse and taking a stock of the situation, more particularly, the efficacy and cohesive potential of the teacher to impart education to the number of pupils. One teacher against the 40 pupils was considered to be a rational and reasonable and it is an obligation of the State to keep adherence thereto, more particularly, when the number of pupils exceeds beyond 40 and number of teachers are disproportionate thereto.

The said principle cannot be applied when the number of pupils is less in comparison to the number of teachers. In other words, it would help the pupils to have an individual attention from the teacher, which, we feel, is more effective and beneficial for the pupils to excel their learning and to get the benefit of being educated in a more conducive manner.

We, thus, do not find that such point deserves any merit.

On the discussions as above, we do not find any grounds warranting interference with the impugned order.

The appeal is, thus, dismissed.

Consequently, the connected application being CAN 1 of 2024 is also dismissed.

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

(Harish Tandon, J.)

ab

(Prasenjit Biswas, J.)

