

13 **20.06.
2024**

Ct. No. 08

Ab

**MAT 163 of 2024
IA No. CAN 1 of 2024**

**Mousumi Patra
Vs.
The State of West Bengal and others.**

**Mr. Sudip Ghosh Chowdhury,
Ms. Shreyeta Mitra.
... for the appellant.**

**Ms. Sonal Sinha,
Mr. Avishek Prasad.
... for the State.**

**Mr. Bibekananda Tripathy.
... for the respondent no. 5 & 6.**

**Mr. Sourav Mitra.
... for the WBCSSC.**

The writ petitioner/appellant applied for a transfer upon uploading an application in a portal of the State Government known as “Utsashree” on the ground that she is suffering from serious gynecological disorder as reported by her Doctor and needs further treatment available in the other districts.

The information uploaded by the school in the said portal, as downloaded by the writ petitioner/appellant, revealed that an objection is raised by the School Authority that there is only one female teacher in a co-educational school. The said objection leads to denial and/or refusal to issue ‘No Objection Certificate’ being one of the parameters of processing an application for transfer under the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015.

Obviously, in absence of any No Objection, the application is kept in suspended animation and the authority under the said Rules did not proceed any

further. The writ petitioner/appellant was constrained to move the writ petition before this Court and by the impugned order the writ petition is disposed of solely on the ground that since the strength of the students in the school is 964 having only 12 teachers, the transfer of the writ petitioner/appellant would affect the learning process of the students of the said school.

There cannot be any two views on the above findings of the Trial Court that the education and the learning process cannot be hampered, as it is a right of every child to have education.

We are conscious of the fundamental rights to education enshrined under Article 21A of the Constitution of India, but equally we cannot ignore the fact that if the fundamental rights of the other in a public employment, which is governed by the statutory laws are infringed having pitted against one and another, the Court must strike a balance in this regard and it is a duty of the sovereign to take appropriate steps to uphold the fundamental rights of education provided under Article 21A of the Constitution to the children.

The transfer is an incident in public employment if the transfer is governed and/or regulated by a statutory provision; the authority cannot act in defiance of the aforesaid provision nor can travel beyond it. The State Government has framed the Rules relating to a transfer of the teachers in various schools within the State. Rule 4(1)(a) provides that any incumbent may apply online in the designated portal on the medical ground as specified therein. The said provision is quoted as under:

“4. Grounds for transfer. - An incumbent may apply online in the designated portal for transfer in the following grounds:-

(a) Any incumbent or his/her son/daughter/spouse suffering from malignant

disease/severe heart disease/renal failure/thalassemia, replacement of organ/serious gynecological disorder causing serious problem in attending the school.”

It is manifest from the bare reading of the aforesaid provision that the serious gynecological disorder causes service problem in attending the school is one of the grounds enshrined therein, which confers right on the incumbent to make an application for transfer.

Rule 6(2)(f) of the said Rules further provides that in the event an application for transfer is uploaded on the said designated portal by an incumbent for transfer on the medical ground, the said applicant shall be examined by a Doctor of the School Management Committee and the report must indicate the disease of the applicant, which cause serious problem in attending the school. Sub-rule (3) of Rule 6 contains a mechanism for processing an application uploaded on the said designated portal upon obtaining “No Objection Certificate” from the school.

The legislature being conscious that there may not be a genuine or adequate medical ground for transfer from one school to another provides second tier of filtration where the District Inspector of Schools was taking a view of the Chief Medical Officer (CMOH) on transfer application. The legislature was conscious that there is a possibility and probability of misusing the said provision relating to transfer on medical ground and, therefore, provided two tier of filtration in order to weed out the frivolous application and allow the application based upon a genuine ground.

It is no longer *res integra* that the moment the statutory rules are in place and contained an exhaustive provision relating to the transfer applications, the grounds, which are not been incorporated, cannot be

taken by the statutory authority in rejecting an application or, in other words, refusing to issue the “No Objection Certificate”. The thing, which is required to be done in a prescribed manner, has to be done in such manner and not otherwise.

As indicated above, the modalities and the mechanism has been provided in the statutory rules to be followed by the schools and the District Inspector of Schools, which appears to have been bypassed at the fiat of the School Authorities in taking a ground, which is neither included nor contemplated in the aforesaid statutory Rules.

The learned Single Judge has not considered the above aspect and, therefore, the impugned order warrants interference. The impugned order is set aside.

The School Authorities are directed to process the said application in the light of the provisions contained under Rule 4 and 6 of the aforesaid Rules.

It goes without saying that all such authorities including the District Inspector of Schools shall complete the exercise within four weeks from the date of communication of this order.

In view of the above, the appeal and the connected application are disposed of. As a consequence whereof, the writ petition filed by the writ petitioner/appellant is also disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

