

20.06.2024
sayandeep
Sl. No. 14
Ct. No. 08

MAT 165 of 2024
With
IA No. CAN 1 of 2024

Sampa Mondal
-Versus-
The State of West Bengal & ors.

Mr. Sudip Ghosh Chowdhury
..... for the appellant

Mr. Rezaul Hossain
Mr. Parvez Hossain
.... for the school authority

Mr. Gourav Das
Mr. Debapriya Chatterjee
..... for the State

The School authority has consciously taken a decision not to forward the application for transfer filed by the appellant on the ground of divorce against her husband. The appellant has challenged the said decision on several scores including that the School authority have acted contrary to the Rules 4 and 6 of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Re-allocation) Rules, 2015. Before we proceed to decide the appeal, it would be profitable and relevant to quote Rules 4 and 6 of the aforesaid Rules which runs thus:

“4. Grounds for transfer.- An incumbent may apply online in the designated portal for transfer on 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;
- (b) *Physically disablement of 40% or more as certified by competent authority;*
- (c) *Female incumbent facing serious problem in attending the school due to divorce or death of husband;*
- (d) *Incumbent of age 57 years and more and willing for home district posting;*
- (e) *Any other reasons.*

“6. Procedure for submission and consideration of the application (1) *An incumbent, may apply for transfer on grounds and manner mentioned in rule 4. The respective authorities involve in the process of transfer ie. School Managing Committee (SMC), District Inspector of Schools of Secondary Education (DI), Central Commission (CSSC), West Bengal Board of Secondary Education (Board) shall consider such transfer application within such time as may be specified by the State Government by guidelines.*

(2) *Upon submission of application, the authority of SMC shall-*

(a) *verify the service records and other details of applicant;*

(b) *examine whether departmental/judicial proceeding is pending or being contemplated, or suspension order is issued against applicant or not. In any such affirmative case, the school authority shall not forward the application;*

(c) *consider the number(s) of subject teacher(s) and roll strength. If resultant vacancy of school in particular subject become zero, or not commensurate with roll strength, the authority of SMC shall not forward the application;*

(d) *consider the total application(s) from school is not more than 10% (ten) of total teachers' strength of school;*

(e) *dispensed with the provision of clause (e) and (d) of this sub-rule for applications made on grounds mentioned in rule 4 (a) to (d):*

Provided that while considering such applications, if resultant vacancy of school in particular subject become (0) zero, or not commensurate with roll strength, the SMC shall approach the CSSC through DI/S (SE) for filling up the vacancy:

Provided further that the CSSC may take endeavour to fill such resultant vacancy(s), by any incumbent whose application for transfer is fit for the aforesaid resultant vacancy or under provision of the section 10C of the Act with the approval of the State Government:

Provided also that the Commissioner of School Education shall supervise the process and ensure filling up of such vacancies with utmost priority and send progress report fortnightly to the School Education Department.

(f) cause to examine the applicant by the doctor of SMC in case of transfer application made on medical grounds mentioned in clause (a) of rule 4 and must indicate the disease of the applicant. Which caused serious problem in attending the school.

(g) issue "No Objection Certificate" (NOC) in fit cases and shall forward transfer application to District Inspector concerned."

It admits no ambiguity on a meaningful reading of the aforesaid provisions that a right is conferred upon the incumbent/the teacher to apply for transfer on a designated portal under Rule 4 thereof on the grounds enumerated therein. Undeniably the Clause (c) of Rule 4 contemplates a ground for transfer due to divorce or death of the husband which is regarded as a special ground for transfer. The procedures for processing the said application and the responsibility of the School Managing Committee is exhaustively provided in Rule 6 thereof.

Clause (e) of Sub Rule 1 of Rule 6 of the aforesaid Rules creates an exception in relation to an application for transfer founded upon the grounds enumerated under Clause (a) to (d) of Rule 4 to the effect that the Clause (c) and (d) of sub Rule (2) of Rule 6 shall not be insisted upon and the school authority shall dispense with such conditions.

Clause (c) and (d) of sub Rule (2) of Rule 6 postulates that while considering an application for transfer the School authority shall take into account the number of the subject teacher roll strength as well as the resultant effect on vacancy in a particular subject to be nil or not commensurate with the roll strength. Clause (d) further provides that the school authority shall take into account the total applications uploaded on the designated portal by the teacher of the said school which should not exceed 10% of the total teacher strength. It is manifest that the aforesaid two clauses are applicable in respect of all applications for transfer uploaded on the designated portal but the dispensation can be made to take recourse thereunder, if the transfer is necessitated by a ground incorporated in Clause (a) to (d) of Rule 4 of the aforesaid Rules.

The cumulative effect of the aforesaid two Clauses and the proviso inserted thereto makes the intention laudable to the effect that the school authority shall not reject the application for transfer on the ground provided in Clause (a) to (d) of Rule 4 because of the

resultant vacancy in the particular subject would become nil or there would be a disproportion in the people teacher ratio on the basis of the roll strength nor on the ground that the said application exceeds 10% of the applications uploaded on the said designated portal by the teachers of the said school.

The contention of the State that the applicant is a single teacher in the Physical Education and the resultant effect on a transfer would make the strength of the teacher to zero in the particular subject, is not acceptable for the simple reason that the provisions contained in Clause (e) of sub Rule (2) and Rule 6 speaks otherwise. The School authority cannot act in derogation to the statutory provisions nor the State can take a plea which is contrary to the Statute as they are bound by the provisions contained therein applicable in this regard. The action of the authority is always tested on the anvil of the reasonableness and/or in tune or in commensurate with the statutory provisions and the statutory authority cannot be permitted to travel beyond the circumference of the statutory provision nor can act whimsically and capriciously taking a ground not contemplated therein.

At time the sentimental arguments are advanced at the behest of the State or its authority that in the event the transfer is made it would have a negative impact on the education of the student which at times appears to be logical but the moment the State has

consciously promulgated a statute, the sentiments or sympathy does not have any role to play and the authority is bound to act strictly within the purview of the statutory provisions.

The procedure for processing an application for transfer is exhaustively provided in Rule 6 and Clause (c) and (d) of sub Rule 2 of Rule 6 shall be dispensed with in relation to an application for transfer on the ground provided in Clause (a) to (d) of Rule 4; the authority cannot bank upon such eventuality in denying the right conferred upon the teacher on promulgation of the Statute.

There is no confusion and/or dissent in recapitulation of the aforesaid provisions but the real issue involved in the instant appeal is whether a transfer is to be made simplicitor on the ground of a divorce or the death of the husband as provided in Clause (c) of Rule 4 of the aforesaid Rules. Even though the school authority cannot take a shelter on the resultant vacancy becoming zero or upset the people teacher ratio on the roll strength yet the school authority is obliged under the aforesaid provision to consider the grounds taken by the teacher in an application for transfer under Clause (c) of Rule 4 thereof.

The meticulous reading of the language employed in Clause (c) of Rule 4 provides that a transfer shall not be permitted solely on the ground of decree of divorce

granted against the female applicant but is controlled by a qualifying words that because of such decree for divorce, the female incumbent is facing serious problems in attending the school. Mere decree for divorce cannot be a ground for transfer unless the facts disclosed satisfies the conscience of the school authority with regard to facing serious problem in attending the school due to divorce.

We have seen the conduct of the petitioner apparent from the downloaded information from the designated portal which reveal that the frequent applications for transfer was made by the petitioner since 2021. It is uniformly submitted by all the counsel that the barring the last application, all such earlier applications were founded upon the factum of distance to be travelled by the petitioner to attend the said school which was rejected by the authority. It is an admitted fact that the petitioner separated herself from the company of her husband in the year 2019 yet was attending the school regularly. The application for divorce was filed in the year 2021 under Section 13B of the Hindu Marriage Act, 1955 and the decree for divorce was granted on 07.05.2022. Within a span of one month, an application is taken out on the ground of divorce as contemplated under Clause (c) Rule 4 of the said Rules.

Our attention is drawn to the resolution of the Managing Committee of the School which vividly reflects

the conduct of the petitioner in making attempt to seek divorce. The petitioner has not been able to show the serious problem being faced by her in attending the school because of such divorce having granted against her except the submission is made at the Bar that the daughter aged about 12 years is residing with the petitioner. The order granting decree for divorce is silent on the custody of the minor daughter and the logical inference can be drawn therefrom that the said minor daughter was all along in the custody of the appellant. Such ground cannot be said to be a ground under Clause (c) of Rule 4 as the daughter was all along in the custody of the appellant since her separation in the year 2019. Furthermore, the inconvenience of a daughter who was all along in the custody of the appellant cannot be construed as a serious problem faced by the petitioner in attending the school due to divorce.

On the harmonious reading of the various Clauses including Clause (c) of Rule 4, mere grant of divorce to the female incumbent cannot be a ground simplicitor for seeking transfer unless there is a convincing materials shown and/or disclosed creating the serious problem in attending the school. The resolution indicates that the petitioner was adamant in seeking the transfer on one ground or other and there is no element of the serious problem to be faced in

attending the school because of the divorce having granted to her.

The writ Court should seldom interfere with the administrative decision taken by the authority provided the same is found strictly within the purview of the statutory provision or withstand on the reasonability test.

We thus do not find any decision of the school authority having suffered from any vices being not in commensurate with the provisions of the law applicable in this regard.

The appeal sans merit.

The appeal is dismissed without any order as to costs.

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

The aforesaid finding is restricted to an application filed by the petitioner on 01.06.2022 for transfer.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)