

27.02.2024
Item No.11
Court No.11
Avijit Mitra

**MAT 298 of 2024
with
IA No. CAN 1 of 2024**

**Papiya Biswas
- Versus -
State of West Bengal & ors.**

Mr. S.P. Lahiri,
Mr. Rajesh Naskar,
Mr. Srijit Halder
...for the appellant
Mr. Bibekananda Tripathy,
Mr. Bishnupada Jana
...for the State respondents
Mr. Sunit Kumar Roy
...for the Commission

The present appeal has been preferred challenging an order dated 9th January, 2024 passed by the learned single Judge in a writ petition being WPA No.19212 of 2023. By the said order, the writ petitioner's prayer for transfer on medical ground was turned down on the basis of the written instruction furnished by the respondent no.3 that the prayer of the petitioner if allowed, the students of the school would suffer since she was the only teacher in Work Education and the school was having 452 students.

Mr. Lahiri, learned advocate appearing for the writ petitioner/appellant submits that the impugned order was passed without considering the judgments delivered by a coordinate Bench of this Court wherein it was *inter alia* held that an application for transfer cannot be

dismissed on the sole ground that the applicant is a single teacher. Let the order passed in MAT 2061 of 2023, as produced, be kept on record.

Drawing our attention to a memo dated 3rd January, 2022 issued by the Additional Chief Secretary to the Government of West Bengal, School Education Department, Mr. Lahiri submits that the respondent no.3 could not have rejected the appellant's prayer for transfer on the purported ground that she was the only teacher of Work Education in the said school.

Referring to the document annexed at page 57 of the application, Mr. Lahiri submits that after the appellant's application for transfer on medical ground was returned for want of certificate of BMOH, the appellant preferred a writ petition being WPA 8666 of 2022 which was disposed of by on 2nd August, 2022 directing that the writ petitioner/appellant shall apply afresh on the same ground and the head of the institution was directed to forward the said application to the BMOH for seeking appropriate opinion on the appellant's medical condition. It was further directed that upon receipt of such opinion thereon, the same may be forwarded to the concerned D.I. of Schools for further action. Pursuant to such direction, the appellant applied afresh on 8th September, 2022. The said application was forwarded by the head of the institution to the respondent no.3 on 22nd September, 2023. As no further steps were taken

thereafter, the appellant was constrained to prefer the above writ petition.

Mr. Tripathy, learned advocate appearing for the State respondents submits that the transfer of the appellant, if allowed, would cause severe inconvenience to the students at large more so when the appellant is the single subject teacher.

Mr. Roy, learned advocate enters appearance on behalf of the Commission.

Heard the learned advocates appearing for the respective parties and considered the materials on record including the judgments delivered by a coordinate Bench of this Court and the relevant rules.

The documents at pages 55 and 62 of the stay application reveal that the school initially issued 'No Objection Certificate' in favour of the appellant on 26th September, 2019 and the appellant was medically examined by the CMOH.

By a notification dated 27th February, 2015, the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as the said 2015 Rules) were promulgated. The said rules were amended from time to time and the last amendment was effected *vide* memo no.09-SE dated 3rd January, 2022. The operative part of the said memo runs as follows :

"In that event a single subject teacher makes application for transfer, the SMC will not reject the

*application and inform the DI(SE) about such application. The DI (SE) will immediately discuss the matter with the CSE in the DI(SE) will take urgent step in time bound manner to search for a teacher on the same subject from nearby and make local arrangement so that the teacher of the other school attends the school wherefrom the teachers has applied for transfer on days of the week on a temporary basis till such time a permanent teachers 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 arrangement in 7 days immediately. The DI(SE) will communicate such arrangement to the school concerned and the HOI in question shall forward the application of the teacher to 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.”*

In view of the said procedure and the judgment delivered by the coordinate Bench of this Court, we are of the opinion that a teacher's application for transfer on medical ground cannot be rejected on the sole ground that he/she is a single teacher for a particular subject in the concerned school.

In the said conspectus, the order impugned in the present appeal is set aside and the respondent no.3 is directed to consider the appellant's application for transfer, in the vacancies existing on date, in the light of the provisions contained in the memo dated 3rd January, 2022, as quoted above and the certificate issued by the Chief Medical Officer of the Health and upon granting an opportunity of hearing to the appellant.

Needless to observe as the operation of the online portal has been temporarily suspended, the appellant's application shall be considered through offline mode and the final decision shall be communicated by the respondent no.3 to the appellant.

The above exercise shall be completed within a period of six weeks from the date of communication of this order.

With the above observations and directions, the appeal and the connected application are disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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