

MAT 339 of 2024

(Apurba Biswas Vs. The State of West Bengal & Ors.)

Mr. Ujjal Ray

..... For the appellant

Mr. Biswabrata Basu Mallick

Ms. Parna Roy Chowdhury

.... For the State

Mr. Sourav Mitra

**..... For the Central School
Service Commission**

The present appeal has been preferred challenging an order dated 6th February, 2024 passed by the learned single Judge in a writ petition being WPA 15423 of 2022. By the said order, the writ petition was dismissed observing, *inter alia*, that ‘*be that as it may, the ‘**Utsashree Portal**’ is now under suspension, as such the prayer of the petitioner for such general transfer cannot be considered at this stage*’. It was also recorded that the petitioner’s application ‘*was rejected from the end of the District Inspector of Schools (S.E.), District – 24-Parganas (North), the respondent no. 5 herein, on the ground that the petitioner is the single teacher of the subject in the school*’.

Mr. Ray, learned advocate appearing for the writ petitioner/ appellant herein submits that the appellant initially submitted an application for general transfer in terms of the provisions of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as the 2015 Rules) on 7th August, 2021 and as

the same was returned by the school authorities, he resubmitted the same on 16th February, 2022. The same was thereafter forwarded by the respondent no. 8 to the respondent no. 5 on 23rd March, 2022 with a remark '*As per Managing Committee forwarded to District Inspector*'. Thereafter the respondent no.5 returned the application to the respondent no.8 on 19th May, 2022 with a remark that '*HOI: requested to follow strictly the Order of the CSE, WB vide Memo No. 9-SE date 03-01-2022 the SMC is requested to inform DI/S(SE) before sending the application to DI/S end for local arrangement on temporary basis Do not reject the application*'. Challenging *inter alia* the said remark, the appellant preferred the writ petition.

According to Mr. Ray, the appellant was appointed as a Physics teacher in the Boyra Sammilani High School (H.S.) (hereinafter referred to as the said school). From the Managing Committee resolution dated 19th February, 2022 it would be explicit that in the HS Section the roll strength in the Physics subject is 'zero'. In view thereof, there can be no hurdle in accepting the appellant's application for transfer.

Placing reliance upon a judgment of a coordinate Bench of this Court, he submits that an application for transfer cannot be dismissed on the sole ground that the applicant is a single teacher. The circular dated 3rd January, 2022, as referred to by the respondent no. 5 in his remark, does not stand in the way in processing the

appellant's application for transfer. Under the said circular, it is incumbent upon the respondent no. 5 to take urgent steps in time to search for a teacher on the same subject from nearby and to make local arrangement strictly maintaining the time frame.

Mr. Basu Mallick, learned advocate appearing for the State denies and disputes the contention of the appellant and submits that pupil teacher ratio needs to be taken into consideration while processing the appellant's application for transfer. It also needs to be ensured that no inconvenience is caused to the students at large.

Mr. Mitra, learned advocate appearing for the Central School Service Commission also denies and disputes the contention of the appellant and submits that being a Physics teacher, the appellant is also under an obligation to take classes of Physical Education in the secondary sections.

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

An application for transfer cannot be dismissed on the sole ground that the applicant is a single teacher. The respondent no. 5 in his remark had not rejected the appellant's claim, but had requested the respondent no. 8 to follow the provisions of the circular dated 3rd January, 2022. The said circular provides the guidelines towards consideration of an application of a single teacher.

Procedural law cannot defeat substantive rights and it is required to assist and aid the object of the statute. The same cannot defeat the substantive rights conferred by statute. In view thereof, we are of the opinion that on the ground that the *Utsashree* portal was under suspension, the learned single Judge ought not to have rejected the appellant's writ petition.

In the said conspectus, the order impugned in the present appeal is set aside. The respondent no.5 ought to have taken a final decision on the appellant's application for transfer instead of relegating the matter to the school authorities for consideration. In view thereof, the matter needs to be reconsidered.

Accordingly, the respondent no. 5 is directed to consider the appellant's application for transfer afresh in the light of the observations made in this order, in the vacancies existing on date, in the light of the provisions contained in the circular dated 3rd January, 2022, upon granting an opportunity of hearing to the appellant and the school authorities and to communicate the final decision 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.5 to the appellant.

The above exercise shall be completed within a period of 6 (six) weeks from date of communication of this order.

In the event the appellant's claim deserves acceptance, all necessary follow up steps shall be taken by the respondents forthwith.

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

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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