

**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 No. 342 Of 2024

With

CAN 1 of 2024

Sagar Lohar

-Versus-

The State of West Bengal And Ors.

For the Appellant : **Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
Mr. Sk Abdur Rahim.**

For the State : **Mr. Jayanta Samanta,
Mr. Parikshit Goswami,**

For the SSC : **Mr. Sunit Kr. Roy.**

Judgment on : **01.07.2024**

Prasenjit Biswas, J:-

1. The present appeal is directed against the order passed by a Single Bench of this Court dated 06.02.2024 in connection with W.P.A 172 of 2024.

2. The appellant/writ petitioner has joined as an Assistant Teacher in Suisa (Higher Secondary) School, Baghmundi, District Purulia. He applied for general transfer through 'Utshasree Online Portal' on the ground of illness of his wife on 15.03.2022 which was duly examined and forwarded by the respondent school with all relevant papers including NOC to the BMOH concerned. Being satisfied with the medical documents annexed with the application filed by the present appellant the BMOH recommended his case and then it was forwarded to the respondent/District Inspector of Schools (Secondary Education), Purulia. On being satisfied the respondent DI of Schools and after getting medical recommendation from CMOH concerned forwarded the same to the respondent/the West Bengal Central School Service Commission in the month of May, 2022. But unfortunately the application of the present appellant for his transfer on his wife's medical ground has been kept pending at the respondent commission till date. Finding no other alternative the present appellant moved the writ petition before the learned Single Bench of this Court and the said writ petition was dismissed by passing the impugned order dated 06.02.2024.

3. Learned Single Bench held interalia that:

“The grievance of the petitioner is that his application though has reached to the West Bengal School Service Commission, but till date the Commission has not taken any decision.

The petitioner is praying for a direction upon the Commission to decide the fate of his application.

The ‘Utshasree Portal’ is now under suspension, therefore, the direction as prayed for is not warranted at this stage.

WPA 172 of 2024 is dismissed accordingly without any order as to costs.”

4. Mr. Ujjal Roy, learned Advocate appearing on behalf of the appellant submits that owing to major distance and due to lack of direct connectivity between the residence of the petitioner and the school and also cause of the serious illness of his wife he has been facing tremendous problem in attending the school on regular basis and as such he is in need of dire requirement of transfer from the present school to any school nearest to his residence. It is further submitted at the behest of the appellant that there is a Gazette Notification vide no. 1122SE/ SE/ S/ 1S-04/ 95 (Pt III) dated 21.12.2021 issue by the respondent school education department whereby the respondent School Service Commission is directed to deal with the online transfer application at their end and consider the transfer application and issued the recommendation as per law within 3 weeks from the receipt of the transfer case from the DI of Schools but quite astonishingly the same has been

withheld till date by the said commission and the respondent commission sat tight over the matter without any reason.

5. Mr. Sunit Kr. Roy, learned Advocate representing the Central School Service Commission submits that since the 'Utshasree Online Portal' under suspension the petitioner's transfer application could not be considered till date.

6. The grievance of the appellant/petitioner is that his application though has reached to the West Bengal School Service Commission, but till date the commission has not taken any decision and he filed the writ petition before the Single bench of this Court with a prayer for giving a direction upon the commission to decide the fate of his application but the learned Single Bench dismissed the said writ petition on the ground that the 'Utshasree Portal' is now under suspension and therefore, the direction as prayed for is not warranted at the stage.

7. The present appellant/petitioner applied for general transfer to any school nearest to his residence through that online portal when it was functioning on medical ground of his wife. It is admitted position that the said transfer petition of the present appellant was duly examined and forwarded by the respondent school with all necessary papers including the NOC to the BMOH concerned and on being satisfied upon the medical documents of the petitioner's wife the concerned BMOH recommended his case and then the same was forwarded to the respondent/ District Inspector of Schools.

8. In turn the DI of Schools being satisfied with petitioner's application and after getting medical recommendation from CMOH concerned forwarded the same to the respondent School Service Commission in the month of May, 2022 but unfortunately the said application of transfer of the present appellant has been kept pending at the end of the commission till date.

9. The petitioner made the application for transfer on 15.03.2022 which was reached to the respondent Commission in month of May, 2022 but it has not yet been considered on the ground of suspension of the said online portal. We are not unmindful that one of the service conditions which gives right to claim transfer on fulfillment of service condition but there is no justification to withhold the said transfer application of the appellant by the School Service Commission on the ground of suspension of 'Utshasree Portal'. The application of the appellant for transfer on his wife's medical ground has been kept pending at the end of the commission and it sat tight over the matter without any reason till date. The appellant cannot be penalized for not functioning of the 'Utshasree Portal'. Moreover, the amended Transfer Rule is still in force and as such there is no impediment in proceeding with the transfer application offline as the same was made when the said portal was functional. Therefore, suspension of portal shall have no affect the case of the petitioner.

10. Under such circumstances, we direct the chairman, West Bengal Central School Service Commission to process the application for transfer of the appellant/petitioner on verification of the record and production of relevant documents by the school authorities. The Chairman, West Bengal Central

School Service Commission shall dispose of the transfer petition filed by the appellant/petitioner within 2 weeks from the date of communication of this order and the order passed by the commissioner be communicated to the appellant within one weeks thereafter.

11. Since the 'Utshasree Portal' has been suspended, the entire exercise as directed above, shall have to be concluded off-line.

12. Under such circumstances the appeal succeeds.

13. The appeal being MAT 342 of 2024 is accordingly allowed and disposed of.

14. The impugned order passed by the learned Single Bench of this Court dated 06.02.2024 passed in connection with WPA 172 of 2024 is hereby set aside.

15. In view of the disposal of appeal CAN 1 of 2024 is also disposed of.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)