

Form No.J(2)

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 400 of 2024
with
IA No. CAN 1 of 2024**

**Asaduzzaman Biswas
Versus
The State of West Bengal & Ors.**

For the appellant : Mr. Anjan Bhattacharya, adv
Ms. Anita Shaw, adv

For the Central School
Service Commission : Mr. Sunit Kr. Roy, adv

For the State : Mr. Supriyo Chattopadhaya, adv
Ms. Tapati Samanta, adv

For the WBBSE : Ms. Koyeli Bhattacharyya

Heard on : 9th July, 2024

Judgment on : **9th July, 2024.**

Harish Tandon , J:

The writ petition was dismissed solely on the ground that "Utsashree Online Portal" is under suspension. The grievance of the appellant relates to keeping an application for

transfer on distance ground in suspended animation as no decision was taken thereupon by the competent authorities.

The learned Single Judge observed that though the application has reached to the West Bengal School Service Commission, but no decision has taken thereupon which according to the appearing counsels is factually incorrect.

What is discerned from the respective submissions of the counsels is that the application filed by the appellant was uploaded on the said portal, but, thereafter no steps were taken thereupon and in the meantime, the State Government has taken a conscious decision to suspend the operation of the said portal.

The right to apply for transfer is recognized in the statutory Rules which has neither been amended nor repealed by a subsequent legislation.

A teacher is entitled to seek for a transfer and such right emanates from the statutory provisions. It is obligatory on the part of the authorities concerned to take a conscious decision thereupon.

All the counsels before us are uniform in their submissions that mere suspension of the said “Utsashree Online Portal” does not *ipso facto* suspend the rights conferred by a statutory provision and, therefore, the entitlement to seek transfer by making an application cannot be undermined nor be taken away.

There is no quarrel to the proposition of law, but once the statute creates a right for seeking transfer by a teacher, mere devise to the means of access to such entitlement is only for the administrative convenience and subsequently if such facilities are suspended, it do not take away the statutory right bestowed upon the teacher under the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015.

There is a fundamental distinction between a means and/or facilities provided by the authorities to exercise the statutory right conferred upon the teacher and the right recognized in the statute and the Rules provided in dealing with such applications.

Mere suspension of the facilities and/or access cannot *ipso facto* repeal the statutory provisions nor can curtail such statutory right and therefore it is obligatory on the part of the State to take a conscious decision on the application made by the appellant. Even if the portal is suspended, there is no difficulty on the part of the State or the Commission to take a printout of the said application and can process the same manually strictly in terms of the statutory Rules and/or Act provided in this regard.

The order impugned is, thus, set aside.

We, hereby, direct the appellant to submit the downloaded copy of an application from the said portal and shall also annex the documents which form part of an attachment to the said application at the time of uploading the same, when the portal was active, to the school authorities within one week from date.

The school authorities shall take a conscious decision on the said application and being satisfied shall issue a no-objection certificate and also forward all such documents to the concerned D. I. of Schools(S.E), Murshidabad who shall, thereafter, forward the same to the West Bengal School Service Commission for making the appropriate recommendation.

It goes without saying that all the authorities shall strictly adhere to the statutory procedures and/or norms provided for each tier of the mechanism for processing the transfer application.

The entire exercise shall be completed within a period of two months from the date of the communication of the order.

In view of the aforesaid observation, the appeal being MAT 400 of 2024 is, thus, disposed of.

CAN 1 of 2024 is also disposed of accordingly.

All parties shall act in terms of the copy of this order downloaded from the official website of High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)