

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.

FMA 545 of 2024

With

IA No. CAN 1 of 2024

Manasi Hazra

Vs.

The State of West Bengal and others.

For the Appellant : Mr. Suvro Prakash Lahiri,
Mr. Rajesh Naskar,
Mr. Akash Saha.

For the State : Mr. Bhaskar Prasad Vaisya,
Mr. Suman Dey.

For the SSC : Mr. Sunit Kumar Roy.

For the Respondent no. 8 : Mr. Soumen Kumar Dutta,
Mr. Subham Dutta,
Mr. Sk. Sayan Uddin.

Heard on : 13.06.2024 & 04.07.2024

Judgment on : 4th July 2024.

The Court:

We have been noticing that slew of matters coming before us pertaining to a transfer sought by the teacher on medical ground

having rejected by the school authorities taking shelter to a provision of law, which has been subsequently amended and/or substituted.

The West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as “said Rules”) was promulgated with effect from 1st March 2015 providing a complete mechanism and the procedure to be adopted by the authorities and also the mode of making an application by the intending teacher.

Rule 3 sub-rule (1) of the said Rules stood as on date of the promulgation of the said Rules though recognizes right of the incumbent teacher to be eligible for general transfer, but with the rider that such eligibility can only be fructified if he is completed five years of satisfactory service in a particular school and in particular post from which he/she seeks general transfer. Rule 4 of the said Rules conferred right on the incumbent teacher to apply for transfer on special ground enumerated therein, which in unequivocal terms includes the medical ground specifying the nature of the disease.

Though the expression “general transfer” is used both in Rule 3 and Rule 4, but it operates in different situations and it is expected from the school authorities, who is in helm of imparting education to the children to understand the distinction between the two different situations. Subsequently, Rule 3(1) of the said Rules was amended by a notification dated 21st December 2021 to the effect that the conditions of continuous five years of satisfactory service shall not be applicable to the incumbent teacher applying for transfer under the special ground including the medical ground.

Our attention is further drawn to a notification dated 29th September 2022 by which sub-rule (2A) of Rule 3 of the said Rules was inserted with the proviso appended thereto that there cannot be any restriction in relation to an application for transfer filed by the

incumbent teacher on medical ground or in other words, having been suffering with specified nature of disease.

The pith and substance of the aforesaid facts and/or the events as adumbrated herein above leaves no ambiguity in our mind that there are two types of general transfer; one contemplated under Rule 3 and another under Rule 4 and, therefore, its applicability is to be made under different circumstances and/or situations.

Though the restrictions of five years of continuous service is applicable to a general transfer coming within the ambit of Rule 3, but after an amendment having been brought, such restrictions have been expressly made not to apply in case of a transfer under Rule 4 of the said Rules. The last amendment by which sub-rule (2A) of the said Rules was incorporated in Rule 3 of the aforesaid Rules was explicit in this regard yet for abandon precaution the proviso was inserted so that even the amended sub-rule (1) of Rule 3 may not be construed in different manner and also to make the intention of the competent authorities laudable that there shall not be any restrictions, be it five years or otherwise, in seeking a general transfer on special ground.

In the instant case, the application was filed in the month of August 2022, much after the amendment having brought in sub-rule (1) of Rule 3 of the said Rules by notification dated 21st December 2021 and, therefore, the decision of the authorities in rejecting the same taking into account an embargo of five years of continuous service is infirm, illegal and taken without application of mind.

The order rejecting the application is hereby set aside.

The school authorities as well as all the statutory authorities are directed to consider the said application afresh in accordance with the statutory provisions applicable in this regard and the entire

exercise shall be completed within two months from the date of communication of this order.

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

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

(Harish Tandon, J.)

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(Prasenjit Biswas, J.)