

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Shampa Dutt (Paul)

FMA 543 of 2024

with

CAN 1 of 2024

Koyel Dutta

Vs.

The State of West Bengal & Ors.

For the Appellant : **Mr. Shuvra P. Lahiri, Advocate**
Mr. Rajesh Naskar, Advocate
Mr. Akash Saha, Advocate

For the WBBSE : **Ms. Koyeli Bhattacharya, Advocate**
Mr. Bibek Dutta, Advocate

Heard on : July 26, 2024

Judgment on : July 26, 2024

The Court:

1. Elaborate arguments were advanced at the behest of the appellant on the interpretation of the statutory provisions applicable in relation to a transfer and the manner of processing and taking decision in the application. The application for transfer filed by the petitioner is rejected by a competent authority on the ground that the Headmaster of the Institution cannot send the application in excess of an outer cap provided in the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds

and Reallocation) Rules, 2015 (hereinafter referred as 'the said Rules).

2. Since the fact, as unfurled, is undisputed that an application for transfer filed by the appellant is rejected by the authority on the ground that it exceeds the outer limit set forth in sub-Rule (6) of Rule 5 of the said Rules, the Trial Court proceeded to dismiss the writ-petition filed by the appellant, assailing the said decision of the authority in rejecting an application for transfer, solely on the ground that the moment the 'Utsashree' portal has been suspended, no relief can be granted to the appellant.
3. At the first blush, we were convinced that mere suspension of the portal does not foreclose the right of the applicant emanating from a statutory provision as the portal was introduced in order to facilitate the applications by providing a means of access. However, at the time of argument, attention of this Court is drawn to the fact that the application for transfer has been rejected as it exceeds the outer cap and the note of caution was also given to the School Management/Headmaster not to send the application in lock, stock and barrel but must follow the limit set up in the statutory Rules.
4. In order to bring clarity and to elucidate the points as above, it would be profitable to quote Rule 5 of the said Rules relating to eligibility for general transfer as stood before the amendment having brought subsequently:

5. Eligibility for General Transfer -

(1) Any Teacher or non-teaching staff qualified as per provision of rule 3 of this Rules may be eligible for transfer to a post of Teacher or non-teaching staff of another school of same category of post and for a Teacher of same subject under same category of reservation (Honours/ Post Graduate or Pass) and Post, as the case may be.

(2) An incumbent opting for General Transfer shall be transferred to the same category of schools having Bengali or English or Hindi or Nepali or Oriya or Santhali or Telugu or Urdu, as the medium of instruction, as the case may be.

(3) A male incumbent shall not be eligible for General Transfer in a female vacancy and a female incumbent can prefer male/Co-ed/female vacancy.

(4) No incumbent shall be eligible to apply for a General Transfer who is left with less than two years of service from the date of his/her retirement on superannuation.

(5) The General Transfer shall be allowed to an incumbent, against whom no Judicial or Disciplinary proceeding is pending or contemplated and, who is not under suspension.

(6) The school authority of a particular school shall not forward applications received from more than 10% (rounded up to next higher digit) of total number of teachers of that school. Priority shall be given first to the teachers senior in age.

5. Sub-Rule (6) of Rule 5 of the said Rules assumes significance as the entire argument and the determination by this Court revolves around the said provision. It is manifest from the bare reading of the language used in Sub-Rule (6) of Rule 5 that the School Authority shall not forward the applications received by it exceeding 10% of the total number of the teachers with further rider that in taking any decision relating to forwarding the application, the seniority in age should be given a preference. The language used in the said sub-rule is lucid and explicit to the sense that the cap of 10% of the total number of teachers of the said School is required to be strictly adhered to but the Counsel for the appellant sought to interpret the expression used within the brackets after the numerical number 10% to mean something beyond a single digit, if acquired by applying the mechanical standards, it is to be rounded up to the next higher single digit or a complete digit. Taking a clue from the expression used within the brackets in sub-Rule (6) of

Rule 5 of the said Rules, the attention of this Court was drawn to an amendment having brought subsequently in the said Rules by a Notification dated 08.09.2021 wherein a complete mechanism has been provided in order to ascertain the deserving applications by awarding marks on different parameters without touching and/or amending the parent sub-Rule (6) of Rule 5 of the said Rules. A further amendment was brought on the basis of a Notification dated 22.12.2021, wherein the sub-Rule (6) of Rule 5 has undergone a sea-change and replaced by the following:-

(3) for sub-rule (6) of rule 5, substitutes the following sub-rules.

“(6) The school authority of a particular school shall not forward application received from more than 10% (rounded up to next higher digit) of total number of teachers of that school, if more than one application is received at school end on ground mentioned in 4(c), while forwarding application. The school authority shall mutatis mutandis follow the marking procedure provided in Rule 6(4)(1) and who obtained more marks, his/her case shall be forwarded, if otherwise eligible.

6. The aforesaid amendment, in our opinion, is brought in order to create symmetry and/or synergy between the un-amended provision and the subsequent amendment brought on 08.09.2021 without bringing any radical changes so far as the adherence of cap of 10% on the total strength of School. By virtue of said amendment, the authorities retain the cap of 10% but the applications to be forwarded shall depend upon the marks obtained by an aspirant and, therefore, there is no ambiguity in this regard that the seniority in age which stood before the amendment, has been done away with. Obviously, the reason is laudable that the parameters for awarding the marks imbibe within it, one of the parameters in relation to seniority in age and the number of years the teacher served in an Institution.

7. The Counsel for the appellant gets embolden by the Notification dated 03.01.2022 and tried to impress the Court that the cap of 10% has been diluted to an extent where the total sanctioned strength is five or less than five. According to the Counsel for the appellant the object and intention gathered from the said Notification leads to an inescapable conclusion that the moment the 10/% cap is exhausted by the School Authority and, in the event, it is found that out of the several applications coming within the four corners of the said outer cap is not allowed in toto other than the application which is kept outside the scope of the outer cap should immediately be forwarded by the School Authority.
8. Though the point does not actually involved in the instant case yet the arguments were advanced on the fraction which comes on an application of 10% on the total strength of the School whether to be rounded up to a higher digit even if such fragment is less than 0.5.
9. According to the Counsel for the appellant, the moment the fraction exceeds the single digit, it is to be rounded up to the next higher digit for the purpose of 10% outer cap provided in the said Rules. Ordinarily, the mathematical rule and the standard of meeting the fraction, in the event to be rounded up, the fraction exceeding 0.5 should be rounded up to immediate next higher complete digit which may not be in case of a fraction being half or less than half of a digit. The said clarificatory Notification was issued in order to eradicate the situation where the sanctioned strength of teachers are five or less than five in a School as applying the 10% on the basis of a mathematical standard, it would not achieve a complete single digit. For such purpose, the authority issued a clarificatory Notification dated

03.01.2022 that in such event, the application should not be rejected as it comes below 10% provided in Rule 5(6) of the said Rules but to be processed on the basis of the merit.

10. The purpose and the intention underlying in relation to the clarificatory Notification dated 03.01.2022 is laudable and does not invite any second opinion that the authorities intended to further a case where the fraction number arrived on a mathematical calculation by applying the 10% outer cap shall be dealt with in such fashion and not otherwise. The intention of keeping five numbers of the sanctioned strength of the teachers or less than five is to give succor to the teachers who have a genuine ground for transfer but because of the language used in the said sub-Rule (6) of Rule 5, their right would never fructified as 10% on the basis of total sanctioned strength would never achieve a single complete digit. It does not throw any light on the score as sought to be projected by the Counsel for the appellant that the outer cap of 10% has, in fact, been done away with and no adherence thereto is warranted by the authorities.
11. As indicated above, the un-amended provisions and the amended provisions does not inculcate any sense in us that the outer cap of 10% has either been diluted or has been whittled down and the contention of the appellant that every application has to be considered by the authority independently, is not acceptable.
12. It lead to an interesting argument advanced before us at the behest of the appellant that the moment the School Authorities forwarded the applications adhering 10% outer cap provided in the said Rules and in the event any of such application is rejected, the application which does not come

within the folds of the 10% cap, should immediately be forwarded by the School Authority so that the 10% outer limit is strictly complied with.

13. The provisions contained in sub-Rule (6) of Rule 5 does not stipulate such situation nor convey the legislative intention in the manner sought to be projected before us. The outer cap of 10% is to be applied in relation to forwarding the applications for being considered by the authority and does not depend upon the decision of the authorities. If the restriction is imposed on the authorities in forwarding the applications to the authorities, such restriction is not dependent upon the decision of the authorities and, there appears to be a fallacy in the submission of the appellant in this regard.
14. The embargo which is created is in relation to forwarding the applications to a competent authority and does not depend upon the result of the said applications. In ordinary sense, if the application for transfer does not come within the outer cap of 10%, it would be deemed to have been rejected and in such event, such application cannot remain alive perpetually so long the 10% outer cap is achieved.
15. If for argument's sake, the contention of the Counsel for the appellant is accepted that the 10% is the outer cap, then in that event, once the teacher of the said School is transferred in conformity with the 10% outer cap, it would foreclose the right of the other teachers to apply for transfer until the sanctioned strength is enhanced and/or extended. It is a continuous process and the applications filed by the teachers in successive period of time are to be forwarded taking into account the outer cap and the way the interpretation is made, shall not only frustrate the very

purpose of a right being created in a teacher seeking transfer but also opposed to a service jurisprudence.

16. Though we do not find any time restrictions between the first application and the second application on the same ground but in course of our judicial dispensation, we find that successive applications are made immediately upon communication of the decision of the authority that the same has been rejected on one ground or other which, in our opinion, would invite chaotic situation.
17. In our opinion, there should be a time restriction between filing of the first application for transfer and the second application, if founded upon the same ground as the teacher whose first application was rejected, should not be permitted to take a chance in filing successive applications within the close proximity of time. The reason being that the authorities who has taken the decision on an application may not be the same when the second application came up for consideration. The human behavior and taking a decision in an objective manner, differs and the discretion so vested, also varies as one authority may not find the said ground to be plausible and reasonable, which may not be the same with the other authority.
18. The authorities must ponder upon the above and if so advised may bring some clarification or changes in the Rules in this regard in order to eradicate the frequent successive applications to be filed by the teachers seeking transfer under the aforesaid statutory Rules.
19. The aforesaid observation is made as we noticed that the first application was rejected on 24.08.2021 on the ground that excess number of applications were forwarded from the School end. The appellant was communicated the decision

on 31.08.2021 and immediately within a short span of time i.e. 13.09.2021 the second application was taken out. However, on 14.09.2021, it was sent back and further application was made on 15.09.2021 which was forwarded to the authorities and the said application was again returned as it exceeds the outer cap of 10%.

20. Thus it is evident from the fact that frequent successive applications are filed by the applicant taking a chance that in the event, the authorities allowed the said application, the purpose is achieved, and for such reason, we request the Government or we recommend the Government to take note of the aforesaid facts upon collating the data in this regard and take a conscious decision of bringing some restrictions in filing the successive application for transfer.
21. Though we do not approve the grounds on which the writ-petition was dismissed that due to suspension of the portal, the application deserves to be rejected but on the facts emanating from the record and the arguments so advanced and the observations made above, we do not find any grounds warranting interference with the ultimate decision of the Single Bench in rejecting the writ-petition.
22. The appeal sans merit.
23. The same being **FMA 543 of 2024** accordingly **dismissed**. The connected application being CAN 1 of 2024 also stands dismissed. No order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J)

