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2024

Ct. No. 08

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MAT 857 of 2024
IA No. CAN 2 of 2024

Jayita Chattopadhyay
Vs.
The State of West Bengal and others.

Mr. Sabyasachi Chatterjee,
Mr. Sandipan Deb.
... for the appellant.

Mr. Supriyo Chattopadhyay,
Ms. Tapati Samanta.
... for the State.

Mr. Subhrangshu Panda,
Ms. Ina Bhattacharya,
Ms. Mithu Singha Mahapatra.
... for the respondent no. 6 and 7.

The application seeking transfer at the behest of the appellant is rejected by the authorities taking shelter under the teacher-pupil ratio in the institution and the demand for such subject.

Before we proceed to deal with the arguments so advanced before us by the appellant, it would be pertinent to recapitulate the scope of the judicial review in relation to a transfer of an employee from one school/collage to another.

In the education department, the transfer is often sought by the Assistant Teacher from one college to another. Because of the slew of such applications being poured into the domain of the employer, the Government decided to frame the Rules relating to transfer so far as the colleges established within the territory of the State of West Bengal are concerned. By virtue of a Rule making power conferred under Section 11 and 17 of the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017, the Government promulgated the West Bengal Colleges (Transfer of Employees) Rules,

2017 (hereinafter referred to as 'said Rules'), which was duly notified and published in the Kolkata Gazette, Extraordinary on November 1, 2017. The transfer is an incident of service and ordinarily cannot be claimed as a matter of right. However, the moment, the employer has framed a scheme or Rules having binding effects, the decision in relation to a transfer has to be taken within the four corners of the provisions contained therein.

In public employment where the services are governed by the statute as well as Rules promulgated in this regard, the authorities are bound to adhere the provisions contained in the said statute and, therefore, cannot transgress from the peripheral thereof. The scope under the judicial review relatable to transfer is limited and to be exercised with great caution and care. The employer is the best person to take a decision in relation to its employee and the services to be availed from them. The various factors played in administration and management of the education system and, therefore, the Writ Court should be slow and circumspect in interfering with the decision of an authority in relation to a transfer.

The impetus can be gained from the judgment of the Supreme Court in **Airport Authority of India vs. Rajiv Ratan Pandey and others**, reported in **(2009) 8 SCC 337** wherein it is held that in a matter relating to the transfer of a Government employee, the scope of judicial review is limited and the High Court should not ordinarily substitute their own decision in the matter of transfer. In a recent judgment rendered by the Apex Court in **Sri Pubi Lombi vs. The State of Arunachal Pradesh and others**, reported in **2024 INSC 200**, the Apex Court has emphasized the scope and jurisdiction exercised by the High Court under Article 226 of the Constitution of India to the effect that unless the Court finds that the decision taken in a transfer matter smacks of an arbitrariness, mala fide or violative of the statutory provisions, the interference should be avoided.

The law as enunciated in the above reports conveys a manifest intention that the High Court should avoid in interfering with the order of the administrative authority taken in relation to a transfer of its employee unless the Court finds that the conduct of the authority is tainted with malice, devoid of reasonableness, discriminatory in nature, smacks of arbitrariness and violative of the statutory provisions framed in relation to a transfer of a Government employee.

Reverting to the facts of the instant case, we find that the statute is in place containing an exhaustive provision relating to a right of the teachers to seek transfer. The said statute contained the procedures and the parameters to be taken into account at the time of taking a decision on an application for transfer filed by the teacher.

Rule 2 of the said Rules postulates that the transfer cannot be claimed as a matter of right, but the grant of transfer is always subject to the larger interest of maintaining the healthy and efficient higher education system within the State of West Bengal. The said Rule is quoted as under:

“2. Applicability:-Transfer under these rules cannot be claimed as a matter of right. The grant of transfer is subject to the larger interest of maintaining a healthy and efficient higher education system. In particular, factors such as availability of vacant post, teacher-pupil ratio in the institution concerned, demand for a particular subject, issues of larger interest such as the need to expand higher education in remote and backward areas, the requirements of the reservation rosters, etc. will determine whether a particular application for transfer by an employee can be accommodated or not. While it is the Government’s intention to accommodate reasonable requests for transfer of a teacher’s own seeking, where feasible, it is made abundantly clear that the administrative rules and procedures for transfers prescribed under these rules shall be subject to the overarching interest of having a health teaching learning environment in the State-funded higher education institutions of West

Bengal.”

It is sought to be contended by Mr. Sabyasachi Chatterjee, learned Advocate appearing on behalf of the appellant, that the Rule 2 of the said Rules has no manner of applicability in the instant case as transfer is sought by the appellant of its own and, therefore, the relevant provision, which would be applicable to the appellant, is Rule 3 of the said Rules. For the purpose of understanding and determining the points so urged above, Rule 3 is quoted as under:

“3. Conditions for transfer of own seeking:-

(1) An employee shall be eligible for transfer of his own seeking only if he has been confirmed in service, and has completed 5 (Five) years of satisfactory and continuous service in a college from which he seek transfer:

Provided that the State Government may, for reasons to be recorded in writing, allow an employee for transfer of his own seeking not completing five years, considering the exigencies of the situation and hardship of the employee on special ground, but such prayer shall not be allowed, if the employee concerned is on probation.

(2) No application under transfer of own seeking shall be entertained if the employee concerned seeks a transfer to a college situated within a distance of 25 (twenty-five) Kilometers from present place of posting:

Provided that the State Government may for reasons to be recorded in writing, allow employees for transfer under this rule within the prescribed distance, considering the exigencies of the situation and hardship of the employee on special ground, but under no circumstances, such prayer shall be allowed, if the employee concerned is on probation.

(3) The benefit of transfer under this rule can be enjoyed once in the whole service life and if the employee concerned fails to join the post on transfer, he shall forfeit his right of seeking a transfer under this category.”

The dichotomy between Rule 2 and 3 is apparent and evident and does not override or supplant each other. Both the provisions are complimenting each other, which would further be evident from the languages and

the expressions used therein. Rule 2 is an expansive provision having its applicability in all situations; on the other hand, Rule 3 has its limited applicability and only when the teacher seeks transfer of his/her own volition. Rule 3 does not contain any parameters for taking a decision by the employer. It prohibits the application to be filed within the timeline set forth therein and the power of employer to relax the rigor thereof, in case of exigencies or in reasonable case. The parameters for considering the application for transfer is provided in Rule 2 of the said Rules, which imbibes within itself various factors, viz. availability of the vacant post, teacher-pupil ratio in the institution concerned, the demand for a particular subject and above all, the issues of a larger interest, which the Government owes under the Constitution. It would further be seen from the said Rule that even it has its applicability to transfer of a teacher, who is seeking, wherever feasible.

The paramount consideration from the conjoint reading of the provisions contained in Rule 2 and 3 of the said Rules leaves no ambiguity in our mind that it centers around the larger public interest, which must withstand on the test of reasonability. We, thus, do not find the stand of the appellant that Rule 2 is not applicable to an application seeking transfer by the teacher himself/herself, as it would come under Rule 3 thereof.

An ancillary point is also taken that in an earlier round of litigation, the Government requisitioned the appellant to find out the vacancy in a nearby college, which has been construed by the appellant to have conferred a right of transfer and the moment the vacancy is identified and communicated to the employer, the transfer is inevitable and a virtue. We do not think that any such stand taken by the respondent authorities have conferred any right, which emanates from a statutory provision.

At best it could be conceived of a parameter to take an objective decision in the matter of transfer but does not supersede the statutory provisions nor the authorities can avoid the parameters set forth in the Rules. The report as relied upon by the Single Bench vividly reflects that in the event the transfer is considered and allowed, it would disrupt the teacher-pupil ratio as there are 12 students studying Sociology as major/honours subject and 125 students in the programme courses. In fact, the authorities have taken shelter under Rule 2 of the said Rules and ultimately took a decision that it would not be healthy and conducive for the students of the college nor the object and purpose of establishing the college within the territory of the institution and, therefore, in the larger interest of the students the prayer for transfer cannot be acceded to.

We, thus, do not find any infirmity and/or illegality in the impugned judgment and order dismissing the writ petition. The appeal sans merit and the same is hereby dismissed.

In view of the dismissal of the appeal itself, the connected application being CAN 2 of 2024 has become infructuous and the same is also dismissed.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

