

IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

Before:

THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

W.P.A. 12846 OF 2022

Tanusri Rana (Karak)

VS.

The State of West Bengal & Ors.

For the Petitioner	:	Mr. Subhrangsu Panda Ms. Ina Bhattacharyya Ms. Mithu Singha Mahapatra Ms. Haritri Roy
For the State	:	Mr. Biswabrata Basu Mallick Mr. Sayan Ganguly
For the School Authority	:	Mr. S. Bhunia Mr. K.K. Bhattacharya
For the WBCSSC	:	Mr. Sourav Mitra

Heard on: 05.08.2024

Judgment on: 05.08.2024

SAUGATA BHATTACHARYYA, J:

Affidavit of service filed on behalf of the petitioner is taken on record.

Matter relates to transfer of the petitioner on the ground of distance. Petitioner is an Assistant Teacher in Amarshi B.C. Girls' High School, Purba Medinipur (hereinafter referred to as "said school"). Petitioner preferred transfer application on 23rd February, 2022 on Utshasree portal. On receipt of application by the said school authority, as it has been submitted on behalf of the petitioner, the same was not allowed on the ground that 10% of existing teachers were already permitted to take transfer. It has further been submitted on behalf of the petitioner that in 2021 academic year out of nineteen teachers working in the said school two teachers were permitted to take transfer and transfer applications of those two teachers were forwarded by the said school authority to the concerned District Inspector of Schools. Therefore, in 2021 academic year bar on general transfer of petitioner in terms of Rule 5(6) of the West Bengal School Service Commission (General Transfer, Transfer On Special Grounds and Reallocation) Rules, 2015 might not have permitted the petitioner to be transferred to another school but in the next academic year that is in 2022 petitioner ought to have been permitted to be transferred in consideration of her transfer application dated 23rd February, 2022.

Reliance is placed apart from Rule 5(6) of the said Rules of 2015 an amended Rule 6(2)(d) as contained in the notification dated 8th September, 2021 amending Transfer Rules of 2015 in order to

demonstrate that in the academic year 2021 it may not be permissible so far the said school authority is concerned to allow petitioner's transfer application on the ground of distance but in the next academic year in 2022 based on the aforesaid statutory provisions petitioner's transfer application ought to have been considered.

In addition thereto, reliance is also placed on a notification dated 3rd January, 2022 issued on behalf of the School Education Department, Government of West Bengal relating to bar on transfer of teacher beyond 10% of existing teaching staff of school excepting in certain circumstances.

Petitioner prays for issuance of mandamus thereby directing the concerned respondent authorities to take decision on her transfer application and allow her to be transferred to another school as per transfer application dated 23rd February, 2022.

Respondents including the said school authorities are represented by learned advocates.

It is submitted on behalf of the State respondents and the Commission that nowhere in the unamended Transfer Rules 2015 as well as in amended provisions as contained in the notification dated 8th September, 2021 it has been contemplated that bar in allowing transfer application beyond 10% of existing teaching staff is confined to a particular academic year.

However, during course of hearing, Mr. Mitra, learned advocate representing the Commission has drawn attention of this Court to the provisions as contained under Rule 3(4) of the unamended Transfer Rules of 2015 which provides general transfer shall be available once in a year and a list shall be published in the website of the Commission and the remaining vacancies due to non-joining after publication of list shall be taken into account in a particular manner as provided therein. According to the Commission, provisions as contained in Rule 3 (4) does not provide a situation which permits the petitioner to have her transfer application being allowed since two teachers of the said school were permitted to take transfer in the previous academic year that is in 2021. Contemplation made under Rule 3(4) is completely for different purpose and the same is for utilization of vacancies in specified manner which are available after completing the process of general transfer due to non-joining in a particular year.

On behalf of the said school authority it has been submitted that the school was having nineteen teachers in 2020 academic year and out of which two teachers were permitted to be transferred in 2021 by the said school authority since it was permissible even on applying bar relating to 10% of teaching strength as contemplated under Rule 5(6) but after transfer of two teachers in 2021 the teaching strength of the said school has been downgraded from

nineteen to seventeen in 2021 and the situation remains unaltered as on date. Therefore, further transfer is not permissible on applying bar relating to transfer of teachers beyond 10% of existing teaching strength. It is also submitted that if from one academic year to next academic year gradually to the extent of 10% of teaching strength teachers are permitted to take transfer without any appointment being made that would jeopardize the academic interest of the students who are prosecuting their studies in the school.

Having considered the submissions made on behalf of the parties and taking note of the relevant provisions of the Transfer Rules which are placed before this Court by the learned advocates, this Court is tasked to find out whether after transfer of two teachers of the said school in 2021 which was found to be within 10% of teaching strength, in subsequent years from 2022 onwards further teachers should be permitted to be transferred in the backdrop of facts that there is no appointment of teachers in the said school till date.

For better understanding of the issue involved in this writ petition this Court finds it apt to set out Rule 5(6) of the West Bengal School Service Commission (General Transfer, Transfer On Special Grounds and Reallocation) Rules, 2015 and amended Rule 6(2)(d) as contained in the notification dated 8th September, 2021 amending Transfer Rules of 2015, below:-

"Rule 5

(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."

"Rule 6.....

(2)(d) consider the total application(s) from school is not more than 10% (ten) of total teachers' strength of school"

On conjoint reading of the aforesaid two provisions, it appears that nowhere it has been postulated that bar relating to transfer of teacher beyond 10% of existing teaching strength is confined to a particular academic year.

Therefore, Court is required to attribute a meaningful construction to the aforesaid two provisions which would strike a balance in between right of a teacher to be transferred *qua* academic interest of the school and its students.

The said school was running with nineteen teachers in 2020 and in 2021 two teachers were permitted to take transfer, therefore, the teacher strength was downgraded to seventeen. If argument of petitioner is accepted then in 2021 though further transfer was not permissible in terms of the aforesaid statutory provisions but in 2022

again upto the extent of 10% of existing teaching strength teachers of the said school ought to have been permitted to be transferred. Acceptance of such submission made on behalf of the petitioner would lead to absurdity in absence of new appointment is made in the said school. Seventeen teachers were there in the school in 2021 academic year and in the next academic year of 2022 according to the petitioner on application of Rules further ten percent of existing teachers including petitioner herein can be transferred, which means what was not permissible in 2021 academic year due to transfer of two teachers reducing number of teachers to seventeen; further transfer of teachers out of same seventeen teachers is again permissible due to change of academic year on applying Transfer Rule. If this process goes on without further appointment being made in that event gradually number of teachers in the said school would be reduced substantially affecting academic interest of students and that is not the purport of the aforesaid statutory provisions.

Therefore, Rule 5(6) of the unamended Transfer Rules of 2015 and amended Rule 6(2)(d) as contained in notification dated 8th September, 2021 shall be read in a manner that once teachers within the ambit of 10% of existing teaching strength are permitted to take transfer further transfer shall not be allowed in terms of the aforesaid transfer Rules unless new teachers are appointed in the school augmenting teaching strength.

Before parting with it needs to be recorded herein that on behalf of the petitioner notification dated 3rd January, 2022 has been relied upon but application of the same is not permissible when the teacher is not in dire need of transfer and if the concerned District Inspector of Schools does not find that it is a “fit case” for transfer of the petitioner. In the present case, transfer application of the petitioner is hit by the bar relating to 10% of existing teaching staff of the said school and nothing is found on record that petitioner is in dire need of transfer which would lead to a situation where concerned District Inspector of Schools would find the same as a “fit case”.

In above conspectus since in the present case 10% teachers constituting two were permitted to take transfer in 2021 and no further appointment was made subsequent thereto further transfer on the ground of distance is not permissible till fresh appointment is made in the said school.

Accordingly the writ petition stands dismissed,

There shall be, however, no order as to costs

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

(SAUGATA BHATTACHARYYA, J.)

