

04 **25.09.
2024**

Ct. No. 08

Ab

**FMA 871 of 2024
IA No. CAN 1 of 2024**

**Moumita Saha
Vs.
The nState of West Bengal and others.**

**Mr. Ekramul Bari,
Mr. Syed Mansur Ali.**

... for the petitioner.

**Mr. Bhaskar Prasad Vaisya,
Mr. Ranjan Saha.**

... for the State.

Pursuant to the order dated 19th September 2024, the State files the affidavit disclosing as to whether there is any sanctioned vacant post in the relevant subject in the colleges, the preference whereof, was given by the appellant. The affidavit filed today reveals that there is one vacant post in the said subject in Sree Chaitnya College, Habra.

Taking into account that there is already one sanctioned vacant post in the college of preference, we invited attention of both the Counsels to address us on the merit of the instant case.

The case pertains to a transfer sought by the appellant not only on the ground of distance but that she being the only child have to take care of her ailing parents, who are residing at the parental house, which is nearly 165 kilometers away from the present place of posting.

As usual, the application of transfer was kept in suspended animation by the authorities, which constrained the appellant to file a writ petition being WPA 11369 of 2023 before this Court and a direction was passed upon the authorities to take a decision on the said application within a stipulated time. Pursuant to the said direction passed by this Court, the

authorities passed a reasoned order on 16th October 2023 rejecting the application for transfer on the premise that it would disrupt the teacher-pupil ratio and, therefore, it would badly affect the education of the children of the said college.

The said grounds have been taken bearing in mind the provisions contained in the West Bengal Colleges (Transfer of Employee) Rules, 2017 (in short 'said Rules'). The appellant challenged the said reasoned order by filing the writ petition and the Single Bench on the basis of the provisions contained in Rule 2 of the said Rules did not find any infirmity and/or illegality in the reasoned order and proceeded to dismiss the said writ petition.

The appellant before us contends that the grounds taken by the authorities in rejecting the application for transfer are based on the extraneous factors and are also factually incorrect. According to the appellant, there are 254 students pursuing the Honours and Master degree course in Philosophy and, therefore, the stand of the authorities that 726 students have opted the subject of Philosophy is incorrect. According to the appellant, the language employed in Rule 2 of the said Rules has to be read in a reasonable and pragmatic manner and should not be used as a tool to reject all the applications for transfer.

Mr. Ekramul Bari, learned Counsel appearing on behalf of the appellant, vehemently submits that the object and purpose behind the promulgation of the said Rules are to be borne in mind and the application based on reasonable ground should not be defeated solely on the ground that it would disrupt the teacher-pupil ratio.

On the other hand, Mr. Bhaskar Prasad Vaisya, learned Counsel appearing on behalf of the State, opposes the contention of Mr. Bari. According to him, several factors have been incorporated in Rule 2 of the

said Rules, which may entail the rejection of an application for transfer, which is admittedly not a vested right. He further submits that the moment the teacher-pupil ratio is disturbed by transferring a teacher from the college, there is no illegality and/or infirmity in the decision of the authorities in rejecting the application on such ground. He, thus, submits that the interest of the students is paramount and, therefore, there is no illegality in the order of the Single Bench in dismissing the writ petition.

On the conspectus of the aforesaid stand taken by the respective Counsels, it is undisputed that the application for transfer was sought not only on the ground of distance but also on the ground that she being the only child has to take care of her ailing parents, who are residing at the distant place.

The point urged before us revolves around the interpretation of Rule 2 of the said Rules and its applicability in a pragmatic and reasonable manner. 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 requirement 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 healthy teaching-learning environment in the State-funded higher education institutions of West Bengal.”

It is manifest that the transfer is not a matter of right, but equally it is true that the right to seek transfer has not been taken away in absolute terms. It is further evident from the said provision that the authorities while allowing the application for transfer shall keep in mind the larger interest on maintaining a congenial and efficient environment in the education system. The authorities shall also take into consideration the availability of the vacant post, teacher-pupil ratio in the institution concerned, the demand for a particular subject and the need to expand the higher education in remote and backward areas.

All such factors are to be borne in mind and we do not find any incongruity in this regard. The authorities can take a decision but such decision must pass the muster of test of reasonability. Any decision, which offends the core object of the statutory provisions having brought by the legislatures, such decision is susceptible to be interfered with as the purpose underlying the said provision would be totally frustrated and rendered otiose.

In the reasoned order, it is indicated that there are 726 students, who have opted the Philosophy subject in the said college and there are four sanctioned posts in the said subject, which are fully occupied. The stand of the authorities, as visualized from the findings recorded therein, that the moment one teacher i.e. the petitioner is transferred from the said college it would bring an imbalance between the teacher-pupil ratio.

We invited the attention of the Counsel for the respective parties whether there is any provision relating to fixation of the teacher-pupil ratio in respect of colleges; none of the Counsels could apprise us the statutory provision in this regard.

Be that as it may, we find that there is one vacancy in the college preferred by the appellant,

obviously the said post is duly sanctioned by the State. The posts are sanctioned taking into account the number of students and, therefore, by the increase or the decrease in number unless the Government abolishes the sanctioned post, it remains to be filled up as the State cannot keep sanctioned post vacant for all time to come. The contention of the State if considered on a logical platform it appears that the moment the saturation is brought in the teacher-pupil ratio, even if the right of apply for transfer is recognized under the aforesaid Rules, none of the teacher would be entitled to be transferred as such transfer would automatically bring the imbalance in the teacher-pupil ratio.

The application for transfer has to be considered in more pragmatic and reasonable manner and must take into account the realities and the plight of a person applying for transfer to another college. In the event the stricter way of applying the test of teacher-pupil ratio, as has been done in the instant case, is considered reasonable, it would frustrate the very purpose of promulgating the said Rules and shall make the provisions contained therein farcical. If the provisions contained therein are capable of two interpretations, the Court must adapt an interpretation taking into account the nature of the legislation and the beneficiaries therein.

The Rule for transfer is enacted for the purpose of the transfer to be streamlined and the standard to be set for bringing an uniform decision in dealing with the application for transfer filed by the teachers. The expression "teacher-pupil ratio in institution concerned" appearing in between the Court, availability of vacant post and demand for particular subject has to be understood in a reasonable manner. The moment the vacant post is also to be taken into account, it automatically brings the concept of the availability of

the posts in a college where the teacher seeks her transfer, as no transfer can be affected to a non-existent post and, therefore, the expression “institution concerned” has to be understood in such perspective.

We, thus, find that there is one vacant post in Sree Chaitnya College, Habra, which is in a close proximity of the parental house and, therefore, do not find any justification in the decision of the authorities for rejecting the application for transfer.

As a consequence we also do not find that the writ petition could be dismissed solely on the ground of Rule 2 of the said Rules. The order impugned is, thus, set aside. The writ petition succeeds.

The respondent authorities are directed to immediately issue an order of transfer on an application for transfer filed by the petitioner/appellant to be posted at Sree Chaitnya College, Habra, within six weeks from the date of communication of this order.

With these observations, the appeal and the connected application being CAN 1 of 2024 are disposed of. There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Partha Sarathi Sen, J.)

