

26.07.2024
sayandeep
Sl. No. 02
Ct. No. 08

MAT 1014 of 2024
With
CAN 2 of 2024

Hafizul Molla
Vs.
The State of West Bengal & ors.

Mr. Shuvro P. Lahiri
Mr. Rajesh Naskar
Mr. Akash Saha

..... for the appellant

Mr. Swapan Kr. Dutta
Mr. Rajat Dutta

..... for the State

Mr. Subhrangsu Panda

..... for the WBCSC

The first and foremost point of attack to an impugned order at the behest of the appellant is that the impugned order is based upon a wrong appreciation of facts and, therefore, warrants interference. Accordingly to the appellant, the transfer application was made on the premise that the parents of the appellant is suffering from various ailments and because of the distance between the college and residence of the parents, he is unable to effectively take care of his parents but the Single Bench rejected the said application on the ground that the petitioner sought for transfer on his medical ground.

Such fact can reasonably be scrutinized on the disclosure made in an application for transfer and it is beyond cavil of doubt that the transfer was sought on the ground of the medical issues of the parents as well as the distance and not of the appellant. We invited the Counsels to address us on the merit of the case in pursuit of deciding whether the ultimate decision taken

by the Single Bench needs interference even if we discard the facts narrated in the impugned order which is apparently incorrect.

The Counsel for the appellant submits that the Rules namely, the West Bengal Colleges (Transfer of Employees) Rules, 2017 bestowed right upon the employee to seek for transfer and such right cannot be violated nor to be used in detrimental to the interest of the employee.

Rule 2 of the said Rule is sought to be interpreted as directory not mandatory which postulates that the transfer cannot be claimed as a matter of right and granting of transfer is circumscribed with many factors emanating therefrom. Rule 2 of 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 overreaching interest of having a healthy teaching-learning environment in the State-funded higher education institutions of West Bengal.”

Our attention is drawn to the Rule 3 of the said Rules by the Counsel for the appellant which contained the exhaustive provisions relating to the conditions of transfer on which, the teacher may seeks wherefrom it appears that the embargo is created in considering the said application, in the event, it falls within the

conditions enshrined therein which, in our opinion, does not confer any right into the appellant nor have any bearing on the decision taken by the authorities. In order to buttress the above, the Rule 3 is also reproduced 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 exigency 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 or transfer under this rule can be enjoyed only 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.”*

Taking a clue from Rule 4, it is sought to be contended that the Assistant Professor may apply for transfer under the said Rule to a similar category of vacant post having the same subject in another College and, therefore, the authorities must confine its decision within the four corners of the said provisions. What is sought to be contended taking reference of Rule 4, is the right conferred under the statutory provisions to apply for transfer in another College for the same or the

relevant subject, the concept of a single assistant professor cannot be taken as a ground for rejection.

Though a plea has been taken by the State that at the time of joining the post held by the appellant in the year 2015, there was no Rule governing the right or the procedure for transfer which came into the light only in 2017 when the aforesaid Rule was duly notified in the Kolkata Gazette, Extraordinary on November 1, 2017. But we do not find any relevance to the aforesaid stand for the simple reason that the moment a right is created by virtue of a valid legislation enuring to the benefit given in the service condition, it does not take away any such right nor any decision can be frowned thereupon if the right conferred under the said statutory provisions is asserted by the assistant professor. Probably, it is sought to be contended that at the time of joining the said post, the petitioner was aware that it is not a transferable part and he has to serve in the institution till he attained superannuation but such point, in our opinion, does not invite any consideration. The moment, the Rule has been promulgated conferring a right to apply for transfer, the submission of the appellant appears to be fallacious for the reason that he tried to blurred the right to apply for transfer and the right to be considered by an authority. In other words, there is a clear distinction between a right to apply for transfer and the right to take a decision by an employee on such application.

The conjoint reading of provisions contained in Rules 2 to 4 leaves no ambiguity in our mind that right to apply for transfer is conferred upon the Assistant Professor but it is misnomer to construe that such application for transfer should be allowed and the authority is denuded of any power to take any conscious decision thereupon. The conferment of right to apply for transfer can never mean that the said application deserves to be allowed. The object behind

the incorporation of the said Rules is to give succor to the Assistant Professors in an exceptional case so that they may be placed in another College for larger public interest. Equally the authorities cannot ignore the interest of the people of the educational institutions who have a right to be educated, to learn, to excel their knowledge in a particular subject and above all to become a responsible citizen of the country. The education system so introduced is to enhance the proficiency in a particular subject having a larger impact on the development of the country. The larger public interest cannot be construed in a quantitative manner but in a pragmatic way that each citizen of the country may not be deprived to learn a subject in pursuit of leading to an ultimate achievement of contributing in the development of the country. The larger public interest is a relatable term and has to be understood in juxtaposition with the interest of each and every citizen of the country keeping in mind its ramification in the event of deprivation.

It is thus open to the employer to take a conscious decision whether a transfer may be allowed or not keeping in mind the motive and the purpose of incorporating Rule 2 of the said Rule. In our opinion, the Rule 2 is to be read reasonably and its elixir has to be preserved or taking into account at the time of considering an application for transfer. Though it is sought to be contended that Rule 2 is not mandatory but directory in nature but in our opinion the Rule 2 is the foundation of the promulgation of the said Rules which have to be kept in mind before the authority embark its journey on taking decisions for transfer as applied by the Assistant Professor.

The writ Court should be slow and circumspect in interfering with the decision of an employer who is the best Judge to take a decision in due administration and the management of the system and above all the

potential of human resource shall be the paramount consideration. The writ Court should not interfere with such decision unless it appears to have been taken unreasonably, irrationally and in flagrant violation of the statutory rules or the provisions of the statute enacted in this regard. The statutory authority cannot depart from the clutches of the statutory provisions nor can be permitted to transgress such limitations set forth in the Statute but have to travel within the circumference thereof. It may a times be a case where an authority who is conferred with the power to decide an application for transfer has not decided the same but the other authority have taken a decision in this case may come within the ambit of the order having passed contrary to the provisions of the Statute. The Court is not an expert in an academic field nor should overreach the domain of the authorities who have an expertise in an academic field but restrict its consideration on the doctrine of reasonability, malice, decision contrary to the constitutional provisions or the statutory provisions or the authority having not bestowed with the power have exercised the power or the authorities having conferred with the power have refused to exercise such power in a reasonable way.

It leads to another point of discrimination which according to the appellant impinges the action of the authority in violation of the constitutional obligations entrusted upon them. The appellant vociferously relied upon the reply given to the queries made under the Right to Information Act, 2005 that it is an apparent and manifest case of discrimination for the reason that the other Assistant Professor have been transferred from the college despite being one Assistant Professor in the said subject and, therefore, the authority cannot take shelter on the above point.

We had an occasion to read the statement made in the writ petition in relation to an alleged discrimination vividly narrated in paragraph 11 thereof.

Apart from the same, there is no other material disclosed by the appellant on the above point but the reliance is heavily placed upon the reply to a query wherefrom it appears that two Assistant Professors were transferred despite being a single professor in the said subject. The discrimination is one of the facets inviting the constitutional Court to step-in in order to determine the reasonability and uniformity in the decision of the authority. A person cannot be permitted to be discriminated by a statutory authority as it runs counter to the constitutional ethos and the Fundamental Rights having guaranteed under part-III of the Constitution of India. While applying the principle of discrimination, the Court must take into account that the authorities have discriminated the assistant professor who stands on a same pedestal that to the other assistant professor who have been treated differently. The equality is the hallmark in the Constitution and does not permit any departure therefrom. The equality must be maintained amongst the equals and not amongst unequals. The case of discrimination has to be pleaded lucidly, explicitly and elaborately so that it is evident and apparent therefrom that the person who have been favoured with the order stands on the same footing that of the another person and in absence thereof it would not be proper on the part of the writ Court to treat the person having discriminated as the other person were favoured with the order of transfer. There is no distinction between a general and/or special transfer under the said Rules nor it contained an exhaustive provision relating to the grounds on which the transfer can be sought. Every transfer is perceived as a general transfer and there may be a varied grounds on which the transfer is

sought and it is subjective and objective decision taken by the authority on the basis of such grounds having brought within its consideration. The Single Assistant Professor may not be an embargo in rejecting an application for transfer but in view of Clause 2 the other factors are to be considered which in fact is found to have been taken note of by the authority in rejecting the application filed by the appellant.

We thus do not find any cogent materials unearthed before us in order to arrive at the decision whether the appellant was discriminated with the other assistant professor and, therefore, we do not find any substance in the said point.

From whatever angle we look at, does not find that the instant case deserves merit.

Accordingly, the appeal is dismissed without any order as to costs.

The connected application being and CAN 2 of 2024 is also dismissed.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)