

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Harish Tandon
And
The Hon'ble Justice Prasenjit Biswas.

MAT 1065 of 2024
With
IA No. CAN 1 of 2024

Dipti Biswas
Vs.
The State of West Bengal and others.

For the Appellant : Mr. Suvro Prakash Lahiri,
Mr. Rajesh Naskar,
Mr. Akash Saha.

For the State : Ms. Sipra Majumdar,
Ms. Prativa Ghatak.

For the Respondent No.4 : Mr. Sarwar Jahan,
Mr. Sk. Nayeemul Haque.

Heard on : 09.07.2024

Judgment on : 9th July 2024.

The Court:

An application for transfer filed by the appellant on the ground of distance had passed through the first tier of the scrutiny, but the authority, who has to take a further decision, was showing an

apathetic approach, which constrained the appellant to file the instant appeal.

To bring more clarity to the observation made herein above, the application for transfer on the ground of distance filed by the appellant was processed in the office of the Sub-Inspector of Schools and the same was further forwarded to the Chairman, District Primary School Council, Murshidabad, who has not take any decision as yet.

The Single Bench dismissed the writ petition on the score that the grounds assigned in the said application are not the good grounds.

Sub-rule (3) of Rule 5 of the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 (hereinafter referred to as “said Rules”) confers power upon the teacher to apply for transfer on the grounds enumerated therein. The said provision is quoted as under:

“(3) an applicant may seek transfer on following grounds and same shall be considered by the Council only against the vacancy available at the time of consideration, subject to the conditions made in sub-rule 3A, in following order of preference, namely:-

- (a) Any applicant or his/her son/daughter/spouse suffering from malignant disease, severe heart disease, renal failure, Thalassemia, replacement of organ, serious gynecological disorder which caused serious problem in attending the school;
- (b) Applicant having physical disablement of 40% and more duly certified by competent authority;
- (c) Female teacher facing serious problem in attending the school due to divorce or death of husband;
- (d) Teacher of age of 57 years and more and willing for home district posting.
- (e) Any other reasons.”

Clause (e) of sub-rule (3) of Rule 5 of the said Rules is an omnibus ground intended to be incorporated as the authority while legislating cannot conceive of all the situations. The expression “the applicant may seek transfer on the following grounds” has to be understood in a pragmatic manner and to be construed as the grounds, which are expressly provided including the ground, which may be found valid on special facts.

The purpose of incorporating clause (e) therein would be totally frustrated if the application for transfer is decided on the grounds enumerated under clause (a) to (d). The judicial experience gained in dealing with the case exposes other grounds than the grounds incorporated in clause (a) to (d) and one of such example can be given that the transfers are sought on the ground of distance for the inconvenience faced by a teacher in attending the school. The authorities have also taken a conscious decision treating the said incidents as a ground covered under clause (e) thereof; provided the authorities are satisfied that such transfer is warranted.

Apart from the same, the Court should stay away from discharging the duties and functions of the employer and should not usurp such power under judicial review. The management and administration lies with the Government, who had the constitutional obligation to establish school within the State to impart education to the children and, therefore, it is the Government, who has to take all conscious decisions whether the grounds of transfer appear to be the plausible, reasonable and required for the smooth administration of the education system.

Time and again the Courts have avoided to substituting itself in the armchair of the employer and it is not desirable that the Court should adopt such an approach.

The grievance of the appellant before the Single Bench was in relation to inaction on the part of the Chairman, District Primary School Council, Murshidabad, in processing the application forwarded to it by the Sub-inspector of School and, therefore, it was unwarranted that the Court should make an observation that the ground assigned in the application for transfer is not a good ground and does not come within the ambit of clause (e) of sub-rule (3) of Rule 5 of the said Rules.

The order impugned is set aside.

The Chairman, District Primary School Council, Murshidabad, is directed to forward the said application to the Secretary, West Bengal Board of Primary Education within one week from the date of communication of this order. Correspondingly, the Secretary of the said Board is directed to consider and dispose of the said application within five weeks from the date of communication of the order in accordance with law.

With these directions, 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.)

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(Prasenjit Biswas, J.)