

35 **10.07.**
2024

Ct. No. 08

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MAT 1189 of 2024
IA No. CAN 1 of 2024

Monika Meheta
Vs.
The State of West Bengal and others.

Mr. Rudranil De,	
Mr. Subhronil Ghosh.	
	... for the appellant.
Mr. Pradipta Siddhanta.	
	... for the State.
Mr. Amales Roy,	
Mr. Aman Gupta.	
	... for the DPSC.
Mr. Ratul Biswas,	
Mr. Kaushik Chowdhury.	
	... for the WBBPE.

Though there is no reflection of any provisions putting a restriction and/or embargo of five years in seeking transfer, yet it can be reasonably inferred that what weighed to the Single Bench was Rule 6 of the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules 2002 (hereinafter referred to as “said Rules”).

Rule 6 of the said Rules is explicit that no teacher shall be eligible to apply for transfer for a period of five years from the date of transfer, which, according to the learned Advocate for the Board, is extended to seven years. Such being the undisputed facts discerned in course of hearing, the first and foremost point, which arose before us, whether such Rule has any manner of applicability in the facts of the instant case.

The said Rule is promulgated in exercise of powers conferred under clause (k) sub-section (2) of Section 106 of the West Bengal Primary Education Act containing exhaustive provision relating to the transfer of teachers including the Head Teacher. Sub-rule (2) of Rule 1 of the said Rules clearly indicates that the said Rule shall apply

to the teachers including the Head Teacher for the purpose of transfer from one primary school to another within the jurisdiction of a Council. It is explicit from the aforesaid provisions that the aforesaid Rule has its applicability to a transfer from one primary school to another within the territorial jurisdiction of the respective Primary School Council and does not expand its horizon to a case of transfer from one territorial jurisdiction of a Council to another territorial jurisdiction of a Council. The aforesaid provision appears to have been overlooked; had those being brought to the notice of the Single Bench, probably the said order would not have been passed.

It is no longer *res integra* that the moment the sub-ordinate legislation or the substantive legislation is promulgated to operate within a limited contour, its operation cannot transgress such limit, but has its applicability within such limited sphere. The stand of the Council that an embargo of five or seven years is created in processing an application does not appear to be in consonance with the law applicable in this regard.

Our attention is drawn to Section 19 sub-section (1) clause (k) of the West Bengal Primary Education Act, 1973 being the repository of the powers and functions of the Board including the power to transfer any teacher or non-teaching staff from a primary school within the jurisdiction of one Primary School Council to a primary school within the jurisdiction of another Primary School Council. Such power is vested upon the Board in case the transfer is sought from one zone to another or, in other words, from the Primary School situated under one Primary School Council to another Primary School Council and, therefore, in such situation, the respective Primary School Council does not have any powers or the jurisdiction to deal with such application for transfer.

The executive instructions in the form of principles and procedures to process the said application is also

subsequently notified by the Secretary of the Board vide Notification No. 230/91-92 dated 2nd November 1991. It contains an exhaustive provision relating to the principles and procedures to be adopted on an application taken out by the teaching or non-teaching staff of a primary school seeking transfer from a school situated within the jurisdiction of one Primary School Council to a school situated within the jurisdiction of another Primary School Council.

It does not contain any embargo like the one appearing in the said Rules and, therefore, the order assailed in the instant appeal based upon the said Rules, which lacks its applicability to the facts of the instant case is unsustainable. The impugned order is, thus, set aside.

The Secretary of the Board is directed to consider the said application in the light of the said Notification dated 2nd November 1991 as amended from time to time and conscious decision shall be taken within four 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.)

(Prasenjit Biswas, J.)

