

**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 1218 of 2024

with

CAN 1 of 2024

Gokul Chandra Mallick

Vs.

The State of West Bengal & Ors.

For the Appellant	:	Mr. Biswarup Biswas, Advocate Mr. Pratap Sanpui, Advocate Ms. Nupur Chowdhury, Advocate
For the CSSC	:	Mr. Sourav Mitra, Advocate
For the State	:	Mr. Santanu Kumar Mitra, Advocate Mr. Amartya Pal, Advocate
Heard on	:	August 8, 2024
Judgment on	:	August 8, 2024

The Court:

1. The application for transfer on the ground of distance was processed at the end of the School Management Committee and by a letter dated 30.04.2022; the School Management Committee requested the District Inspector of Schools (SE), Tamruk, Purba Medinipur, to immediately make a local arrangement as the appellant is the only teacher in History subject in the said School.
2. Since there was no further step taken by the District Inspector of Schools (SE), the writ-petition was filed before this Court. The

Single Bench disposed of the writ-petition reposing trust upon the School Authority to make sincere efforts in making an alternative arrangement which the appellant perceived to be not in tune with the relevant Notifications and Rules issued by the Government. It is not in dispute that the application which was filed in the year 2022, is still lurching in the domain of various authorities as no final decision has been taken thereupon.

3. The appellant submits that the right to make an application for transfer is enshrined in the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred as the 'said Rules') and, therefore, such right being a statutory right, cannot be frustrated and/or undermined because of the lackadaisical attitude of the authorities, in helm of the affairs.
4. The attention of this Court is further drawn to the Notification No. 1122-SE/S dated 21.12.2021 amending rule 6 of the said Rules by incorporating the time limit within which the authorities at every tier of such system have to take a final decision. Apropos the said Notification, a further Notification dated 03.01.2022 was issued by the School Education Department, Government of West Bengal making further amendment by inserting the proviso to Rule 6 (2) of the said Rules concerning the single teacher in the subject applying for transfer from a School to another School.
5. The Notification dated 03.01.2022 is a repository of the conscious decision of the Government that the application for transfer cannot be rejected solely on the ground that he is the only teacher in the subject but the mandate was given upon the District Inspector of Schools (SE) of the respective districts to make an alternative arrangement, in the event, it is found that the application for transfer by the single teacher comes within

the bracket “fit cases”. The obligation is imposed upon the District Inspector of Schools to find out an alternative arrangement for which the incumbent applying for transfer should not suffer nor the authority can frustrate the intention underlying the said amendment brought by way of such Notification. It is imperative on the part of the District Inspector of Schools (SE) of the respective districts to make an alternative arrangement as a stop-gap measure so that the education of the children is not hampered.

6. An equilibrium is sought to be made between the rights of an incumbent seeking transfer and the education to be imparted to the children for which the said Notification dated 03.01.2022 was issued so that the object and purpose entrusted upon the Government under the Constitution is not violated and/or frustrated. It is inconceivable that an application for transfer necessitated by the valid ground shall be kept in abeyance for all time to come until an alternative arrangement is made.
7. Having considered the aforesaid object behind issuance of the Notification dated 03.01.2022, we invited the attention of the Counsel appearing for the State as well as the Counsel for the District Primary School Commission to apprise the stand of the appropriate authority.
8. It is submitted by the Counsel for the State that the Commissioner for School Education has communicated to him indicating various Notifications and the steps taken in this regard and sought for further time not exceeding fifteen days from date to take an appropriate decision in terms of the said Notification.
9. We had an occasion to peruse the communication so made and gathered an impression that the authorities were keeping the said application in suspended animation and did not take any step imposed upon it by virtue of the said statutory Notification

unless the Court intervenes. The purpose and object of the Notification dated 03.01.2022 is totally shattered the moment the Court finds that the application for transfer filed in the year 2022 is yet to be decided in the eighth month of the year 2024. The expression 'time bound' used in the said Notification does not have a longer elasticity beyond a reasonable time and it is a matter of deep concern that more than two years have elapsed yet the authorities have not realize that the purpose and object of such Notification incorporating the words "steps to be taken within time-bound manner" has actually acted to further the object culled out therefrom. Mere seeking further time to make an alternative arrangement is simply gaining time when we do not find from the said communication that any genuine attempt was taken for such a long period.

10. The said Notification cast duty on the District Inspector of Schools to make arrangement within the time-bound manner and does not invite any option or choice of any other teacher to volunteer in rendering his service to a School from which the appellant seeks transfer. Though the shelter was sought to be taken under the letter dated 24.05.2022 that steps have been taken but the tenet of the letter does not instill any confidence in us that it is in the spirit and tune of the Notification dated 03.01.2022.
11. The moment the statutory provision casts a duty upon the District Inspector of Schools (SE) of the concerned District to make an alternative arrangement within a time-bound manner, the way, the said authority perceived the said provision having reflected in the said letter dated 24.05.2022 is against the spirit and soul of the Notification dated 03.01.2022. A stalemate situation is brought in construing the Notification dated 03.01.2022 where the helplessness of the District Inspector of

Schools is made galore that, in the event, none of the teachers volunteers to render their service to the School from where the appellant sought his transfer, the transfer application would remain in a cold-storage and cannot be brought forward.

12. This cannot be the spirit of the said Notification as the decision of the Management of the education system lies with its officials and the action to be taken within the four corners of the statutory provision which cannot be whittled down or done away with perceiving something for which the Government never issued such Notification.
13. The sum and substance of the entire episode as discerned from the instant case is that the application for transfer is still lying in the bucket of the officials and no steps have been taken in terms of the said Notification dated 03.01.2022 in the manner for which the same is issued by the Government.
14. We, therefore, direct the concerned District Inspector of Schools (SE) to consider the application for transfer strictly in terms of the Rules as well as the subsequent amendments having brought by way of a Notification within four weeks from date.
15. With these observations, the appeal being **MAT 1218 of 2024** and the connected application being **CAN 1 of 2024** are **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J)

