

July 31, 2024
WEDNESDAY

FORM NO. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Harish Tandon
And
The Hon'ble Justice Shampa Dutt (Paul)**

**MAT 1362 of 2024
with
CAN 1 of 2024**

Sandip Kumar Datta
Vs.
The State of West Bengal & Ors.

For the Appellant : **Mr. Sandip Ghosh Chowdhury, Advocate
Ms. Shreyita Misra, Advocate**

For the State : **Mr. Biswajit Sau, Advocate
Mr. Biswajit Das, Advocate**

For the SSC : **Mr. Sunit Kumar Ray, Advocate**

Heard on : July 31, 2024

Judgment on : July 31, 2024

The Court:

1. By consent of the parties the appeal itself is taken up for final hearing.
2. An application for transfer on the ground of distance is rejected by the head of the institution on the pretext that the appellant is a single teacher in Life Science in the concerned School and the transfer would prejudicially affect the academics of the students. Though the grounds taken by the authorities, appears to be rational and reasonable yet the authorities cannot act in contradiction with the statutory Rules framed by the Government.
3. By a Notification dated 03.01.2022, an amendment was brought into Rule 6(2)(c) of the West Bengal School Service Commission (General Transfer, Transfer on Special Ground

and Reallocation) Rules, 2015 by which the following guidelines were issued:

“In the event a single subject teacher makes application for transfer, the SMC will not reject the application and will inform the DI(SE) about such application. The DI(SE) will immediately discuss the matter with the CSE. In fit cases, the DI(SE) will take urgent step in time bound manner to search for a teacher on the same subject from nearby schools and make local arrangement so that the teacher of the other school attends the school wherefrom the teacher concerned has applied for transfer on limited days of the week on a temporary basis till such time a permanent teacher on that subject joins. The DI(SE) will inform such arrangement to the CSE who shall inform the matter to the Chairman of WBCSSC. President of WBBSE and School Education Department CSE will ensure such arrangements in 7 days time immediately. The DI(SE) will communicate such arrangement to the school concerned and the HOI in question will forward the application of the teacher to the DI(SE). The DI(SE) will then forward the case to the WBCSSC for consideration. WBCSSC will suitably recommend the case for transfer to the WBBSE and the Board will issue transfer order accordingly.

This remains in force until further order.”

4. It appears that the aforesaid provisions having incorporated in the statutory provisions that the School Management Committee cannot reject an application on the ground that the transfer is sought by a single teacher in the subject but shall immediately inform the District Inspector of Schools (SE) about such application having filed by the said single teacher and the D.I. of Schools is mandated to discuss the matter with the Commissioner of School Education and if it is found that it is a fit case for transfer, it is an obligation cast upon the D.I. of Schools (SE) to take urgent steps in a time-bound manner to find out a teacher of the same subject from the nearby Schools and make a stop-gap arrangement so that the teacher may also attend the said School.
5. The object and purpose of incorporation of the aforesaid provision is laudable that the education of the children

should not be hampered which by no stretch of imagination can be said to be unreasonable or irrational. The right to apply for transfer emanates from statutory rules and, therefore, the authorities cannot reject the applications solely on the ground that the appellant is a single teacher in a relevant subject in the School as the authorities cannot transgress beyond the statutory peripheral. The moment the mechanism of processing the application is provided in the said Notification dated 03.01.2022, it is imperative on the part of the respective authorities to keep adherence thereof.

6. The expression “fit cases” has to be construed in a pragmatic manner and a discretion is also vested upon the authority to consider the ground of transfer in an objective manner and communicate such decision to the teacher as permissible therein. Unless the authorities take a conscious decision as mandated in the said Notification, the application should not be rejected but be kept in abeyance for a reasonable period of time and the other obligations imposed upon the authorities are to be exhausted.
7. The Trial Court rejected the writ-petition solely on the ground that the petitioner’s application cannot be considered by the authorities without making a local arrangement as it would be detrimental to the academic interest of the students.
8. As indicated above, there is no mandate given in the statutory provision relating to rejection of the said application but the application would be forwarded by the School Managing Committee to the D.I. of Schools (SE) who will undertake an exercise as indicated in the said Notification keeping the said application alive and it is beyond cavil of doubt that such exercise has to be done in a time-bound manner. The authorities cannot keep the application in suspended animation for all time to come as it

would frustrate the very purpose of casting a duty upon the D.I. of Schools (SE) to take a decision in a time-bound manner which should be reasonable and, therefore, we do not concur with the decision of the Single Bench that the application filed by the appellant deserves dismissal and accordingly the order impugned is set aside.

9. The application for transfer filed by the petitioner shall be forwarded by the School Managing Committee to the D.I. of Schools (SE), if not already forwarded within a week from the date of communication of this order and the D.I. of Schools (SE) is directed to undertake the exercise as mandated in the Notification dated January 3, 2022 within six months from the date of receipt of such application and it goes without saying that the said decision, if any taken, shall be communicated to the appellant forthwith.
10. With these observations the appeal being **MAT 1362 of 2024 is disposed of**. The connected applications being CAN 1 of 2024 is disposed of.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J)