

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)

***FMA 1290 of 2022
With
CAN 1 of 2022***

***R. Sai Sridhar
Vs.***

The State of West Bengal & ors.

For the appellant : **Mr. Debasish Kundu, adv
Mr. Srikumar Chakraborty, adv
Mr. Sk. Nezamuddin, adv**

For the Central School
Service Commission : **Dr. Sutanu Kr. Patra, adv
Mrs. Supriya Dubey, adv**

For the State : **Mr. Arindam Chattopadhyay, adv
Ms. Lipika Chatterjee, adv**

Heard on : **31st July, 2024**

Judgment on : **31st July, 2024.**

Harish Tandon , J:

The application for transfer filed by the appellant was kept in abeyance by the authorities which constrained the appellant to approach the Court by filing the writ petition which is dismissed by the impugned order.

The Single Bench was of the view that since the five years period has not expired from the date of the appointment, the application for transfer cannot be considered under the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and re-allocation) Rules, 2015.

It is not in dispute that the appellant was appointed to the post of headmaster in Satragachi Mixed High School on 27.06.2019 and an application for transfer was taken out on 01.11.2019 which was kept in abeyance and further representation was made reminding the authorities to take a decision on the said application.

At the time of admission of the instant appeal, the direction was passed upon the School Service Commission to submit a report before this Court. The report filed today would reveal that since the application was taken out within five years from the date of the appointment to the post of headmaster, such application is barred under Rule 3 of the aforesaid Rules. It is further indicated that the School preferred in the said application for transfer where the appellant intended to be posted was not a notified vacancy and, therefore, the prayer for transfer to such school cannot be acceded to.

Rule 3 of the aforesaid Rules postulates that the incumbent shall not be eligible for general transfer if he is not confirmed in service and completed five years of satisfactory service in the particular school. It further provides that the experience in previous school as well as the post except the experience in the post of the school from which the said

incumbent has applied shall not be considered while counting the experience in terms of service. Sub Rule 2 of Rule 3 creates an embargo in entertaining the application for general transfer if the incumbent intended to get transferred in a school within the distance of 25 k.m. of the existing school.

A point is sought to be taken before us by the School Service Commission that the moment an embargo has been created in the statutory rules, no right is created into an incumbent to make an application which we do not concur with it.

The word “entertainment” has to be understood in a proper perspective which by no stretch of imagination can be construed as a complete bar in filing an application. The right to make an application and right to get the said application entertained are two distinct factors which cannot be blurred. A person has a right to make an application but whether such application would be entertained by the authority or not depends upon the objective factors. The access provided for making an application cannot be nipped in the bud as such application may not be entertained by the authority. The said Rules having a statutory flavor confers a right on the incumbent to make an application for transfer which cannot be denied at the threshold. The authority after receiving the said application has to take a conscious decision within the four corners of the statutory provisions and it goes without saying that such decision would be communicated to the incumbent for future course of action.

Rule 3 of the said Rules impinges upon eligibility of an incumbent to seek transfer before completion of the five years of satisfactory service in a particular school after being confirmed in service and, therefore, it is open to the authority to take shelter under the said provision in arriving at the decision on an application for transfer.

Admittedly, the application for transfer taken out by the appellant was within five years of his posting as a headmaster in the school and, therefore, we do not find any infirmity in the stand of the authorities that the said application cannot be entertained in view of mandate given in the aforesaid Rule. Whether there was a vacancy notified or not cannot be gone into in the instant matter for the simple reason that the application for transfer was filed within five years from the date of posting as headmaster and, therefore, we do not intent to make any comment thereupon.

We cannot overlook the fact that in the meantime, the five years period has expired which would further be evident from the report filed by the School Service Commission.

In such view of the matter, the embargo created under Rule 3 of the said Rules is no longer applicable and, therefore, we grant liberty to the appellant to make fresh application if so advised to the competent authority in terms of the provisions contained in the aforesaid Rules. In the event, such application is filed, it is expected that the authorities

would take a decision thereupon without unreasonable delay and communicate the same to the appellant.

With these observations, the appeal and applications are disposed of without any order as to costs.

All parties shall act in terms of the copy of this order downloaded from the official website of High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)