

19.09.2024

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Sl. No. 19

Ct. No. 08

MAT 1756 of 2024

With

CAN 1 of 2024

Sudipta Mukherjee

Vs.

State of West Bengal & ors.

Mr. Sudip Ghosh Chowdhury

Mr. Afrin Nahar Mandal

... for the appellant

Dr. Sutanu Kr. Patra

Ms. Supriya Dubey

.... for the WBCSSC

Mr. Jahar Lal De

Ms. Debarati Sen (Bose)

.... for the State

The writ petition filed by the appellant seeking an order upon the Central School Service Commission to take a decision on the application for transfer, is rejected by the Single Bench taking into account the provisions contained in Rule 5(6) of the West Bengal Central School Service Commission (General Transfer, Transfer on Special Ground and reallocation) Rules, 2015. The said Rule 5(6) of the said Rules of 2015 is quoted as under.

“(6) The school authority of a particular school shall not forward applications received from more than 10% (rounded up to next higher digit) of total number of teachers of that school. Priority shall be given first to the teachers senior in age.”

Our attention is drawn to the information uploaded on the official website of the School Service Commission wherefrom it appears that the School authorities after receiving the application filed by the petitioner issued No Objection Certificate with certain remarks which is evident therefrom. Despite such remarks having been put while issuing the No Objection Certificate by the head of the institution, the D.I. considered the same and approved the said application meaning thereby the Commission was directed to consider the vacancy position and make the recommendation.

The Single Bench has proceeded to reject the application as it exceeds 10% of the total strength contemplated under Rule 5(6) of the aforesaid Rules.

It is undeniable that the School authorities issued the No Objection Certificate appending certain remarks which after being taken into consideration by the D.I. (SE), the decision was taken to forward the said application to the Commission. Our attention is drawn to the provision contained in Rule 6 of the said Rules containing the exhaustive provision relating to procedure to be adopted by the authorities in relation to application for general transfer. The application has to pass through the decisions of the various authorities to reach the final destination i.e., the Central School Service Commission who was further obligated to take a decision on the basis of a parameters set forth therein.

Several parameters have been indicated in the aforesaid Rules and the marks to be allotted in respect each such eventualities and the person getting a highest marks was to be recommended to only one post despite having made three choices.

At the first occasion, we asked Dr. Patra where there is any provisions relating to choices to be made; to that effect our attention was drawn to sub-Rule 2 of Rule 6 which provides an application to be filed in a prescribed form appended to the said Rule and one of such prescribed form indicates the choice of the preference of the Schools.

Be that as it may, we find that after the allotment of the marks, it is obligatory on the part of the Commission to communicate the decision in relation to the other applications to the D.I. and the respective head of the institution and ultimately to the applicants so that a further steps can be taken in this regard.

In the instant case, we do not find that the Central School Service Commission has taken any decision nor communicated the same, if already taken, to either of those authorities or at least to the appellant. The Single Bench should not have proceeded to reject the writ petition relying on Rule 5(6) of the said Rules. The moment the School authorities forwarded the same after appending the No Objection Certificate and the D.I. of Schools (SE) have also taken a conscious decision in this regard, it is imperative that the Central

School Service Commission should take a decision thereupon.

Since the Central School Service Commission has not taken any decision as yet, we feel that instead of dismissing the writ petition, a direction should be passed upon the said authority to take a conscious decision within a timeframe and communicate the same to the appellant. Accordingly, the order impugned is hereby set aside.

The West Bengal Central School Service Commission is directed to take a decision on the basis of an application so forwarded by the D.I. of School (SE), Jhargram in terms of the provisions contained in Rule 6 of the aforesaid Rules of 2015 within 6 weeks from the date of the communication of this order.

It is expected that the Central School Service Commission shall keep in mind the obligations imposed under the Rule 6 of the said Rules of 2015.

The appeal and application are accordingly allowed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)