

WPST 197 of 2023

(Ayan Chaudhury. Vs. State of West Bengal & Ors.)

Mrs. Pampa Dey Dhabal
Mr. Krishna Deo Das

..... For the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Pinaki Dhole

..... For the State.

The present writ petition has been preferred challenging an order dated 1st December, 2023 passed by the learned Tribunal in the original application being O. A. No. 595/2023.

Mrs. Dhabal, learned advocate appearing for the petitioner submits that the petitioner was initially appointed as a Lower Division Clerk in a selection process initiated by an advertisement being no. 4/2008. Subsequent thereto, he was promoted to the post of Upper Division Clerk and was working at ITI, Durgapur. Clause 4 of the advertisement specifically provided that *‘the candidate will have to opt for one particular district from the schedule ‘A’ given below and he/she will be considered for vacancy in that district only according to his/her option’*. In violation of such condition, as specified, the petitioner was transferred by an order dated 20th October, 2022 from ITI, Durgapur to ITI, Tung in the district of Darjeeling. The said transfer order was also not in consonance with the West Bengal (Recruitment to Clerical Cadre) Rules,

2010 (in short, the 2010 Rules). The order of transfer and the order of release were issued on the same date in hot haste. Such issues, as urged, were glossed over by the learned Tribunal and no finding was returned on the same and the original application was dismissed by a cryptic order. Such infirmity warrants interference of this Court.

Mrs. Dhabal further submits that after issuance of the impugned order of transfer repeated representations were submitted by the petitioner but the same were not responded to. Aggrieved thereby the petitioner was constrained to approach the learned Tribunal.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents denies and disputes the contention of the petitioner and submits that transfer is purely an incidence of service. On administrative ground the petitioner was transferred from ITI, Durgapur to ITI, Tung in the district of Darjeeling. The petitioner deliberately did not join the transferred post and had continued in unauthorised absence till date. In the said conspectus, the learned Tribunal did not interfere with the order of transfer and there is no infirmity in the same.

Answering our query, Mr. Mukherjee, however, submits that the vacancy in ITI, Tung in the district of

Darjeeling is still existing and the petitioner is free to join the transferred post.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Transfer is an incidence of service and such order should not be interfered with unless the same is palpably illegal, arbitrary or *mala fide*.

The argument of Mrs. Dhabal that the transfer order was issued in derogation to the conditions incorporated in the advertisement, particularly Clause 4 of the same, is not acceptable to us. The said condition was as regards appointment and not transferability. The 2010 Rules which came into effect after the petitioner's appointment have no manner of application. The transfer order was issued on 22nd October, 2022 and the petitioner approached the learned Tribunal almost about 10 months thereafter in the month of August, 2023. The petitioner has failed to establish any arbitrariness or *mala fide* in the order of transfer.

In view thereof, the learned Tribunal rightly did not exercise discretion in favour of the petitioner and accordingly, no interference is called for in the present writ petition and the same is dismissed.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(V.M. Velumani, J.)

(Tapabrata Chakraborty, J.)