

Item no.
26
30.04.2024
Saswata

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

WPA 899 of 2024

**Tanima Bandyopadhyay
versus
The State of West Bengal & Ors.**

Mr. Shuvro Prakash Lahiri
Mr. Debajit Kundu

... For the petitioner.

Mr. Subir Kumar Saha
Mr. Sandip Guha Roy

... For the State

Mr. Sunit Roy

... For the respondent no.3.

1. Affidavit of service filed in Court today is retained with the record.
2. The present writ petition has been filed, inter alia, praying for a direction upon the respondents to process the petitioner's application for transfer dated 10th April 2024.
3. The petitioner is an Assistant Teacher and is presently imparting education to the students, of the respondent no. 7. The petitioner having completed 5 years of mandatory service is otherwise eligible to be considered for transfer in terms of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as the "said Rules").
4. Mr. Lahiri, learned advocate representing the petitioner by drawing attention of this Court to the application for transfer dated 10th April 2024, appearing at page 77 of the writ petition, submits that the petitioner in usual

course had applied before the District Inspector of Schools (Secondary Education), Uttar Dinajpur seeking general transfer on special ground. According to the petitioner, the aforesaid application had been made on offline mode inasmuch as, the online portal “*Utsashree*” has been temporarily suspended. According to him, once the application of this nature is received by the District Inspector of Schools (Secondary Education), he is under duty and obligation to forward the same to the Commissioner being the respondent no. 2. Once, such application is received by the Commissioner, the Commissioner is required to assess the eligibility of the petitioner and if the petitioner is found eligible, to forward the same to the respondent no. 3 being the West Bengal School Service Commissioner for effectuating the transfer.

5. According to Mr. Lahiri, in this case the respondents are sitting tight over the matter. No steps have been taken by the respondents including the District Inspector of Schools (Secondary Education).
6. Mr. Roy, learned advocate enters appearance on behalf of the respondent no. 3
7. Mr. Guha Roy, learned advocate appearing for the State respondents submits that this Court may not have jurisdiction to try and entertain the present writ petition inasmuch as the application for transfer has been made before the District Inspector of Schools (Secondary Education), Uttar Dinajpur and as the Circuit Bench does not have determination to take up such matters, he

submits that this matter should be decided by the Principal Bench.

8. Heard the learned advocates appearing for the respective parties and considered the materials on record.
9. In this case, it is noticed that the petitioner has already made an application praying for general transfer on special ground in terms of Rule 4 of the said Rules. The said application has been made via offline, inasmuch as the online portal has been suspended. The said application has, however, been kept pending and no decision has been taken in that regard.
10. I, however, find that a preliminary objection has been raised by the respondent nos. 1,2, 5 and 7 as regards the jurisdiction of this Court to entertain this writ petition. The preliminary objection is on the ground that the application for transfer has been made to the respondent no. 5, who is situated at Uttar Dinajpur and the High Court at Circuit does not have jurisdiction to decide any issue in relation to Uttar Dinajpur. In this case, I may note that the respondent no. 5 is only the authority to process and forward the application for transfer to the respondent no. 2. Consideration of the petitioner's application for transfer is required to be made by the respondent no. 2 who has jurisdiction to entertain applications for transfer all over the state of West Bengal.
11. In the event any recommendation for transfer is made by the respondent no. 2, the same is required to be given

effect to by the respondent no. 3 which also has jurisdiction over the entire State of West Bengal.

12. Further the petitioner is seeking transfer to her native place at siliguri.

13. Having regard to the aforesaid, I am of the view that simply because an application for transfer is made to the respondent no. 5 being the District Inspector of Schools (Secondary Education) Uttar Dinajpur, this Court does not lose jurisdiction to entertain the present writ petition.

14. The preliminary objection as regards want of jurisdiction fails and the main matter is taken up for consideration on merit.

15. Having regard to the case made out by the petitioner, I am of the view that since, the said Rules confer a legal right on the petitioner to be considered for transfer, the petitioner's application for transfer cannot be kept pending. Further since, the online portal has been suspended, there cannot be any embargo on the part of the respondent no.5 in forwarding the petitioner's application for transfer to the respondent no. 2, for consideration thereof in offline mode.

16. In view thereof, I direct the respondent no.5 to forward the petitioner's application for transfer to the respondent no. 2 for the respondent no. 2 to process and / or consider the same in terms of the said Rules and if the petitioner is found eligible to make available the list of vacancies to the petitioner and after giving an opportunity of hearing to the petitioner to take a decision

thereon, by passing a reasoned order and to make appropriate recommendation to the respondent no.3 for the said respondent to effectuate the transfer.

17.The entire exercise as indicated above must be completed within a period of sixteen weeks from the date of communication of a Photostat certified copy of this order.

18.With the above observations and directions the writ petition is disposed of.

19.Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the necessary formalities.

(Raja Basu Chowdhury, J.)