

Item No. – 23
17.03.2025
Rohan
Court No. 8

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**MAT 114 OF 2025
with
I.A. No.: CAN 1 of 2025**

**Saroj Kanti Bag
Versus
The State of West Bengal & Ors.**

**Mr. Sudip Ghosh Chowdhury.
... for the appellant**

**Mr. Jahar Datta,
Mr. Bipin Ghosh,
Ms. Susnita Saha.
... for the State**

**Mr. Subir Sanyal, Sr. Adv.,
Mr. Ratul Biswas,
Mr. Kaushik Chowdhury.
... for the W.B.B.P.E.**

**Mr. B.P. Vaisya,
Mr. Gourav Das.
... for the DPSC, South 24 Parganas**

1. The writ petition at the behest of the writ petitioner/appellant stood dismissed by the Single Bench after taking into account the report submitted by the District Primary School Council, South 24-Parganas that he is not a surplus teacher.
2. At the first blush, the order appears to us to be cryptic but after inviting the counsels representing the respective parties, we do not find any infirmity and/or illegality in dismissing the writ petition for the reasons stated hereinbelow.
3. The petitioner was appointed as an Assistant Teacher in the primary school and prayed for a mutual transfer,

which was eventually allowed. Subsequently, an application for transfer to a school situated within the territorial jurisdiction of another primary school council was taken out before the Board, which was kept in suspended animation, invited the writ petition to be filed before this Court. Though the Court should not substitute itself to exercise the powers of the administrative authorities, but if it appears that relegating the parties to an administrative authority would not yield any favourable decision as the law applicable in this regard is unambiguous and stare at the face of the litigant, there is no infirmity in this regard.

4. Section 19(1)(k) of the West Bengal Primary Education Act, 1973 confers power upon the Board to transfer any teacher or non-teaching staff from a primary school within the jurisdiction of one Primary School Council to a primary school within the jurisdiction of another Primary School Council. Such powers appear to have been vested and there is no corresponding provisions appearing in the said section guiding the authorities to act in a particular manner. However, the West Bengal Primary School (Transfer of Teacher including Head Teacher) Rules, 2002 was framed initially to apply in relation to a transfer a primary school teacher within the jurisdiction of the Primary School Council but our attention is drawn to a subsequent amendment having brought through a notification dated 13th September, 2021 wherein, the specific provision relating to a procedure to be adopted for inter-council transfer was inserted in the following manner:

“8. Inter Council Transfer.- While considering inter-council transfer in accordance with the provision of clause (k) of section 19 (1) of the Act, the Board

shall mutatis mutandis follow the provision of these rules particularly sub-rule (3) of rule 5 of these rules:

Provided that the Board may on basis of application or otherwise transfer any female teacher who is victim of crime with the concurrence of the State Government in the School Education Department. It shall maintain due confidentiality in regard to identity of such victim."

5. On the manifest reading of the subsequently inserted provision, though the Board is an ultimate authority to take a decision for an inter-council transfer, but has to follow the procedures in this regard incorporated in Rule 5(3) of the aforesaid Rules as a guiding tool. Since the said provision is to be applied *mutatis mutandis*, it is a principle enshrined therein which is required to be followed by the authorities before it embarks a journey of deciding the said application for transfer filed by the primary school teacher.
6. The original Sub-Rule (3) of Rule 5 is repository of a provision relating to the preference given to an application necessitated by a special circumstance. In other words, the said provision applies in relation to an order of preference given to applications filed under Section 19(1)(k) of the Act and does not put any hindrance in adopting the procedure. However, by virtue of the aforesaid amended provision, Sub-Rule (3) of Rule 5 is to be followed and by the same notification, Sub-Rule 3A was introduced by which, the conditions incorporated therein should be kept in mind or in other words followed under Sub-Rule (3) of Rule 5 of the said Rules.
7. It is beyond cavil of doubt that the application necessitated by any special circumstance, viz., Rule 3(a) to Rule 3(d) are kept outside the purview thereof in certain circumstances but does not rule out the applicability of a sufficient or excess teacher concept

having brought therein to be taken into account. According to the writ petitioner/appellant, the transfer was sought on the ground of illness. Our attention is drawn to the application which does not indicate the specific disease, but in the writ petition, it is stated by the petitioner that he is suffering from a cervical spondylosis which does not come within the peripheral of the disease under Rule 3(a) of the Rule. It is not obligatory on the part of the Board to transfer a teacher from one school situated in a Primary School Council to another school situated in another Primary School Council if the circumstances does not warrant, more particularly, being outside the ambit of the aforesaid provisions indicated hereinabove.

8. There is no merit in the instant appeal.
9. The appeal being **MAT 114 of 2025** is **dismissed**.
10. The application being **CAN 1 of 2025** is also **dismissed**.
11. No order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(HARISH TANDON, J.)

(OM NARAYAN RAI, J.)