

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction
(Appellate Side)

W.P.A. No.2478 of 2025

Haridas Makhal

Vs.

The State of West Bengal & Others

Before: The Hon'ble Justice Saugata Bhattacharyya

For the Petitioner	: Mr. Sudip Ghosh Chowdhury, Adv.
For the State	: Mr. Abhishek Banerjee, Adv. Mr. Somnath Mukhopadhyay, Adv.
For W.B.C.S.S.C	: Ms. Supriya Dubey, Adv.
For W.B.B.S.E	: Ms. Koyeli Bhattacharyya, Adv. Mr. Bibek Dutta, Adv. Ms. Keya Panja, Adv.
Heard On	: 20.02.2025, 18.03.2025 & 10.04.2025
Judgment On	: 10.04.2025

Saugata Bhattacharyya, J.:

1. An affidavit taking exception to the report filed on behalf of District Inspector of Schools (S.E.), Purba Bardhaman, which is affirmed on 21st March, 2025, is placed before this Court and same is taken on record.
2. Petitioner made application for transfer on 15th July, 2022 on the ground of distance in between the present school of the petitioner and his

place of residence. Such application was made on Utsashree portal and same was forwarded by the authority of Lohai Sammilani Vidyaniketan, Purba Burdwan (hereinafter referred to as '*said school*') on 26th August, 2022 to the District Inspector of Schools (S.E.), Purba Bardhaman being respondent no.4 for taking further steps.

3. Grievance of the petitioner is in spite of receipt of transfer application by respondent no.4 on 26th August, 2022 through portal, respondent no.4 has refused to forward the transfer application of the petitioner to the Chairman, West Bengal Central School Service Commission being respondent no.3 for taking final decision on the same. Respondent no.4 in his turn has sent back the transfer application of the petitioner to the said school authority and the said school authority has sent back the same to the petitioner on 9th September, 2022.

4. Learned advocate representing the petitioner submits that petitioner has been wrongly excluded from the zone of consideration for transfer on the specious plea that he was not coming within the zone of consideration on applying embargo relating to 10 per cent of teaching strength of the said school as envisaged under Rule 5(6) of West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as '*said Rules of 2015*').

5. It is specifically submitted on behalf of the petitioner that while considering the transfer application of the petitioner respondent no.4 is required to count Headmaster of the said school as one of the teachers and

if same would have been done, in that event total number of teaching strength of the said school would have been counted as 21 (twenty one) instead of 20 (twenty). If transfer application of the petitioner was considered based on 21 (twenty one) teaching staff working in the said school, in that event petitioner would have come within the zone of consideration since as per Rule 5(6) of said Rules of 2015 against 21 (twenty one) teaching staff of the said school 3 (three) would have been permitted to take transfer applying rules relating to 10 per cent of total teaching strength.

6. On the contrary, learned advocate representing the State respondents has opposed this writ petition on the ground that Headmaster/ Headmistress is a single cadre post in a school. Therefore, while calculating total number of teaching strength working in a school Headmaster/ Headmistress should be excluded. Reliance is also placed on Rule 2(m) of said Rules of 2015 wherein definition of "Teacher" is provided. It is also contended in reference to said Rule 2(m) that an Assistant Headmaster/ Assistant Headmistress can be transferred from respective post to a post of Assistant Teacher whereas Headmaster/ Headmistress cannot be transferred from the post of Headmaster/ Headmistress to the post of Assistant Teacher. Therefore, Headmaster/ Headmistress should be excluded while counting total number of teachers working in the school.

7. Having considered the respective submissions made on behalf of the parties, issue which needs to be examined is whether on the anvil of said Rules of 2015 Headmaster/ Headmistress is to be excluded while counting

total number of Assistant Teachers working in a particular school in order to apply Rule 5(6) of said Rules of 2015 when more than one teachers are seeking transfer from one school to another.

8. In the present case at my hand, there are 20 (twenty) Assistant Teachers working in the said school apart from Headmaster. If total teaching strength is considered as 20 (twenty) then applying Rule 5(6) of said Rules of 2015, two teachers can be permitted to take transfer and if Headmaster is taken into consideration while counting total teaching strength of the said school, in that event there are 21 (twenty one) teachers. Based on Rule 5(6), which is required to be applied, 3 (three) teachers can be permitted to take transfer.

9. In order to decide the issue, this Court finds it fit to consider the definition of “Teacher” ascribed in Rule 2(m) of said Rules of 2015. For better understanding Rule 2(m) is quoted below:

“ “Teacher” means an Assistant Teacher of a school recognized as such by the Board or Council, as the case may be, and includes the Headmaster or Headmistress, Assistant Headmaster or the Assistant Headmistress for the purpose of these rules. However, Assistant Headmaster/ Assistant Headmistress may seek transfer as Assistant Teacher.”

On plain reading of aforesaid Rule 2(m), it appears that definition of “Teacher” includes Assistant Teacher, Headmaster/ Headmistress and Assistant Headmaster/ Assistant Headmistress of a school. Therefore, as per Rule 2(m) of said Rules of 2015 there is no bar in counting Headmaster/

Headmistress in order to find out total number of teachers working in a school for consideration of transfer applications preferred by teachers.

10. Another issue is required to be taken into consideration that if the submission made on behalf of the State respondents is accepted that the post held by a Headmaster/ Headmistress is a single cadre post in that event Headmaster/ Headmistress should not be permitted to take transfer from one school to another. However, there is no bar in transferring the Headmaster/ Headmistress from one school to another in terms of relevant provisions of said Rules of 2015. Headmasters/ Headmistresses are regularly being permitted to take transfer, in accordance with relevant statutory provisions.

11. In view of the aforesaid discussions and taking note of the definition of “Teacher” ascribed in Rule 2(m) of said Rules of 2015, respondent no.4 ought to have counted Headmaster of the said school in coming to a conclusion as to how many teachers are working in the said school. It is indisputable that including Headmaster there are 21 (twenty one) teachers working in the said school. In terms of Rule 5(6) of said Rules of 2015, if in a school 21 (twenty one) teachers are working, 10 per cent constitutes 2.1 which needs to be rounded up to next higher digit, that is, 3 (three). In the event three teachers are permitted to take transfer, petitioner will come within the zone of consideration.

12. It is also admitted position that the said school authority has allowed the transfer application of the petitioner and forwarded the same through portal to respondent no.4 for taking further steps to process the same.

13. Hence, respondent no.4 is directed to forward the transfer application of the petitioner to the Chairman, West Bengal Central School Service Commission being respondent no.3 by seven (7) days from the date of communication of this order and on receipt of the same, respondent no.3 shall decide the same, in accordance with law, by four (4) weeks thereafter. The decision to be taken by respondent no.3 shall be communicated to the petitioner by ten (10) days thereafter.

14. It is made clear that suspension of portal shall not be a ground to reject transfer application of the petitioner.

15. With the above directions, writ petition stands disposed of.

16. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)