

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Saugata Bhattacharyya

W.P.A 6800 of 2025

With

CAN 1 of 2025, CAN 2 of 2025

Bajid Hossain

Versus

The State of West Bengal & Ors.

For the Petitioner

: Mr. Sunit Kumar Roy
Sk. Nayeemul Haque

For the State

: Mr. Biswabrata Basu Mallick, Ld.A.G.P,
Mr. Suman Dey
Mr. Kartick Chandra Kapas,

For the Madrasah Service
Commission

: Mr. Pratik Dhar, Senior Advocate,
Mr. Prosenjit Mukherjee
Ms. Madhurima Sarkar

For the Madrasah Board

: Mr. Nadeem Sulaiman

For the applicants in CAN 1 of
2025 and CAN 2 of 2025

: Mr. Uday Sankar Chattopadhyay
Ms. Aiswarya Datta

Heard on : 24.04.2025

Judgment on : 24.04.2025

Saugata Bhattacharyya, J. :

1. Writ petition is heard at length in presence of the learned Advocates representing the petitioner, West Bengal Madrasah Service Commission, State respondents. Two applications have been filed being CAN 1 of 2025 filed by two Assistant Teachers of Dhuliyan High Madrasah (H.S), Murshidabad (hereinafter referred to as the said Madrasah) and another being CAN 2 of 2025 by two guardians of the said Madrasah. Learned Advocate representing the applicants in both the applications is also heard.
2. In terms of the previous order dated 08.04.2025 a supplementary affidavit has been filed on behalf of the petitioner and the same is taken on record.
3. In the writ petition recommendation for transfer dated 19th March, 2025 issued by the Secretary, West Bengal Madrasah Service Commission (hereinafter referred to as Commission) is under challenge. By the said recommendation Memo dated 19th March, 2025 petitioner being an Assistant Head Master of said Madrasah has been transferred to Rahatpur High Madrasah (H.S.) District- Uttar Dinajpur. It is submitted on behalf of the parties that impugned recommendation Memo dated 19th March, 2025 was issued based on

order of OSD & EO Director of Madrasah Education, West Bengal dated 19th March, 2025.

4. Therefore it appears that on 19th March, 2025 OSD & EO Director of Madrasah Education, West Bengal under Rule 33(d) of the West Bengal Madrasah Service Commission Recruitment (Selection and Recommendation of persons for Appointment and Transfer to the Posts of Teacher and Non-Teaching Staff) Rules, 2023 (hereinafter referred to as the said Rules of 2023) decided to transfer the petitioner from the said Madrasah to Rahatpur High Madrasah (H.S.), Uttar Dinajpur in the interest of public service. It is also stated in the transfer order that there is dearth of Assistant Teacher in Bengali under Honours/P.G category in Rahatpur High Madrasah and that being the reason to transfer the petitioner on applying provisions under Rule 33(d) of the said Rules of 2023.
5. Based on such order dated 19th March, 2025 on the same date recommendation for transfer was issued by the Secretary of the Commission.
6. Mr. Sunit Kumar Ray, learned Advocate representing the petitioner while questioning the validity of the decision to transfer the petitioner has categorically submitted that petitioner is presently working as an Assistant Head Master of said Madrasah based on approval accorded by the District Inspector of Schools (S.E.), Murshidabad vide Memo dated 22nd March, 2022. It is further submitted in terms of the

permission accorded by the concerned District Inspector of Schools (S.E.), Murshidabad authority of said Madrasah conducted a selection process in accordance with the relevant Recruitment Rules and the petitioner was selected for being appointed in the post of Assistant Head Master and accordingly based on approval granted by the District Inspector of Schools (S.E) concerned petitioner is functioning as Assistant Head Master of the said Madrasah. Appointment of petitioner as Assistant Head Master was questioned in a writ petition being WPA 2208 of 2022 wherein a Co-ordinate Bench passed direction to exchange affidavits but selection of the petitioner as Assistant Head Master was not interfered with at the interim stage. Such order of the Co-ordinate Bench dated 24th February, 2022 was assailed by preferring an Intra Court Appeal being MAT 368 of 2022 which was disposed of vide order dated 6th May, 2022 passed by the Hon'ble Division Bench wherein order passed by the Co-ordinate Bench on 24th February, 2022 was not interfered with save and except an observation was made that appointment of the petitioner was made after filing of the connected writ petition; petitioner in the present writ petition shall not claim any special equity on the basis thereof and issue was kept open before the Single Bench to take decision on exchange of affidavits. Since petitioner was transferred by the impugned recommendation dated 19th March, 2025 from the post of Assistant Head Master to the post of Assistant Teacher it is

submitted that such transfer is punitive in nature which is not tenable in view of the relevant provisions of the said Rules of 2023.

7. Mr. Pratik Dhar, learned Senior Advocate represents West Bengal Madrasah Service Commission. He made submissions to defend the recommendation for transfer dated 19th March, 2025 firstly based on transfer order dated 19th March, 2025 issued by the OSD & EO Director of Madrasah Education, West Bengal wherein it has been stipulated that petitioner shall be permitted to draw pay as per last pay certificate issued by said Madrasah. Therefore, it is contended that financially petitioner will not be looser on his transfer from the post of Assistant Head Master to the post of Assistant Teacher. It is also contended that such decision to transfer the petitioner was taken in terms of Rule 33(d) of the said Rules of 2023 where authority has been conferred to decide the transfer of any staff working in Madrasah upon recording satisfaction on the recommendation of Director of Madrasah Education. According to the Commission connotation "Staff" as it is used under Rule 33(d) includes all category of staff working in Madrasah including Assistant Head Master. It is submitted that since by giving pay protection petitioner has been transferred from said Madrasah to another Madrasah demotion from Assistant Head Master to the post of Assistant Teacher by way of transfer is immaterial. It is also contended that post of Assistant Head Master is not a substantive post, creation of such post depends upon roll

strength of a Madrasah and if roll strength crosses 750 or more in that event concerned State authority creates such post by according necessary approval. There was no competitive examination conducted by the Commission for filling up the post of Assistant Head Master and by way of an internal selection process since post of Assistant Head Master is filled up no right accrues in favour of the petitioner to lay a claim that he cannot be transferred from the post of Assistant Head Master to the post of Assistant Teacher in a situation where pay protection is granted.

8. Submission is also made by Mr. Basu Mallick, learned Additional Government Pleader representing the state respondents which is in tune with the submission made on behalf of the Commission. In support of same a communication dated 23rd April, 2025 issued by the OSD & EO Director of Madrasah Education, West Bengal enclosing a writing is placed before this Court and the same is taken on record.
9. Mr. Dhar, learned Senior Advocate in order to buttress the case of the commission has relied upon two judgments one delivered by the Hon'ble Supreme Court and another by Delhi High Court reported in **2024 SCC OnLine SC 279 Pubi Lombi -Vs- Sate of Arunachal Pradesh and Others** and another reported in **2013 SCC OnLine Del 937 Ritu Kaushal -Vs- Directorate of Education & Ors.**

10. Mr. Chattopadhyay, learned Advocate appearing on behalf of the applicants in both the applications submits that there are certain allegations against the petitioner in functioning as Assistant Head Master of the said Madrasah and in this regard representation is made before the concerned respondent authorities alleging misconduct of petitioner. According to the applicants if petitioner is transferred by giving effect to the impugned transfer order dated 19th March, 2025 said Madrasah would be benefitted.
11. Having considered the submissions made on behalf of the parties this Court is required to consider Rule 33(d) of the said Rules of 2023 which is quoted below:-

“33. (d) If the Commission is satisfied on the recommendation of Directorate of Madrasah Education, that for public interest or for the welfare of the students of any Madrasah, any staff is required to be transferred irrespective of his/her willingness.”

12. Much emphasis has been laid on the expression used in Rule 33(d) i.e., ‘Staff’ and it is contended on behalf of the respondents since staff includes Assistant Head Master of Madrasah there is no impediment in transferring the petitioner from the post of Assistant Head Master. While considering such submission made on behalf of the commission this Court cannot brush aside the fact that by the recommendation for transfer dated 19th March, 2025 petitioner has been transferred

from the post of Assistant Head Master to the post of Assistant Teacher which appears to be a punitive one notwithstanding granting pay protection. That the post of Assistant Head Master is an approved post which is created by according necessary sanction by the state authorities. If a post of Assistant Head Master is available in Madrasah such post is required to be filled up by following recruitment rules. Petitioner participated in the selection process conducted by the said Madrasah authority and on being selected he was appointed as an Assistant Head Master and such appointment was approved by the concerned District Inspector of Schools (S.E) vide Memo dated 22nd March, 2022. It needs to be recorded herein that the writ petition being WPA 2208 of 2022 is pending wherein challenge has been laid against selection of the petitioner as Assistant Head Master of said Madrasah, issue travelled before the Hon'ble Division Bench and by passing an order dated 6th May, 2022 issue was kept open and Single Bench was requested to decide the validity of selection of the petitioner as an Assistant Head Master of the said Madrasah on exchange of affidavits. The writ petition being WPA 2208 of 2022 is still pending. If at this stage impugned recommendation for transfer dated 19th March, 2025 is given effect to in that event the writ petition being WPA 2208 of 2022 shall be rendered infructuous since the issue involved in that writ petition is selection of the petitioner as Assistant Head Master of said Madrasah.

13. Though elaborate argument has been advanced on behalf of the commission that it is open to the authority to transfer Assistant Head Master of one Madrasah to the post of Assistant Teacher in another Madrasah but Rule 33(d) postulates recording of satisfaction by the commission while transferring a staff of Madrasah. OSD & EO Director of Madrasah Education, West Bengal passed an order on 19th March, 2025 for transfer of the petitioner and on the very same date i.e., on 19th March, 2025, Secretary, West Bengal Madrasah Service Commission issued recommendation for transfer but what was the satisfaction recorded in support of such transfer is not placed during the hearing of the writ petition on behalf of the commission. The reason for transferring the petitioner is dearth of Bengali teacher in Rahatpur High Madrasah (H.S.) but it is contended on behalf of the petitioner that apart from him there are three other Bengali teachers working in the said Madrasah. Why petitioner who is working in the post of Assistant Head Master is chosen for transfer when other Bengali teachers are available in the said Madrasah is unknown. This consideration is required to be made in view of the fact that petitioner at present is functioning as an approved Assistant Head Master of said Madrasah and in connection with selection of the petitioner a writ petition being WPA 2208 of 2022 is still pending and in the event such transfer order is given effect to petitioner will be demoted from the post of Assistant Head Master to the post of Assistant Teacher.

14. This goes to the root of the matter. Mere use of expression 'Staff' in Rule 33(d) does not absolve of the responsibility of the concerned respondent authorities to take into consideration as to why the petitioner working in the post of Assistant Head Master is to be transferred to the post of Assistant Teacher of another Madrasah since no case is made out by the respondent authorities that Assistant Teachers in Bengali with Honours/PG degree are not available in the district.
15. In **Ritu Kaushal** (*supra*) Co-ordinate Bench of Delhi High Court was considering the fact situation where primary teacher working with additional charge of Primary Wing Coordinator was relieved of additional charge and taking note of same certain observations were made that it does not confer right upon the incumbent to claim such elevated status permanently. But, in the present case petitioner is holding the post of Assistant Head Master on granting approval by the concerned District Inspector of Schools (S.E) after being selected for the said post on conclusion of a selection process following a recruitment rules. Therefore, ratio of **Ritu Kaushal** (*supra*) does not come in aid of respondent authorities.
16. In **Pubi Lombi** (*supra*) in paragraph 15 Hon'ble Supreme Court has held in absence of certain situations it is inappropriate to conclude a case of malafide but exceptions which have been carved out in paragraph 15 needs consideration so far present case is concerned. It

has been specifically observed therein that violation of any statutory provision is one of the exceptions. There is nothing found in Rule 33(d) of the said Rules of 2023 that an incumbent holding post of Assistant Head Master can be transferred to the post of Assistant Teacher in another Madrasah by demotion without initiating appropriate proceeding against him. Furthermore such transfer is detrimental to the petitioner due to such demotion.

17. Both the applications are also taken into consideration which are filed at the instance of two guardians and two Assistant Teachers. If they have grievance against the petitioner due to certain alleged misconduct committed by him it is open to them to bring it to the notice of the concerned authorities for taking appropriate steps against him. It is apprised during course of hearing today that though post of Head Master of the said Madrasah was lying vacant for considerable period of time but recently a candidate has joined the post of Head Master. Therefore, the said Madrasah authority can take steps in accordance with law in the event of any misconduct of the petitioner.
18. In view of aforesaid scenario impugned order dated 19th March, 2025 issued by OSD & EO Director of Madrasah Education, West Bengal and the impugned recommendation for transfer dated 19th March, 2025 issued by the Secretary, West Bengal Madrasah Service Commission stand set aside.

19. The writ petition being **WPA 6800** of **2025** is disposed of. Consequently the applications taken out by the applicants are dismissed.
20. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(Saugata Bhattacharyya, J.)