

22.07.2025
Item No.05
Court No.11
Avijit Mitra

MAT 593 of 2025
with
IA No.: CAN 1 of 2025 [Stay]
with
IA No.: CAN 2 of 2025 [Sec. 5]

Banasree Roy
- Versus -
The State of West Bengal & Others

Mr. Shuvro Prokash Lahiri,
Mr. Rajesh Naskar,
Mr. Ankan Mondal
... for the Appellant.
Mr. Biswabrata Basu Mallick, Ld.A.G.P.,
Mr. Sayan Ganguly
... for the State
Mr. Sourav Mitra
... for the Central School
Service Commission.

Affidavit-of-service, as filed, be kept on
record.

The present appeal has been preferred
challenging an order dated 12th February, 2025
passed by the learned single Judge in the writ
petition, being WPA 1217 of 2025.

As we have invited the learned advocates
appearing for the respective parties to advance
their arguments on merits of the matter, the delay
in filing the present appeal is condoned and the
application under Section 5 of the Limitation of Act,
being IA No.: CAN 2 of 2025, is disposed of.

Records reveal that as the appellant's claim for transfer was not considered since she was the single Assistant Teacher of Geography in Social Science Group at Kalyangarh Bidhan Chandra Bidyapith, she preferred a writ petition being WPA 23500 of 2024 which was disposed of by an order dated 30th September, 2024 directing the District Inspector of Schools (SE), North 24 Parganas [hereinafter referred to as the DI(SE)] to consider her claim. Pursuant thereto, the DI(SE) passed an order on 2nd December, 2024 stating *inter alia* that no willing teacher had been found to man the post of the appellant after her transfer. Aggrieved thereby, the appellant preferred the writ petition. Upon contested hearing, the said writ petition was disposed of by the order impugned observing *inter alia* as follows:

'Since steps have already been taken by respondent no. 4, no further order need be passed on this writ petition excepting a direction upon he respondent no. 4 to continue to make endeavor to find out willing teacher and in the event such teacher is made available steps shall be taken in accordance with law for transferring the petitioner upon making local arrangement in petitioner's school'.

Mr. Lahiri, learned advocate appearing for the appellant submits that the notification dated 3rd January, 2022 casts a duty upon the DI(SE) to take urgent step in a time-bound manner to search for a teacher on the same subject from nearby and make local arrangement so that the teacher of the other school attends the school wherefrom the teachers has applied for transfer on days of the week on a temporary basis till such time a permanent teacher subject joins.

He argues that it is a fundamental principle that a statutory authority can act only in the manner he is permitted by the statutes. There is no provision in the notification dated 3rd January, 2022 to invite any option or choice of any other teacher to volunteer in rendering service to a school from which the appellant seeks transfer. As such, the learned single Judge erred in law in not interfering with the order dated 2nd December, 2024 passed by the DI(SE) expressing his inability to consider the appellant's prayer due to non-availability of a willing teacher for local arrangement. Such argument, as urged, was glossed over by the learned single Judge and no finding was returned on the same. Reliance has been placed upon a judgment of a co-ordinate

Bench of this Court delivered in the case of *Gokul Chandra Mallick Vs. The State of West Bengal & Others* [MAT 1218 of 2024].

Mr. Biswabrata Basu Mallick, learned A.G.P. appearing for the State/respondents submits that the learned single Judge has directed consideration of the appellant's claim in the light of the notification dated 3rd January, 2022 and there is no infirmity in the order impugned.

Mr. Mitra, learned advocate appearing for the Commission submits that no allegation has been levelled against the Commission in the writ petition.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 [hereinafter referred to as the 2015 Rules] were amended from time to time and the last amendment was effected *vide* memo dated 3rd January, 2022. The operative part of the said memo runs as follows:

“In that event a single subject teacher makes application for transfer, the SMC will not reject the application and inform the DI (SE) about such

application. The DI (SE) will immediately discuss the matter with the CSE in the DI (SE) will take urgent step in time bound manner to search for a teacher on the same subject from nearby and make local arrangement so that the teacher of the other school attends the school wherefrom the teachers has applied for transfer on days of the week on a temporary basis till such time a permanent teachers subject joins. The DI (SE) will inform such arrangement to the CSE who shall inform the matter to the Chairman of WBCSSC, President of WBBSE and School Education Department, CSE will ensure such arrangement in 7 days immediately. The DI(SE) will communicate such arrangement to the school concerned and the HOI in question shall forward the application of the teacher to the DI(SE) will then forward the case to the WBCSSC for consideration, WBCSSC will suitably recommend the case for transfer to the WBBSE and the Board will issue transfer order accordingly.

This remains in force until further order.”

In the said notification there is no rider that the DI(SE) has to make any endeavour to find out any willing teacher of neighbouring school, who can man the post of the appellant temporarily till the regular

incumbent joins the post. The term '*willing*' does not feature in the said notification.

The competent authority took a conscious decision towards amendment of the 2015 Rules by the said notification dated 3rd January, 2022 without including any rider to the effect that a single teacher can be transferred only after a willing candidate to man his/her post is found out by the DI(SE). On the contrary, the notification states that it would be an obligation on the part of the DI(SE) to take urgent steps in a time-bound manner to search for a teacher on the same subject from nearby schools and make local arrangement so that the teacher of the other school attends the school wherefrom the single teacher concerned has applied for transfer. The appellant's claim for transfer cannot be kept in abeyance till a willing teacher is found and accordingly, the order dated 2nd December, 2024 passed by the DI(SE), is set aside.

In view thereof, the order impugned in the present appeal is modified to the effect that the DI (SE) shall act in strict consonance with the provisions of the said notification dated 3rd January, 2022 and the observations made in this order and take expeditious steps for filling up the resultant vacancy that may arise after the appellant is

transferred. The entire exercise shall be completed by the DI(SE) being the respondent no.4 herein preferably within a period of three months from the date of communication of this order.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)