

WPA 10874 of 2022

Samir Das
Vs.
The State of West Bengal & Ors.

Mr. Ujjal Ray	
Mr. Atreya Chakraborty	 for the petitioner
Mr. Arindam Chattopadhyay	
Ms. Lipika Chatterjee	 for the State
Dr. Sutanu Kumar Patra	
Ms. Supriya Dubey	 for the WBCSSC

- 1.The petitioner is aggrieved by the rejection of his request for transfer on the ground that the petitioner is a single teacher in the concerned subject in the relevant school.
- 2.The petitioner joined as an Assistant Teacher of Mathematics in Ratote Junior High School on August 31, 2010. While in service in the school, the petitioner made an application for transfer on August 13, 2021. The petitioner’s application for transfer was forwarded by the school authorities to the District Inspector of Schools, who in turn forwarded the same to the West Bengal Central School Service Commission (hereinafter referred to as “WBCSSC”). The WBCSSC rejected the petitioner’s request for transfer on the ground that there was a single teacher in the concerned subject

in the school wherefrom the petitioner sought to be transferred.

3. Being aggrieved by the refusal to accede to the petitioner's request for transfer from the said school, the petitioner has approached this Court by filing the instant writ petition.

4. Mr. Ray, learned advocate appearing for the petitioner submits that as the petitioner had made the application for transfer on August 13, 2021, the petitioner's application could not have been turned down on the ground of there being a single teacher in the relevant subject in the school wherein the petitioner was rendering his services.

5. Mr. Ray submits that the amendment effected to the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter 2015 Rules) could not apply to the petitioner inasmuch as the same were effected on September 8, 2021 and the petitioner had applied on August 13, 2021.

6. Mr. Ray also places reliance on a Single Bench judgment of this Court in the case of **Satyajit Saha Vs. The State of West Bengal & Ors. (WPA 16082 of 2021)** decided on December 23, 2021 wherein it was held that the Memorandum dated September 22, 2021 whereby the amendment was effected to

the aforesaid Rules of 2015 would not have retrospective effect.

7.Mr. Ray places further reliance on the following judgments of the Hon'ble Division Bench of this Court :

a) **Prapti Chakraborty Vs. State of West Bengal & Ors. (MAT 205 of 2023)**, reported at **2023 SCC Online Cal 2403**

b) **Pragya Sarki Vs. The State of West Bengal & Ors. (MAT 4 of 2023)**

8. Mr. Ray submits that the aforesaid two judgments of the Hon'ble Division Bench of this Court further support his clients' case. He submits that while in the case of Prapti Chakraborty (supra) the Hon'ble Division Bench had held that an application for transfer made by a teacher could not be declined on the ground that the same fell foul of the rule of "out of 10 per cent", the Hon'ble Division Bench in the case of Pragya Sarki (supra) has held that the rule/circular/amendment which created an embargo on the transfer of a school teacher of a subject in the relevant school could not be applied retrospectively.

9.Dr. Patra, learned advocate appearing for the WBCSSC produces before this Court "Guidelines to applicant of Secondary, H.S. School seeking transfer" and submits that the petitioner has admittedly made his application for transfer through the portal meant therefor. He further submits that such portal was

not in existence at the time when the 2015 Rules came into existence.

10.Dr. Patra further submits that the aforesaid Guidelines were framed to regulate transfers that were requested upon the portal coming into existence. Therefore, the petitioner who had applied through the portal would be bound to follow those Guidelines. Dr. Patra relies on Clause 7(iv) of the said Guidelines.

11.Having heard the learned advocates appearing for the respective parties and having considered the material on record, this Court is of the view that the petitioner's application for transfer could not have been turned down by the WBCSSC on the ground of there being a single teacher in the concerned subject. There are more than one reasons for holding that the decision taken by the WBCSSC to decline the petitioner's request for transfer is not sustainable.

12.Firstly, at the time when the petitioner applied for transfer, there was no rule that put an embargo on a single teacher of a subject being transferred from one school to the other. It is trite law that an application for transfer of a candidate is to be considered in the light of the Rules obtaining at the time when such application is made. The judgment cited by Mr. Ray in the case of **Satyajit Saha (supra)**

and **Pragya Sarki (supra)** clearly support the aforesaid view.

13. Secondly, the Hon'ble Division Bench of this Court in the case of **Piyali Goswami Vs. State of West Bengal and others (MAT 64 of 2025)** while considering the case of transfer upon the Rules being amended (which brought in the embargo on transfer of single teacher and which was not there at the time when the petitioner had made the application) has held as follows :

“8. In a co-ordinate Bench decision in MAT 1218 of 2024 the Hon'ble Division bench has observed that the said notification passed over a statutory duty on the D.I. of Schools of the district concerned to make an alternative arrangement within a time bound manner. The said notification does not contemplate that unless a willing teacher volunteers to join the school even on a temporary basis, the application for transfer of an eligible teacher would not be allowed at all and is dependent upon the willingness of the teacher.

9. In the instant case, more than four years have passed since the application has been made. However, the same time, we cannot ignore the welfare of the students who suffered in the event the teacher is transferred without post being filled up even on a temporary basis with a fresh drive for recruitment if necessary for the said post.”

14. Thirdly, reliance placed on Clause 7(iv) of the said Guidelines in the instant case does not come to the aid of the WBCSSC. Clause 7(iv) provides as follows :

“(iv) You must realize that your noble service to the institution is key factor for growth of students. As such to save the

interest of the institution, the authority will see your requirement as subject teacher in respect of preferred school, permissible limit of release of teacher for the sake of institution etc. However, as already informed, keeping the nature of the problem a teacher facing as mentioned in 7(III) above i.e. grounds 4(a) to (d) above, such exercise may be dispensed with while considering such applications.”

15.From the document annexed at page 25 of the writ petition it is clear that the school has stated that it has no objection if the petitioner is transferred as requested by the petitioner. In the peculiar facts of this case, the requirement of Clause 7(iv) of the Guidelines have been appropriately met inasmuch as the school wherefrom the petitioner has sought for being transferred, has not registered any objection to the petitioner’s transfer.

16.In view of the aforesaid, the decision of the Commission to not transfer the petitioner, is set aside.

17.The matter is remitted to the WBCSSC and the WBCSSC is directed to reconsider the petitioner’s case for transfer within a period of four weeks from the date of communication of this order and to pass necessary orders in respect of the petitioner’s transfer, if the petitioner is otherwise eligible for transfer.

18.Since more than four years have passed since the date of the petitioner making the application for transfer

and since it has been submitted by the petitioner that the vacancies in the school that had been indicated by the petitioner in the petitioner's preference in the application for transfer may not be existence at present, the WBCSSC shall, if it finds that the petitioner is eligible for transfer, give an opportunity to the petitioner to change the names of the schools indicated in the application for transfer.

19.It is clarified that if it is found that vacancy is still existent in the school indicated by the petitioner in the application for transfer then in that case the aforesaid exercise will not be undertaken by the WBCSSC.

20.With the aforesaid observation, WPA 10874 of 2022 is disposed of.

(Om Narayan Rai, J.)