

14.08.2025
Item No.04
Court No.11
KCP

**FMA 996 of 2025
with
IA No. CAN 1 of 2025**

**Md. Minarul Islam
- Versus -
The State of West Bengal & Ors.**

Mr. Shuvro Prokash Lahiri,
Mr. Rajesh Naskar,
Mr. Ankan Mondal
... for the Appellant.

Mr. Shamim-ul-Bari,
Mr. Samsul Kabir Humayan Reza.
... for the State/Respondents.

Mr. Sunit Kumar Roy.
... for the S.S.C.

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

The present appeal has been preferred challenging an order dated 4th April, 2025 passed by the learned single Judge in the writ petition, being WPA 2275 of 2025.

Records reveal that the appellant, an Assistant Teacher of Political Science in Tildanga High School (H.S.) submitted an application for transfer dated 25th September, 2021. The same was returned by the school authorities on 7th October, 2021 without forwarding the same to the District Inspector of Schools (SE) Murshidabad [hereinafter referred to as the DI(SE)]. Aggrieved thereby, the appellant preferred the writ petition.

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 teacher has applied for transfer on days of the week on a temporary basis till such time a permanent subject teacher 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 incorporating a rider to the effect that *'On receipt of transfer application respondent no.5 shall make an endeavour to find out a willing teacher of neighbouring school who can man the post of the petitioner temporarily till regular incumbent joins the resultant vacancy after transfer of the petitioner. If willing teacher is found and it is also found to be a 'fit case' under notification dated 3rd January, 2022 the concerned respondent authority*

shall transfer the petitioner to another school in accordance with law'. In support of such contention reliance has been placed upon the judgment delivered in the case of *Gokul Chandra Mallick Vs. State of West Bengal & Ors. (MAT 1281 of 2024)*.

Mr. Bari, learned advocate 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. Roy, 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.

In the notification dated 3rd January, 2022 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 consciously issued the guidelines to take care of transfer applications of

teachers *vide* 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.

The learned single Judge has rightly observed that if the appellant is found to be a single teacher in the subject, instead of sending back the transfer application to him, the school authorities are required to forward the same to the DI(SE) for taking necessary steps as per the notification dated 3rd January, 2022. However, the observation of the learned single Judge that the appellant's application for transfer shall be considered only in the event a willing teacher is found, in our opinion, is not sustainable.

In view thereof, this Court directs that the school authorities being the respondent no. 7 and 8 shall

forward the transfer application to the respondent no. 5 within 7 days from the date of communication of this order.

Thereafter, the respondent no. 5 shall consider the same in strict consonance with the provisions of the said notification dated 3rd January, 2022 and the observations made in this order and take steps for filling up the resultant vacancy that may arise after the appellant is transferred. The said respondent no. 5 shall also communicate the final decision to the appellant.

The above exercise shall be completed by the respondent no. 5 as expeditiously as possible, preferably within a period of three months from the date of receipt of the transfer application from the said school.

The order impugned is, accordingly, modified and the appeal along with the connected application is 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.)