

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Ct.551
Item No.60

11.06.25
Sws.M

WPA 12280 of 2022

Piuli Halder
Vs
The State of West Bengal & Ors.

Mr. Biswarup Biswas
Mr. Gora Chand Samanta
...for the petitioner

Mr. Samim ul Bari
...for the State

Mr. Sourav Mitra
...for the Central School Service Commission

1. The petitioner assails the act of the District Inspector of Schools (S.E.), Sadar Sub-Division – Malda in returning the petitioner's application for transfer to the school authority with a request to the school authority to "follow School Education Department Notification No. 09-SE and 10-SE dated 03.01.2022 and act accordingly".
2. The petitioner, an Assistant Teacher of Sanskrit (Pass) of Udaipur High School had applied for transfer on special ground under section 4(e) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 since the petitioner has been suffering from gynecological disease. The petitioner's application was duly forwarded by the School Managing Committee to the District Inspector of

Schools, who in turn has returned the said application to school authority as aforesaid. Hence the writ petition.

3. Mr. Biswas, learned advocate appearing for the petitioner submits that such act on the part of the District Inspector of Schools is wholly *de hors* the law. He has taken the Court through the Government Notification dated December 21, 2021 to demonstrate that there are strict timelines within which the authorities starting from the school managing committee to the West Bengal Board of Secondary Education are mandated to act. He has also invited the attention of the Court to the Education Department's Notification dated January 3, 2022 to submit that in terms of the proviso to Rule 6(2)(c) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 guidelines have been framed to take care of transfer applications and in terms of such guidelines the District Inspector of Schools is obligated to discuss the matter of transfer with the Commissioner of School Education upon an application for transfer made by a single subject teacher being forwarded to the District Inspector of Schools by the School Managing Committee.
4. Relying on the said Notification dated January 3, 2022, it is further submitted that it is for the District Inspector of Schools to take urgent steps in time bound manner to search for a teacher on the same subject from nearby schools and make local management so that the teacher of

the other schools attends the school wherefrom the teacher concerned applied for transfer on limited days of the week on a temporary basis till such time a permanent teacher on that post joins. Mr. Biswas has further placed before this Court a judgment rendered by the Hon'ble Division Bench in the case of **Gokul Chandra Mallick vs. the State of West Bengal & Ors. (MAT 1218 of 2024 with CAN 1 of 2024)** where in a somewhat similar situation the Hon'ble Division Bench has held as follows:

“5. The Notification dated 03.01.2022 is a repository of the conscious decision of the Government that the application for transfer cannot be rejected solely on the ground that he is the only teacher in the subject but the mandate was given upon the District Inspector of Schools (S.E.) of the respective districts to make an alternative arrangement, in the event, it is found that the application for transfer by the single teacher comes within the bracket “fit cases”. The obligation is imposed upon the District Inspector of Schools to find out an alternative arrangement for which the incumbent applying for transfer should not suffer nor the authority can frustrate the intention underlying the said amendment brought by way of such Notification. It is imperative on the part of the District Inspector of Schools (SE) of the respective districts to make an alternative arrangement as a stop-gap measure so that the education of the children is not hampered.

6. An equilibrium is sought to be made between the rights of an incumbent seeking transfer and the education to be imparted to the children for which the said Notification dated 03.01.2022 was issued so that the object and purpose entrusted upon the Government under the Constitution is not violated and/or frustrated. It is inconceivable that an application for transfer necessitated by the valid ground shall be kept in abeyance for all time to come until an alternative arrangement is made.”

5. Mr. Bari, learned advocate appearing for the State-authorities submits that the action of the District Inspector of Schools is unexceptionable.
6. Mr. Mitra, learned advocate appearing for the School Service Commission has invited the attention of the Court to the Notification dated January 3, 2022 and submitted that it is only in “fit cases” that the District Inspector of Schools has been mandated to take steps for searching out a teacher of the same subject from nearby schools and not in all cases.
7. Having heard learned advocate for the parties and having considered the material on record, this Court is of the view that the action of the District Inspector of Schools in remitting the matter back to the school authority with a request to “follow School Education Department Notification No. 09-SE and 10-SE dated 03.01.2022 and act accordingly” cannot be countenanced.

8. The Notification dated January 3, 2022 mandates the District Inspector of Schools to immediately discuss the matter with the Commissioner of School Education upon an application for transfer made by a single subject teacher being forwarded by the School Managing Committee to the District Inspector of Schools. The District Inspector of Schools in the case at hand has not done that. Instead of discussing the matter with the Commissioner of School Education and taking the way forward in terms of the notification dated January 03, 2022, the District Inspector of Schools has out of his own remitted the matter back to the school authority.
9. The Court notes the objection raised by Mr. Mitra that only in “fit cases” the District Inspector of Schools would be required to take steps in time bound manners to search for a teacher on the same subject from the nearby schools but in the case at hand even such stage is yet to arrive. In fact even prior to having a discussion with the Commissioner of School Education in terms of the mandate by the Notification date January 3, 2022, the District Inspector of Schools has remitted the matter to the school authorities. Such action of the District Inspector of Schools is clearly *de hors* the law governing the subject.
10. In fact the Hon’ble Division Bench judgment in the case of **Gokul Chandra Mallick** (supra) has no scope for controversy or debate inasmuch as it has clearly laid down that the statutory provision casts a duty upon the District

Inspector of Schools to make an alternative arrangement within a time bound manner upon an application being forwarded to it by the school managing committee. The District Inspector of Schools in the case at hand has been found seriously wanting in taking steps in terms of the statutory mandate.

11. In view of the aforesaid, the District Inspector of Schools (S.E.), Sadar Subdivision is hereby directed to consider the petitioner's application for transfer as forwarded to it by the School Managing Committee afresh in the light of the Education Department's Notification dated January 3, 2022 and the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 as amended till date and to take appropriate steps strictly in accordance with the law governing the field as expeditiously as possible but not beyond a period of six months from date.
12. With the aforesaid observations, the writ petition being **WPA 12280 of 2022** stands **disposed of**.
13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Om Narayan Rai , J.)