

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE JAY SENGUPTA

WPA 15222 of 2024

Dr. Biswajit Barman
Vs.
The State of West Bengal & Ors.

For the Petitioners	:	Mr. Shamim ul Bari.
For the State	:	Mr. Swapan Kr. Datta Id.AGP., Mr. Rajat Datta.
For the Respondent Nos.6,7&8.	:	Mr. K. M. Hossain, Ms. Keya Sutradhar, Mr. K. A. Ali.
For the WBCSC	:	Mr. Pulak Ranjan Mondal, Ms. Bandana Mondal, Mr. Subhrangsu Panda, Ms. Ina Bhattacharyya, Ms. Mithu Singha Mahapatra.
Heard on	:	24.03.2025
Judgment on	:	24.03.2025

JAY SENGUPTA, J:

1. This is an application challenging an order of the Director of Public Instruction dated 13th March, 2023 and praying for direction upon the respondents to take necessary steps for transfer of the petitioner from the Domkal Girls' College, Murshidabad to the Thakur Panchanan Mahila Mahavidyalaya, Cooch Behar, which is nearer to the petitioner's place of residence at Tufanganj, Cooch Behar.

2. Learned counsel appearing on behalf of the petitioner submits as follows.
The petitioner is an Assistant Professor of Philosophy at the Domkal Girls' College, Murshidabad. He joined the college on 01st August, 2019. He made an application before the DPI on 04th October, 2021 for transfer of own seeking (special ground) from the Domkal Girls' College, Murshidabad to Sukanta Mahavidyalaya, Jalpaiguri or the Thakur Panchanan Mahila Mahavidyalaya, Cooch Behar or any other College in Cooch Behar or Alipurduar. By an order dated 08th March, 2024 passed by a Coordinate Bench of this Court in *WPA 3586 of 2024*, the DPI was directed to consider the representation of the petitioner in this regard in accordance with law. But, the prayer for transfer was rejected. It is true that at the time of seeking transfer, the petitioner had not completed five years' of service. But, at present he has. Reliance is placed on a decision of a Division Bench of this Court in *MAT 205 of 2023* and it is submitted that an application for transfer once made has to be considered on the basis of existing and/or prevailing Rules and the teacher pupil ratio need not necessarily always outweigh the requirements of the incumbent. In the instant case, the petitioner's residence is about 600kms. away from the work place and his father suffers from senility and has to be taken care. But, the same has not been considered as a special ground. The DPI could have relaxed the condition that one has to work for five years in order to claim such transfer. In cases of similarly circumstanced individuals, transfers have been effected.
3. Learned counsel appearing on behalf of the State denies the allegations and submits as follows. The petitioner had applied for transfer of his own

seeking on 04th October, 2021 before completion of five years' of service although as per Rule 3 of the Transfer Rules of 2017, an employee would become eligible only when confirmed and rendered 5 years continuous service. However, the proviso to Rule 3(I) gives a discretion to the Government to allow transfer in a restrictive manner on consideration of exigencies of hardships, etc. In the instant case, the petitioner has failed to make out such a case. Another relevant factor for refusal of the petitioner's prayer was that there was only one teacher serving in the substantive post of Philosophy being the petitioner. The other SACT teacher engaged by the College was against no substantive post. The vacuum that would have been created if the transfer of the petitioner was allowed would have made the teacher pupil ratio 1:85.

4. I have heard the learned counsels for the parties and have perused the writ petition and the written notes of submissions.
5. The petitioner took the employment knowing fully well the service conditions and the distance, which was there between his workplace and the residence. Normally, five years' continuous service is required to pray for transfer. He tried to make out an exceptional case and therefore, sought relaxation of the usual conditions. The ground was about distance and his father's senility and the consequent need to taken care of him. But, these factors were there at the time he joined service.
6. So far as the decision of the Division Bench of this Court is concerned in *MAT 205 of 2023*, it had clearly been recorded there that the service conditions gave a right to claim transfer on fulfilment of certain conditions. In

the instant case, at the time when the transfer application was made, the normal requirement of five years of continuous service was not met. It may be that now the petitioner is eligible to pray for transfer inasmuch as the said bar would not come in the way and there would be no necessity for further relaxation. Moreover, on merits, the Division Bench merely directed the Commissioner of School Education to decide the issue within a particular time.

7. In the impugned order dated 14th May 2024, it has been recorded that as per records submitted by the Domkal Girls' College, there was one Assistant Professor in Philosophy Department in the substantive post and one SACT. The overall student strength was 170. The teacher student ratio was 1:85. If the petitioner was allowed to be transferred, the ratio would become unacceptable.
8. Just as the concerns and difficulties of the teachers are to be taken care of, the fate of the students cannot be ignored either. Afterall, they are the reason why we have colleges and teachers.
9. Therefore, I do not find any compelling reason for which the authorities should have allowed the petitioner's prayer for transfer by relaxing the usual condition of five years of continuous service in the instant case.
10. However, some time has elapsed and the petitioner has already completed five years of service. The teacher student ratio may also have to be reassessed.

11. In view of the above discussions, the writ petition is dismissed, however, without any order as to costs. But, the petitioner shall be at liberty to file a fresh application for transfer on available grounds.
12. Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J)