

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 17196 of 2022

Sujit Kumar Mondal

Vs.

The State of West Bengal & Ors.

For the Petitioner

: Mr. Ujjal Ray

: Ms. Manishikha Mondal

**For the Central School
Service Commission**

: Mr. Sourav Mitra

Heard on

: 06/05/2025

Judgment on

: 06/05/2025

Rai Chattopadhyay, J. :-

1. The subject matter of this writ petition is whether the application for transfer filed by the writ petitioner dated **January 23, 2022**, should be eligible to be considered as per the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 [in short "2015 Rules" or the "**Rules of 2015**"], being treated as a continuation of his first ever application in this regard, that is for transfer submitted earlier on **August 9, 2021**, whereas in the meantime an amendment has been brought into the said

Rules of 2015, vide the subsequent notification dated **December 22, 2021**, changing the relevant provision thereunder.

2. Mr. Roy learned advocate for the petitioner has submitted that it is the same application filed by the petitioner on **August 9, 2021** and **January 23, 2022**, which cannot be treated differently under the different provisions of the Rules as the later one is the continuation of the initial one. To explain as to why it is so, Mr. Roy has stated application submitted by the writ petitioner dated **August 9, 2021**, has not been considered by the respondent authority and has been turned down for a reason which is not maintainable in the eye of law. In that case the respondent has allegedly acted without application of mind, Mr. Roy says. It is submitted that the respondent has failed to assign sufficient reason as to why the petitioner would not be governed under the provisions of the said **Rules of 2015**, which did not put any embargo regarding transfer of a single teacher in subject, in a school. That, due to the error and lapses on part of the respondent, that the petitioner had to come up with further applications for transfer or otherwise, it would not be necessary for him to file any further application for transfer. It is stated that now the respondent is motivated to take advantage of its own wrong, which it is not permitted to do in view of the settled position of law. Mr. Roy has submitted that had the said respondent not dealt with the application of the petitioner dated **August 9, 2021**, in an erroneous and illegal manner and the petitioner's prayer would have been allowed in terms of the prevalent Rules of 2015, there would not have been any further occasion for the petitioner to file subsequent applications before the said Authority. Hence, according to the petitioner, all his applications before the Authority are connected, on the same subject matter and should be treated in accordance

with the Rules, which were prevalent at the time of filing of the first application by the petitioner **August 9, 2021**.

3. In support of his submissions, Mr. Roy has relied on certain judicial pronouncements. He has relied on the finding of the Court in **Prapti Chakraborty Vs. State of West Bengal and Others** in **MAT 205 of 2023** vide order dated August 10, 2023. He says that the Court has held that service conditions gives right to claim transfer on fulfilment of certain conditions. Also that an application for transfer has to be considered on the basis of existing and/or prevailing Rules. He says that the Court has decided in the said matter that once a teacher fulfils the eligibility criteria for being transferred, as per the Rules the authority must take steps to fill up the resultant vacancy as per the norms existing at the relevant point of time, even by way of a local arrangement, till the time recruitment for a permanent teacher in the said post is made. Mr. Roy says that so far an incumbent being eligible for transfer under the provisions of the prevailing Rules, can under no circumstances be restrained to avail the same. In case even if required, the authority has to make alternative local arrangement by referring to the Division Bench judgment in **Amar Jana Vs. West Bengal Central School Service Commission, Secretary and Others (FMA No. 1082 of 2019** dated December 22, 2020). The Court has held in the said case that withholding 'No Objection Certificate' on the ground of dearth of teacher in the school particularly when the right has been accrued in favour of the said teacher by virtue of the Rules is not maintainable. So far as the petitioner is concerned, according to Mr. Roy, the school even at one point of time, issued 'No Objection Certificate' in his favour still his prayer for transfer is being restrained by the authorities, which is nothing but illegal and vitiable action.

4. **Satyajit Saha Vs. State of West Bengal and Others (WPA 16082 of 2021)** vide order dated December 23, 2021 has been relied on by Mr. Roy to submit that in case of applications for transfer filed after the date of amended notification that is, after September 22, 2021, the said 2021 notification would be applicable and not in case of the petitioner, whose application relates back to the date of his initial prayer submitted on August 9, 2021. According to the said judgment and its settled position of law, Mr. Roy submits that the notification should have a prospective effect, not any retrospective effect.

5. Mr. Mitra, learned advocate, for the Central School Service Commission has disputed such contentions and prayer of the petitioner. His objection is principally for the reason that the petitioner has submitted as many as five applications seeking transfer, all on various different grounds. That, all the applications of the petitioner as mentioned above has been duly considered and dealt with by the respondent and its orders have been duly uploaded in the official site of the respondent. Each order of the respondent with regard to an application of the petitioner has been followed by a fresh application by the petitioner, last of which is dated **January 23, 2022**. Admittedly, however, the said application dated January 23, 2022 is pending till date before the respondent authority for consideration. Mr.Mitra has submitted that there is no connection in between the two applications filed by the petitioner and each one of the same is a fresh application, may be with the same prayer, though on the basis of different reasons. Mr.Mitra has submitted that the grounds placated by the petitioner in this case are unfounded and the relief claimed is not maintainable. Mr.Mitra has raised objection as to the applicability of the judicial

precedents as cited by Mr.Roy in this case, for the reason that those are distinguishable on facts. He seeks that the writ petition may be dismissed.

6. The petitioner is an entrant in service as a regular assistant teacher in the subject, political science, in honours/postgraduate category. He has been recommended by the respondent on **September 15, 2008** and appointed vide the appointment letter dated **September 27, 2008**. Admittedly he is the only teacher in the school, for the subject political science. In such circumstances, the petitioner files, his first application seeking transfer on **August 9, 2021**.

7. There have been series of similar applications being filed by the writ petitioner and corresponding orders by the Authority dismissing each of those, citing reasons. The last application filed by the petitioner is that dated **January 23, 2022**, which is still pending. It does not appear from any material whatsoever on record that the petitioner has ever challenged any of the order of the Authority, dismissing time and again the various applications for transfer filed by him from time to time. It further appears that the applications as submitted by the petitioner with the respondent authority, bore the grounds dissimilar, from each other. The only thing which has remained constant from the second year of the petitioner's service carrier is his prayer for transfer.

8. Eligibility for general transfer would have been determined in accordance with Rule 5 of the 2015 Rules, before coming into force of the amendment thereof vide notification dated December 22, 2021. Rule 5 of the 2015 Rules is quoted bellow for convenience of discussion:-

“Eligibility for General Transfer – (1) Any Teacher or non-teaching staff qualified as per provision of Rule 2 of this Rules may be eligible for transfer

to a post of Teacher or non-teaching staff of another school of same category of post and for a Teacher of same subject under same category of reservation(Honours/ Post Graduate or Pass) and Post, as the case may be.

(2) An incumbent opting for General Transfer shall be transferred to the same category of schools having Bengali or English or Hindi or Nepali or Oriya or Santhali or Telugu or Urdu, as the medium of instructions, as the case may be.

(3) A male incumbent shall not be eligible for General Transfer in a female vacancy and a female incumbent can prefer male/Co-ed/female vacancy.

(4) No incumbent shall be eligible to apply for a General Transfer who is left with less than two years of service from the date of his/her retirement on superannuation.

(5) The General Transfer shall be allowed to an incumbent, against whom no judicial or Disciplinary proceeding is pending or contemplated and, who is not under suspension.

(6) The school authority of a particular school shall not forward applications received from more than 10% (rounded up to next higher digit) of total number of teachers of that school, Priority shall be given first to the teachers senior in age."

9. The amended provision in terms of notification dated December 22, 2021 is as follows:-

"(c) consider the number of subject teacher and roll strength. If resultant vacancy of school in particular subject become zero or commensurate with roll strength, the authority of SMC shall not forward application. However, it shall not be applicable to single subject teacher/post for which State Government shall issue separate guidelines;"

10. The Rule of 2015 did not restrict or put an embargo for transfer of a single subject teacher in the school. Later on the amended provision of the said Rule which came into force with effect from **December 22, 2021**, has provided that

the single subject teacher of a school should not be considered as eligible for transfer without his substitute being in place. From December 22, 2021, the said amended provision would govern the general transfers under the respondent. It is noted that the petitioner though refuses to be governed under the said amended provision, but has not challenged the amendment notification dated **December 22, 2021** in the instant case. It is also noted that the petitioner has not challenged any of the orders of rejection of the respondent of his different applications. By this way the petitioner has been estopped now from challenging those decisions of the respondent, since the same would be the only fallout, if the petitioner's application dated **January 23, 2022**, is considered to be the continuation of his first application dated **August 9, 2021**. Since after determination of one application of the petitioner, by the said respondent, he did not find reasons to challenge the same and files a separate application, those are obviously to be considered as separate applications filed by the petitioner, may be with the same prayer. Taking clue from the very lucid submissions made by Mr. Roy, it can be held that the so-called illegal order of the respondent in response to the petitioners application dated **August 9, 2021**, should have been challenged by him in due time. For the reasons as stated above, the Court does not find sufficient of the same to hold that there is continuity in the applications made by the petitioner on different dates, till last and for the said reason, the petitioner should be governed by the Rules as were prevalent at the time of filing the first application by him. Instead, the court finds that any application filed by the petitioner should be governed by the Rules prevalent on the same date of filing such application, like in case of his application dated January 23, 2022, the Rules prevalent on that date should be made applicable. In case of the petitioner, the amended Rules dated **December 22, 2021** should govern determination of the petitioners application dated **January 23, 2022**.

11. In the case of **Prapti Chakraborty (supra)**, the Court has held that there cannot be any doubt that in an appropriate situation, interest of student could be the overriding consideration. The Court has held further in the said order that the order of rejection has to be considered on the basis of the reasons mentioned and not on any other extraneous consideration.

12. The Court is interested to have a look to the reasons shown by the respondent in rejecting the petitioner's application. The order dated August 18, 2021 is:-

"As per GO No 159-SE/S/1S-4/95 dt 27.02.2015 the General Transfer ratio of teaching and non-teaching staff is not clear to the Managing Committee. So the Committee has unanimously decided that it will be backed to the applicant and wait for new order."

13. The order dated August 31, 2021 is as follows:-

"The application has been backed to the applicant due to only teacher of the concern subject as per MC resolution no. 26, dated 31.08.2021."

14. The order dated October 5, 2021 speaks as follows:-

"Sujit Kumar Mandal is only single teacher of Political Science. Medical documents uploaded by him is not verified at Managing Committee level."

15. The following order dated October 28, 2021 is as follows:-

"As per CMOH report(uploaded),no severe gynaecological abnormality is found."

- 16.** As discussed earlier, none of these orders have been challenged by the writ petitioner.
- 17.** Therefore, the Court is of considered opinion that the applications filed by the petitioner on various dates should be treated as separate applications submitted after final decision with regard to his earlier application before the authority. The argument of the petitioner that the last of those should be related back to the first of the applications as the petitioner would not have to file the following applications unless and until the authority would not have rejected his first application on unsustainable and illegal grounds, does not inspire much confidence in the mind of the Court in view of the fact that the petitioner has never expressed his grievance against any of the order of the authority by challenging the same. It is a fact that the last application of the petitioner is still pending that is, dated January 23, 2022. That has to be considered by the respondent and decision should be taken thereupon. However, from the entire discussion as above, it clearly transpires that in doing so the respondent would be obliged to follow the Rules as has been prevalent on the date of filing of the said application by the petitioner.
- 18.** On the terms as above, the Court finds no merit in the instant writ petition.
- 19.** Hence, the writ petition no. WPA 17196 of 2022 is dismissed, along with applications pending if any.
- 20.** Since no affidavit-in-opposition has been called for in the case, the allegations in the writ petition are deemed to have denied by the respondents.

- 21.** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)