

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:
THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PRASENJIT BISWAS

MAT 1400 OF 2024
with
CAN 2 OF 2024

SOMNATH KAR
Vs.
THE STATE OF WEST BENGAL & ORS.

FOR THE APPEALANT : MR. SOUMIK GANGULI, ADVOCATE
MR. DILIP KUMAR SADHU, ADVOCATE
MS. CHANDANA CHAKRABORTY, ADVOCATE

FOR THE STATE : MR. SUPRIYO CHITTOPADHYAY, LD. AGP
: MR. JAYANTA SAMANTA, ADVOCATE
: MR. SUMAN DEY

FOR THE : MR. BHASKAR PRASAD VAISYA, ADVOCATE
RESPONDENTS : NILAY BARAN MANDAL ADVOCATE

HEARD ON : JANUARY 07, 2025

JUDGMENT ON : JANUARY 07, 2025

THE COURT:

1. Though the application for transfer filed by the appellant was not decided by the authority, yet, on the basis of the report submitted before the Single Bench, the application appears to have been dismissed as the transfer would disrupt the Pupil-Teacher ratio. Although, liberty was given to the appellant to renew the prayer but that appears to us, was unwarranted as the right emanating from the statutory provisions can be exercised by the beneficiary under the said statute.
2. The argument is advanced by Mr. Bhaskar Prasad Vaisya, the learned Advocate appearing for the District Primary School Council, Purulia, that Rule 3 of the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002 postulates the Pupil-Teacher ratio to

be maintained and there is no infirmity and/or illegality in the impugned order. It is vehemently submitted by Mr. Vaisya that there are only two teachers in the said school and in the event the petitioner is transferred, it would create an imbalance in Pupil-Teacher ratio which would offend the provisions contained under Rule 3 of the said Rules.

3. It is audaciously submitted that there is dearth of teacher in the State and if one is transferred, it would be impossible for the administration to fill up the gap by transferring another teacher from another school. Lastly, it is submitted that transfer is not a right.
4. We are not unmindful of somewhat well-settled proposition in the service jurisprudence that the transfer is an incident of service and does not create an inchoate right into an employee to command the employer to transfer to his desired school. The moment the State has enacted the legislation concerning the transfer, a right is created into an employee to apply for transfer, which should not be denied on arbitral or whimsical grounds. Right to apply for transfer emanates from a statutory provision and it is within the discretion of the employer whether to allow such transfer or not, obviously on the basis of the plausible grounds and the well-informed decision must be taken in order to ensure the transparency, fairness and uniformity in this regard. The moment the statutory Rules have been framed, the authorities cannot transgress its circumference and must travel within the peripheral thereof.
5. It would be relevant to quote the provisions contained in Rules 3, 4 and 5 of the said Rules, which runs thus:

“3. Roll strength of a teacher : A Primary School under the jurisdiction of the Council ordinarily will have one teacher for every forty pupils or part thereof, not being less than twenty in a hilly, forested or other thinly populated area. A second teacher may be admissible when the roll-strength exceeds sixty. A third teacher may be admissible when the roll strength exceeds one hundred. Similarly, a fourth teacher may be admissible when the roll strength exceeds one hundred forth and so on. But in no case a Primary School is to have less than two teachers.

4. Condition for transfer : A Council may-

- (a) on its own motion, or*
- (b) on an application from a teacher,*

transfer an approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher is confirmed and has completed minimum two years of continuous service both in case of mutual or single transfer :

Provided that the Council may, if it considers necessary for proper utilization of service of a primary teacher in the interest of education, transfer an approved teacher without maintaining any time limit of service :

Provided further that where there is a surplus teacher according to roll-strength as stated in rule 3, the Council may, on its own motion, transfer such approved teacher without maintaining any time limit of service by way of rational adjustment of teacher in a primary school having deficit teacher in the following order of preference :-

- (i) A primary school without an approved teacher.*
- (ii) A primary school having single teacher, and*
- (iii) Other primary school having shortage of teacher.*

5. Procedure for transfer : *(1) A teacher seeking transfer under clause (b) of rule 4, shall submit his application for transfer with reasons thereof to the concerned Sub-Inspector of Schools during the month of December of each year and the concerned Sub-Inspector of Schools shall subsequently send such application with his specific views to the respective Council by January of the succeeding year.*

(2) Subject to sub-rule (3) the Council shall consider such applications and take a decision in respect of transfer by February and March of each year. Every transfer order shall be effected either at the end or at the beginning of the academic year :

Provided that if it is considered expedient to do so by the Council under exceptional circumstances the application for transfer may be considered at any time with the approval of the Board.

(3) The Council may while processing the applications for transfer approved teachers, consider the applications of such teacher as stated below on the priority basis according to the following order of preference, namely :-

- (a) a physically handicapped teacher having more than fifty percent of handicappedness and such teacher possessing a supporting document issued by the competent authority;*
- (b) a female teacher who has to face serious inconvenience in attending the school regularly due to her present place of posting;*
- (c) A teacher suffering from acute incurable disease like cancer, kidney ailment etc. and such teacher posting a supporting document issued by a competent authority.*

(4) After considering the application for transfer of an approved teacher, the Council may accept or reject the application for transfer and such decision of the Council shall be final.

(5) If the application of the approved teacher is accepted, the Council shall issue an order of transfer under the signature of the Secretary of the concerned Council and such order shall be communicated to the teacher and other concerned forthwith.

(6) On receipt of the order of transfer, the Sub-Inspector of Schools of the concerned Council shall immediately issue release order in favour of the teacher, so transferred, with a direction to join the new place of posting.

(7) The concerned teacher shall, after receiving the release order, join the new place of posting as directed under sub-rule (6). A transferred teacher shall be entitled to the joining time as stated under rule 7 depending upon the distance between two schools by normal route.

(8) The transferred teacher shall at the time of joining the new place of posting submit a joining report to the concerned Sub-Inspector of Schools who shall endorse a copy of the joining report to the Secretary to the Council."

6. Rule 3 of the aforesaid Rules does not create any fetter in applying for transfer, but in our opinion, is the recapitulation of maintaining the Pupil-Teacher ratio by an authority in order to ensure seamless imparting of education to the children being the ultimate beneficiary of the education system prevalent in the country. It is, in effect, the reiteration of the mandate relating to the Pupil-Teacher ratio so that the quality education may be imparted to the children but such provision has to be read in harmony with the subsequent provisions contained in the said Rules.
7. Rule 4 of the said Rules confers power upon the Council to transfer any approved teacher either on its motion or on an application from a teacher from one primary school to another within its territorial jurisdiction subject to the condition that such approved teacher is confirmed and has completed minimum two years of continued service. However, the proviso appended thereof, creates an exception with regard to the timeline as stipulated in the enabling provision obviously taking into account the exigencies or an unforeseen circumstances faced by the teacher. The second proviso indicates that while effecting the transfer on its own motion, the Council must take into

account, the rational adjustment of the teacher in order to make up the deficiency in the order of preference.

8. The conjoint reading to Rules 3 and 4 of the said Rules conveys the laudable intention of the legislature that it is obligatory on the part of the Council to maintain the Pupil-Teacher ratio but that would not stand as a fetter in applying for transfer or deny the prayer for transfer despite the same having founded upon the plausible and convincing ground. While interpreting the statutory provisions, the first and foremost duty of the Court is to harmonize the same so as to make it workable. The interpretative tools should not be used by the Court to render any such provisions otiose or redundant but the attempt must be resorted to operate in their respective sphere without overreaching or creating a shadow of umbrella upon the other.
9. Rule 5 of the said Rule contains an exhaustive provision relating to the procedure to be followed on an application for transfer and our endeavour has failed to find out any conditions or grounds enumerated therein which would invite the rejection of a genuine application solely on the ground of imbalance having created into Pupil-Teacher ratio. Each application for transfer is decided on its merit and within the four corners of the statutory provisions as the decision de hors the same, is always to be eschewed. Rule 5 does not contain any provision that the application should be rejected on such ground envisaged under Rule 3 of the said Rules but provide a complete mechanism in dealing with the application for transfer.
10. The aforesaid findings would get further impetus on the provisions contained in Rule 5 of the said Rules where the Council have been empowered to effect the transfer annually, obviously taking into account that the Pupil-Teacher ratio is maintained. The cumulative effect of the provisions contained in Rules 3, 4 and 5 leaves no ambiguity in my mind that the moment there is deficit in the Pupil-Teacher ratio, the imbalance can be cured by transferring a teacher from a school having a surplus teacher in relation to the Pupil-Teacher ratio. The order does not indicate that there is no surplus teacher in any other school within its jurisdiction but proceeded simplicitor on the basis that it would create a disruption in the Pupil-Teacher ratio and, therefore, the application cannot be entertained, which in our opinion, has been taken without due application of mind.

11. The order impugned is, thus, set aside.
12. The Council is directed to reconsider the application for transfer filed by the appellant afresh. If necessary, my permit the appellant to produce the document in support all the grounds enumerated therein and shall dispose of the same within four weeks from the date of communication of this order by providing reasons in accordance with law.
13. Accordingly, the appeal being **MAT 1400 of 2024** and the connected application being **CAN 2 of 2024** are **disposed of**.
14. No order as to costs.
15. Urgent Photostat Certified copy of this order, if applied for, be given to the parties upon complying with all necessary formalities.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)