

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 18484 of 2022

Bithin Ghosh

Versus

The State of West Bengal and Others

For the Petitioner : Mr. Ujjal Roy, Adv.
Ms. M. Mondal, Adv.

For the State : Mr. Supriyo Chattopadhyay, Adv.
Ms. Iti Dutta, Adv.

For the WBCSSC : Mr. Kanak Kiran Bandyopadhyay, Adv.

Heard on : 14.01.2025

Judgment on : 22.01.2025

Ajay Kumar Gupta, J:

1. The writ petition has been filed by the petitioner praying for relief in the nature of Mandamus directing the respondents to grant the petitioner general transfer from Brahmajharul Rakhal Chandra High School (HS) to any school close to his residence, preferably, at (i) Kanpur Krishnabati Vivekananda Institution (H.S.), or (ii) Nirbhoypur B.G. Nilkantha Siksanicetan (H.S.), or (iii) Arambagh High School (H.S.), as well as consequential relief thereof.

2. The background facts, which led to filing of this writ petition, may be adumbrated as under:-

3. The Petitioner appointed as Assistant Teacher of “History (Hons/PG)” on 11.08.2010 at Brahmajharul Rakhal Chandra High School (HS) and since then, the petitioner has been rendering his unblemished service till date without any complain from any corner.

4. Due to long distance and lack of direct connectivity between the residence of the petitioner and the school where working, the petitioner is unable to care his widow aged mother, who is a patient

of both eyes Presbyopia and Hypermetropia, BRVO and also his two aged infant child since his wife is also a working lady whose workplace is about 55 kms away from petitioner's residence. Due to such long distance, the petitioner's health condition has been deteriorating and facing tremendous problems in attending the school. Accordingly, he is in dire requirement of transfer from the present school to any school close to his residence.

5. The petitioner made an application for general transfer to any school close to his residence and submitted the same through the online transfer portal, which the Government of West Bengal introduced as the 'Utsashree Online Portal' for transfer of the school teachers, a system of awarding of automated point/score has been given to such portal pursuant to different factums, such as, the year of service of the candidate, the distance of school, the candidate's residence and the candidate's spouse's workplace etc. The petitioner applied in the same portal for general transfer to any school close to his residence on 'Any Other' ground vide his application dated 19.08.2021.

6. The Head of the Institution duly forwarded the same to the concerned District Inspector of Schools. But, the petitioner found such application to be back from the concerned District Inspector of Schools itself on the ground, “Sl. No. 5 of HOI Checklist needs to be rectified” on 25.08.2021.

7. The NOC dated 11.08.2021 clearly indicates, *inter alia*, that Assistant Teacher/petitioner is not under suspension and there is no Disciplinary Proceedings, judicial proceedings or Financial Irregularities or Court Case in connection with transfer against the Assistant Teacher.

8. Despite that, his application was rejected on 25.08.2021 either is the outcome of non-application of mind by the respondent concerned or any probable technical error by the respondents which are totally beyond the petitioner’s control but the petitioner’s genuine case has been denied for the same which is liable to be interfered with by this Hon’ble Court.

9. The petitioner was informed that his case was denied for the reason being a Single Teacher in the school. Though, the West Bengal

School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 has been in operation which used to guide the conditions of transfer of the petitioner till 7th September, 2021 (i.e. the date prior to the date of publication of the Gazette Notification amending the said Rules) and such Rules never provide any embargo as regards the transfer of any subject be him/her the single teacher available in the subject or not.

10. It was submitted by the learned advocate appearing on behalf of the petitioner that if at all being the single subject teacher in the concerned subject be the reason for non-consideration of the petitioner's case for transfer through 'Utshashree' scheme, the same reason is wholly illogical, unconstitutional, arbitrary and discriminatory and is liable to be interfered with by this Hon'ble Court. The petitioner is an Assistant Teacher similar to the other teachers of the different subjects in which subjects there are more than one teacher in several other schools. The fact of being the petitioner a single teacher in the concerned subject is not in the hand of the petitioner and the petitioner has not got any role to play, consequently, the petitioner herein should not suffer for default on the part of the respondents that too when the petitioner is the only

care giver to his widow aged mother who is a patient of both eyes Presbyopia and Hypermetropia, BRVO and also his two aged infant child since his wife is also a working lady whose workplace is about 55 kms away from petitioner's residence.

11. The petitioner has to travel around 54 kilometres on one side to reach to the school from his residence by compromising with his health and the family issues on the other hand, the other teachers of the other schools have been favoured with the beneficial scheme of 'Utshashree' in spite of having much lesser difficulties than that of the petitioner.

12. On 8th September, 2021 the amendment to the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 is brought about and the same provided that a teacher of a single subject should not be granted with the benefit of transfer in the said Rules. It further mentioned such amendments in the Rules were never given any retrospective effect. Therefore, such embargo would not be applicable in case of the petitioner since he applied for transfer on 19.08.2021,

the date of his application is prior to coming into force of the said amendments on 8th September, 2021.

13. It was further submitted that an identical issue came up for consideration before this Hon'ble High Court at Calcutta in Writ Petition being WPA No. 6338 of 2022 when Co-Ordinate Bench of this Hon'ble Court had been pleased to observe that there is no retrospective effect of Notification/Circular dated 08th September, 2021 and thereby setting aside the reason of rejection after observing the non-application of the same in the matter of consideration of the application for transfer of the petitioner therein. The Co-Ordinate Bench had further been pleased to direct the respondent Commission to take further steps for transfer of the petitioner therein to another school considering the non-application of the said Notification/Circular in the case of the petitioner therein.

14. On the other hand, the respondent no. 5, the Additional District Inspector of Schools (SE) has filed affidavit-in-opposition denying all the allegations save and except what is matter on record and contested the writ petition. It is submitted that the office of the District Inspector of Schools (SE), Paschim Medinipur duly objected

the matter of transfer of the petitioner in terms of para 5(6) of Notification No. 159-SE/S dated 27th February, 2015 of School Education Department. At the material point of time, teacher strength of Brahmajharul Rakhal Chandra High School (HS) was 15 and the said school authority has already issued No Objection Certificate in favour of two senior Assistant Teachers, namely, Joyti Mukherjee and Bikash Chandra Barman to the petitioner.

15. The school authority forwarded the application of the petitioner, checklist in respect with para 5(6) of Notification No. 159-SE/S dated 27th February, 2015 left blank by school authority. The application of the petitioner was not within 10% of total teacher strength and, moreover, he was not senior in age amongst the other applicants. Therefore, in such a situation, it is not possible for the authority to consider the case of the petitioner since there is every possibility of deprivation from the study if petitioner's application for transfer allowed. The study of the students is paramount consideration while considering the prayer of a person, who is alone to teach the subject. Therefore, the writ petition is liable to be dismissed.

16. Learned counsel appearing on behalf of the West Bengal Central School Service Commission also supported the contention of the learned counsel appearing on behalf of the State.

17. Heard the submissions of both sides and on perusal of the record, it appears on 8th September, 2021 the amendment of West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 was brought and in the said amended Rules, it was provided that teacher of single subject should not be granted with the benefit of transfer in the said Rules. It is also admitted fact that such amendment in the Rules was never given any retrospective effect. Such condition would also not applicable in connection with the prayer of transfer made by the petitioner since he had made such prayer on 19.08.2021 i.e. prior to date of coming into force of the said amendment i.e. 8th September, 2021. Therefore, the said amended Rules are not applicable in the case of the petitioner.

18. However, Rule 5, Sub-Rule 6 of the Notification No. 159-SE/S/1S-4/95 (Part) – 27th February, 2015 is very much applicable in the present case. While forwarding petitioner's application by the

school authority for his General Transfer did not follow or qualify Rule 5, Sub-Rule (6) that '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'.

19. The school authority has already given 'No Objection' for transfer to two senior teachers than the present applicant. The plea, taken by the State in affidavit-in-opposition, was not communicated to the petitioner till date either from the portal or in writing.

20. The details regarding general transfer of the petitioner indicated on 04.10.2021 in the "Utsashree Online Portal" that the HOI back the application with remark "The application is back to Applicant in reference to this office vide Memo No. 1632-S Dt. 29.09.2021. The SA may be asked to follow the order and resubmit the application".

21. In view of the above facts, the purpose would be sub-served if the case of the petitioner be referred to the respondent no. 5, the District Inspector of Schools, (Secondary Education), Paschim

Midnapore, Siksha Bhavan, Post Office - Midnapore, District - Paschim Medinipur, PIN Code – 721 101 with a direction to consider the same independently afresh upon resubmission of application by the school authority indicating about the Rule 5 Sub-Rule 6 of the Notification No. 159-SE/S/1S-4/95 (Part) – 27th February, 2015 and decide whether the petitioner is otherwise eligible for transfer to any other school or not in view of Notifications issued by the Government of West Bengal.

22. This Court further directs to intimate the petitioner, the result of his application for transfer, after considering the notifications issued by the Government of West Bengal, School Education Department (Secondary Branch) time to time within a period of four weeks from the date of receipt of re-submission of application for transfer of the petitioner.

23. It is made clear that this Court has not entered into the merits of the claim made by the petitioner and all points are left open to be decided by the aforesaid respondent independently at the time of consideration of application of the petitioner.

24. Consequently, the writ petition being No. **WPA 18484 of 2022** is disposed of with above observations. All connected applications, if any, are also, thus, disposed of.

25. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

26. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)