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10.01.2025
Ct. No. 18
(ARPAN)

W.P.A. 24421 of 2024

**Abhishek Mondal
Vs.
The State of West Bengal & Ors.**

Mr. Shuvro Prokash Lahiri
Mr. Rajesh Naskar
Mr. Ankan Mondal

...for the Petitioner

Mr. Supriyo Chattopadhyay, AGP
Ms. Sayantanee Bhattacharjee

...for the State

Mr. Sourav Mitra

...for W.B.S.S.C

Affidavit-of-service filed on behalf of the
petitioner is taken on record.

In spite of service of notice upon the authority of
Mahabatnagar Kailashpur Milan Siksha Sadan (H.S.),
South 24 Parganas (hereinafter referred to as the 'said
school authority'), the said school authority is not
represented today.

Petitioner has prayed for transfer on special
ground since he is suffering from 75% disability on
making application on Utsashree portal on 4th August,
2022. However, the said school authority refused to
forward the transfer application of the petitioner to the
District Inspector of Schools (S.E.), South 24 Parganas
being respondent no.7 since petitioner was previously
favoured with a transfer order dated 11th February, 2021
in terms of the recommendation issued by the

Commissioner of School Education, West Bengal *vide* memo dated 27th January, 2021. According to the said school authority within a period of seven (7) years from the date of issuance of transfer order, petitioner is not entitled to be transferred again.

Learned advocate representing the petitioner submits he could not join the transferred post pursuant to the transfer order dated 11th February, 2021 since he was transferred to a school which situates far away from his place of residence and the distance in between the said school and the residence of the petitioner is greater than the distance in between the residence of the petitioner and his present school.

Moreover, reliance is placed on a notification dated 8th September, 2021 whereby amendment has been carried out to the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 as contained in amended Rule 3(3). According to the petitioner if he would have been transferred to a preferred school based on his transfer application, in that event, as per amended provision he cannot pray for transfer for a period of seven (7) years from the date of refusal of joining the transferred post. It is further contended that petitioner could not join the transferred post in terms of the transfer order dated 11th February, 2021, in the

event, said transfer order would have been complied with he had to travel longer distance in order to attend the school where he was transferred and moreover, it was not his preferred school.

State respondents and West Bengal Central School Service Commission are represented by learned advocates.

It is submitted on behalf of the respondent authorities that during suspension of portal, as a special case, leave may be granted to the petitioner to make offline application for taking steps by the authorities on verification of disability of the petitioner by the concerned Chief Medical Officer of Health.

Before giving necessary directions for taking decision on transfer of the petitioner on special ground, this Court finds it apt to examine whether petitioner is entitled to be transferred since on previous occasion one transfer order was passed on 11th February, 2021 based on recommendation made by the Commissioner of School Education, West Bengal on 27th January, 2021. The scrutiny needs to be made on the anvil of provision under Rule 3(3) as contained in notification dated 8th September, 2021. For better understanding Rule 3(3) is quoted below:

“(3) Where an incumbent refuses to join his/ her preferred school after due recommendation by the Commission, such incumbent concerned shall not be allowed to submit application before completion of 7 years from the above refusal.”

In consideration of Rule 3(3), it is clear that in the event applicant teacher refuses to join his/ her ‘preferred school’ after due recommendation by the Commission, the said teacher shall not be permitted to take transfer for a further period of seven (7) years.

In the instant case, *vide* transfer order dated 11th February, 2021 petitioner was not transferred to his preferred school as indicated in his transfer application neither he was recommended by the West Bengal Central School Service Commission (Commission) on the contrary he was recommended by the Commissioner of School Education, West Bengal. It needs to be recorded here that after transfer order was passed on 11th February, 2021, petitioner by writing a letter addressed to the Commissioner of School Education, West Bengal disclosed the reasons as to why he was not able to join the transferred post and requested the Commissioner of School Education, West Bengal to take necessary steps for transferring him to one of the three schools which are indicated in the said letter dated 31st December, 2021.

Therefore, bar of seven (7) years as clamped in Rule 3(3) as contained in notification dated 8th September, 2021 is not applicable in case of transferring the petitioner to another school on special ground if ultimately decision is taken by the concerned respondent authorities since petitioner previously was neither transferred to his preferred school nor it was recommended by the Commission rather he was recommended by the Commissioner of School Education, West Bengal.

Accordingly, leave is granted to the petitioner to make offline application seeking transfer indicating three schools in terms of preference to the respondent no.7 by fortnight from date. If such application for transfer is made within the aforesaid time, respondent no.7 shall obtain report from the concerned Chief Medical Officer of Health on medical verification of the petitioner in order to ascertain whether petitioner is suffering from disability as it has been supported by a document which is at page 34 of the writ petition issued on behalf of M.R. Bangur Hospital, Kolkata certifying that petitioner is suffering from 75% disability. Such report shall be obtained by the respondent no.7 by three (3) weeks from the date of receipt of transfer application from the petitioner and if such report justifies petitioner's transfer, transfer application of the petitioner along with medical report shall be forwarded to the Chairman, West Bengal Central

School Service Commission being respondent no.4 by seven (7) days thereafter. On receipt of transfer application and medical report respondent no.4 shall take final decision within a period four (4) weeks from the date of communication of this order. The decision to be taken by the respondent no.4 shall be communicated to the petitioner by one (1) week thereafter.

It needs to be recorded that aforesaid direction is given considering the special facts and circumstances of this case. It is also recorded that suspension of portal shall not be a ground to reject transfer application of the petitioner.

With the above directions, writ petition stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)