

**1202
2025**

WEDNESDAY

Court : 08
Item : DL-14
Matter : MAT
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Bench ID : 266291
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE
(ASSIGNED)**

**MAT 1975 OF 2023
CAN 2 OF 2024**

PRADIPTA MUKHERJEE

Vs.

STATE OF WEST BENGAL & ORS.

MS. GOPA BISWAS, ADVOCATE

MS. SAMPRITI SAHA, ADVOCATE

.....for the Appellant

MR. TARUN KUMAR GHOSH ADVOCATE

MR. SK. MUSIOR RAHAMAN, ADVOCATE

.....for the Respondents

MR. RANJAN SAHA, ADVOCATE

.....for the DPSC, Paschim Medinipur

1. The application for transfer taken out by the writ-petitioner/appellant was founded on a ground of having suffered a gynecological disorder causing serious problem in attending School. Though the said application for transfer was forwarded to the District Primary School Council (DPSC), Paschim Medinipur, but received rejection solely on the ground that, in the event, the transfer is effected, it would bring imbalance in the Pupil-Teacher Ratio (PTR).
2. The order of the DPSC was assailed by the writ-petitioner before this Court and the said writ-petition is dismissed by the impugned order upholding the contention of the DPSC i.e., in the event, the transfer is effected, it would disrupt the PTR with liberty to the petitioner to file afresh, in the event, the PTR improves.
3. We are conscious that the transfer is not a vested right though an incident of service. However, the

moment the legislation is enacted permitting the transfer application to be decided on a particular parameter, the authority cannot travel beyond the peripheral thereof and have to adhere the mandates given therein.

4. The West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 was initially published on 28.07.2021 in the official gazette and received amendments by virtue of a further Notification dated 14.09.2021. Rule 3 of the aforesaid Rules permits any teacher including the Head-Teacher to apply for transfer and such transfer application is required to be considered on the basis of the parameters set forth therein.
5. By virtue of the Notification dated 14.09.2021, Sub-Rule (3) of Rule 3 was amended by bringing a radical change in the sense that it imbibed within itself several medical incidents as a ground for transfer. Undeniably the gynecological disorder causing serious problem in attending School is included in the aforesaid Rule by virtue of an amendment having brought. The application for transfer was based upon a gynecological disorder and, therefore, comes within the ambit of the aforesaid provision.
6. Rule 3A is further amended having received a fresh look mandating the PTR to be taken into account for any application of transfer under Clause (c) of sub-rule (3) of Rule 3 of the aforesaid Rules. However, clause (e) of Rule 3A dispensed with the PTR as mandated under clause (a) thereof, in the event, the application for transfer is filed on the ground enumerated under sub-rule 3 (a) to (d). Obviously,

the gynecological disorder finds place within sub-rule (3) (a) of the aforesaid Rules and, therefore, the mandate of PTR is dispensed with existing scenario.

7. The authority cannot take a ground not contemplated in the statutory provisions nor can import the same as one of the conditions ignoring the relevant provision incorporated in this regard. The mandate of PTR is applicable to a case where the application for transfer is necessitated by any other reason other than the reasons contemplated under clause (a) to (d) of sub-rule (3) of Rule 3 thereof and, therefore, the authorities have acted contrary to the provision of the aforesaid Rules.
8. The moment the Court finds that the authorities have transgressed the circumference of a particular provision; it would entail such order liable to be interfered with. The Single Bench did not consider the statutory provisions as placed before us and proceeded simplicitor on the *ipse dixit* of the submission advanced by the DPSC who otherwise have a responsibility to place the statute before the Court at the time of making submissions.
9. In view of the discussion made hereinabove, the order of the Single Bench is set aside.
10. As a consequence whereof, the writ-petition filed by the appellant stands allowed.
11. The DPSC, Paschim Medinipur is directed to consider the application afresh in the light of the provisions contained under the aforesaid Rules and the entire exercise shall be completed within three weeks from the date of communication of this order.

12. With these observations, the appeal being **MAT 1975 of 2023** and the connected application being **CAN 2 of 2024** are **disposed of**.

(HARISH TANDON, J.)

(PARTHA SARATHI CHATTERJEE, J)