

Sumatinagar Sarat Kumar High School and another.
Vs.
Manasi Sarder and others.

Mr. Biswarup Biswas,
Mr. Debnarayan Patra.

... for the appellants.

Mr. Ujjal Ray,
Ms. Manishikha Mondal.

... for the respondent no. 1.

Mr. Sunit Kumar Roy,
Ms. Susmita Mondal.

... for the School Service Commission.

It is a sordid state of affairs that the Managing Committee of the school is apathetic to the genuine grievance raised by the writ petitioner/respondent no. 1 in the transfer application necessitated by a medical exigencies. An application, which sees the light of the day 3 to 4 years before the resolution is taken, remained pending diminishes the avowed object of incorporating several diseases in the statutory Rules to be considered for transfer.

The West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (in short “said Rules”) was framed by the Government with effect from 27th February 2015. The said Rules contain exhaustive provisions concerning the transfer and/or related issue and the exercise of power by the respective authorities mentioned therein. The said Rules received several amendments by passage of time, but we are concerned with the amendment having brought on 8th September 2021. Rule 4 of the said Rules sees a radical change by introducing the amendments incorporating certain incidences of

medical infirmity. The said Rule is reproduced as under:

“4. Grounds for transfer.

An incumbent may apply online in the designated portal for transfer on following grounds:

- (a) Any incumbent or his/her son/daughter/spouse suffering from malignant disease/ severe heart disease/ renal failure/ thalassemia, replacement of organ/ serious gynecological disorder causing serious problem in attending the school;
- (b) Physically disablement of 40% or more as certified by competent authority;
- (c) Female incumbent facing serious problem in attending the school due to divorce or death of husband;
- (d) Incumbent of age 57 years and more and willing for home district posting;
- (e) Any other reasons.”

It is evident from the aforesaid provisions that a teacher or non-teaching staff may apply for transfer not only on account having suffered the specified diseases but also for his/her son/daughter/spouse. Thus, the legislature has given an expanded horizon in seeking a transfer necessitated by the medical reasons.

Rule 6 of the said Rules provides a complete mechanism and the procedure to be adopted by the several authorities being responsible for taking a decision in relation to a transfer from one school to another and it imbibes within itself the School Managing Committee, District Inspector of Schools, Central Commission and the West Bengal Board of Secondary Education. The respective responsibilities and the exercise of powers are clearly defined in the said provision and, therefore, each of such authorities cannot travel beyond the boundaries of the aforesaid provisions. Rule 6, as amended, is quoted as under:

“6. Procedure for submission and consideration of the application.

(1) An incumbent, may apply for transfer on grounds and manner mentioned in rule 4. The respective authorities involve in the process of transfer i.e. School Managing Committee (SMC), District Inspector of Schools of Secondary Education (DI), Central Commission (CSSC), West Bengal Board of Secondary Education (Board) shall consider such transfer application within such time as may be specified by the State Government by guidelines.

(2) Upon submission of application, the authority of SMC shall –

(a) verify the service records and other details of applicant;

(b) examine whether departmental/ judicial proceeding is pending or being contemplated, or suspension order is issued against applicant or not. In any such affirmative case, the school authority shall not forward the application;

(c) consider the number(s) of subject teacher(s) and roll strength. If resultant vacancy of school in particular subject become zero, or not commensurate with roll strength, the authority of SMC shall not forward the application;

(d) consider the total application(s) from school is not more than 10% (ten) of total teachers' strength of school;

(e) dispensed with the provision of clause (c) and (d) of this sub-rule for applications made on grounds mentioned in rule 4 (a) to (d):

Provided that while considering such applications, if resultant vacancy of school in particular subject become (0) zero, or not commensurate with roll strength, the SMC shall approach the CSSC through DI/S (SE) for filling up the vacancy:

Provided further that the CSSC may take endeavor to fill such resultant vacancy(s), by any incumbent whose application for transfer is fit for the aforesaid resultant vacancy or under provision of the section 10C of the Act with the approval of the State Government:

Provided also that the Commissioner of School Education shall supervise the process and ensure filling up of such vacancies with utmost priority and send progress report fortnightly to the School Education Department.

(f) cause to examine the applicant by the doctor of the SMC in case of transfer application made on medical grounds mentioned in clause (a) of rule 4 and must indicate the disease of the applicant, which caused serious problem in attending the school.

(g) issue "No Objection Certificate" (NOC) in fit cases and

shall forward transfer application to District Inspector concerned.

(3) District Inspector concerned upon receipt of application with the NOC from school, shall:

(a) verify the service records and other information as furnished by the incumbents;

(b) take the views of the Chief Medical Officer of Health (CMOH) on transfer application related to medical grounds as reported by the doctor of the SMC;

(c) forward transfer application to Central Commission along with his/ her view.

(4) Central Commission upon receipt of applications for transfer from District Inspector shall consider the same only against the vacancy available at the time of consideration on following basis:-

(a) It shall populate the reason wise transfer list forwarded by District Inspectors;

(b) Vacancy already reported to it for direct recruitment, shall not be filled by transfer;

(c) Transfer shall be made in the same category of post, as specified in sub-rule (1), (2), (3) of rule 5.

(d) In case of application for transfer in the category of rule 4(a) to (d) by a teacher of a particular subject to a school which is already having sufficient or excess teacher in that subject, Central Commission shall not consider the application for transfer to opted school. In the event when all options exercised are not found suitable, the incumbent may be considered for transfer to a school (having requirement of that subject teacher) nearby to opted school(s).

(e) Applications submitted against a single vacancy with more than one reasons, will be considered in order of preference from grounds mentioned in rule 4(a) to (e).

(f) In case of applications under rule 4(c) submitted against a single vacancy, divorcee/Widow Lady incumbent having child below the age of 10 years (on date of application) shall get preference over applicant having child above 10 years of age.

(g) In case of applications under rule 4(d) submitted against a single vacancy, incumbent who submitted application earlier shall get preference.

(h) In case of application for transfer in the category of Rule 4(e) by a teacher of a particular subject to a school which is already having sufficient or excess teacher in that subject, CSSC shall not consider the application for transfer to opted school. In the event when all the options

exercised are not found suitable, the transfer application will be rejected by CSSC.

(i) In other grounds transfer under rule 4(e), if more than one application for a single vacancy is received, consideration shall be made on the basis of marks obtained on points as follows:

Sl. No.	Particular	Marking
1	2	3
1.	Service rendered in present school and post till last date of application	2 (two) marks for each completed year till 31-12-2005 not exceeding 20 marks and 1 (one) mark for each completed year after that. For 6 months and above but below 1 year will be awarded by half of the marks allotted for the year.
2.	Female applicant having child below 10 years of age; Female applicant having child above the age of 10 years (age till last date of application)	5 (five) marks in addition to the marks awarded in serial No. 1. 3 (three) marks in addition to the marks awarded in serial No. 1
3.	Present serving school of applicant is away from the spouse working place	above 50 km upto 100 kms: 1 mark Above 100 Kms to 200 Km: 2 marks Above 200 kms: 3 marks
4.	Distance from present Posting of applicant	While considering the distance in kilometers from the place of residence and to the place of posting, the address recorded in the Service Book shall be taken into account. For every 50 KMs distance, 1 (one) marks shall be awarded. However, total marks will not exceed more than 6(six) marks. Any change in the Service Book in this regard will be required to be supported with any one of the following documents in the name of the applicant or his/her spouse, namely: 1) EPIC (Voter Card) 2) Aadhaar Card 3) Passport 4) Landline or postpaid bill of mobile telephone 5) Electricity bill 6) Bank Passbook 7) Driving License. Distance calculated by the CSSC will be final and no appeal for fresh calculation will be entertained.

N.B. In case of two or more incumbent securing same

marks, application submitted earlier shall get priority.

(j) After considering the applications so forwarded to the Central Commission in the manner provided hereinbefore, it may issue recommendation of transfer to the Board, in fit cases.

(k) In case of rejection, the Central Commission shall inform reason to incumbent, District Inspector and School Management Committee.

(5) (a) The Board being appointing authority, after receipt of such recommendation, issue transfer order mentioning the joining time, with copy to CSSC, DI and SMC (of present and proposed school of posting) and keep the vacancy report updated caused due to transfer.

(b) After receipt of the transfer order, SMC of releasing school shall take action for release and issue LPC.

(c) The SMC/ HM of joining school, as the case may be, shall join the teacher within the given time.

(d) After receipt of copy of the transfer order, release order and joining report, concerned DI will take action for updating service record of incumbent.

(6) The Board may, on basis of application or otherwise transfer any female teacher who is of victim of crime with the concurrence of the State Government in the School Education Department. It shall maintain due confidentiality in regard to identity of such victim.”

Before we proceed to interpret the various clauses contained in Rule 4 and Rule 6 of the said Rules, the undisputed facts, which would throw light thereupon, are required to be adumbrated.

Admittedly, an application for transfer was filed by the writ petitioner/respondent no.1 that she is suffering from serious gynecological disorder causing serious problem in attending the school, way back in the year 2021-2022, as we find a dissent whether the Managing Committee considered the application for transfer filed in the year 2021 or 2022.

Be that as it may, even if we take it the last application to have been considered by the Managing

Committee as both the applications is founded upon the same sets of fact, the resolution taken by the School Managing Committee is required to be scrutinized in order to ascertain whether the resolutions are strictly in adherence to the statutory provisions.

Based upon the aforesaid undisputed facts and taking into consideration the provisions contained in Rule 4 and 6 of the said Rules, it is manifest that the moment the application for transfer is filed disclosing the disease mentioned in Clause (a) of Rule 4, the School Managing Committee is mandated to verify the service records and other details of the applicant and also to find out whether any cases are pending or being contemplated or the said applicant is under order of suspension. Clause (c) of Rule 6(2) provides that in the event the number of subject teacher and the roll strength would invite the strength to be zero or not in commensurate with the roll strength, it is not obligatory on the part of the School Managing Committee to forward the said application.

The legislature by incorporating Clause (e) of Rule 6(2) was conscious that the medical ground cannot be equated with the other general grounds as it stand on higher pedestal and conveyed the laudable message that Clause (c) and (d) of Rule 6(2) of the said Rules shall not apply to a case where the transfer is sought on any of the grounds envisaged in Clause (a) to (d) of Rule 4 of the said Rules. Obviously, the reason being that the medical emergency sees no boundaries and does not invite an inhuman approach even in the executive fiat. The procedure to be adopted by the School Managing Committee is also provided in Rule 6, as mentioned herein above, to the effect that the moment an application is filed, the School Managing Committee shall cause such applicant to be examined by the Doctor

appointed by the said Committee if the transfer is necessitated by the disease suffered by the applicant as mentioned in Clause (a) of Rule 4 of the said Rules.

The statutory Rules have provided the obligations and adherence thereof, which cannot be undermined and/or whittled down as per the whims and discretion of the School Managing Committee. The School Managing Committee is required to adhere the provisions and any transgression or departure therefrom would entail such decision susceptible to be interfered with in exercise of powers under Article 226 of the Constitution of India.

Had it been a case that there is no transfer policy or the Rules framed by the Administration in order to run and manage the institution or the system, the decision of the authorities are tested on the principles of natural justice, reasonableness and/or rationality. Once the statutory Rules are framed by the State Government incorporating the exhaustive provisions relating to transfer, the respective roles and responsibilities enshrined therein cannot be permitted to be bypassed and/or violated but the strict adherence must be ensured.

Interestingly, an application, which was filed in the year 2021 of 2022, was taken into consideration in the first resolution of the School Managing Committee taken on 23rd February 2022, which does not reveal any discussion on the application for transfer necessitated by medical emergency. It simply talks about the plight of managing the school because of the disruption having seen in the pandemic struck globally. The second resolution was taken on 30th September 2024, where the Managing Committee for the first time flagged an issue that the application cannot be processed as it does not contain the supporting documents relating to the

gynecological disorder causing impediment in discharge of duties.

Neither Rule 4 nor Rule 6, as reproduced herein above, postulates the documents to be submitted in support of such claim. Had that been the situation, there was no occasion to incorporate a clause mandating the School Managing Committee to cause the applicant to be examined by a Doctor chosen by them. The moment the clause provides for an examination by the Doctor appointed by the Managing Committee, it rules out the mandate of any supporting documents to be enclosed to the application for transfer. The examination is on the basis of the disclosed medical disease and not to be ascertained as an expert body on the scrutiny of the medical documents submitted along with an application of transfer.

It is an independent exercise to be undertaken by the School Managing Committee unaffected and/or being influenced by the supporting documents issued by the member of the said medical fraternity. The Rule further provides that the application based on the disclosed disease, as mentioned in Clause 4(a), forwarded to the DI should further be scrutinized by constituting the Medical Board and thereafter the decisions is required to be taken whether such transfer is inevitable or to the best interest of the Administration.

Such being the position emerged from the aforesaid provisions, we do not find any justification in the stand of the Managing Committee in keeping the application for transfer in suspended animation and at the much belated stage flagging an issue that such application is incomplete being not supported by medical documents. The purpose of bringing amendment giving a reshape of Rule is to expedite such application so that the purpose

is not lost or elapsed on delayed decision of the authority.

Astonishingly, the applications for transfer on such grounds filed in the year 2021 or 2022 are taken for the first time in the year 2024, after a gap of one or two years, which would frustrate the very purpose of incorporating the amendments in the said Rules. The insensitivity of the School Managing Committee in not taking a prompt decision on the said application and keeping the same in abeyance for no reason causes an immense mental stress into the applicant apart from the physical inconvenience so suffered.

The apathetic and lackadaisical attitude of the School Managing Committee is evident and eminent from the fact emerged from the resolution annexed to the application. However, in course of hearing, the Advocate-on-Record of the appellants submits that the infertility after giving birth cannot be a gynecological disorder causing sufferance in attending the school.

We enquired from the Counsel for the appellants about the Members of the School Managing Committee and did not find any medical expert to be a part thereof. The resolution placed before us does not reveal that the Managing Committee has considered the same, but it appears that the said plea is taken for the first time at the Bar. Apart from the same, it was obligatory on the part of the School Managing Committee to appoint a Doctor to examine the applicant to verify whether she is suffering from such disease or not; it is not open to the Managing Committee to take any plea without having expertise, knowledge and/or proficiency in the relevant subject.

It is another way to prolong the application so that

the grievance of the writ petitioner/respondent no. 1 is misdirected and the application would remain in limbo for all time to come. The role of the Managing Committee, as evident from their conduct, though requires a serious reprimandation yet we feel that imposition of costs while dismissing the instant appeal would permeate a clear message.

We, therefore, dismissed the instant appeal and the connected application being CAN 1 of 2024 with costs of Rs. 50,000/- to be shared equally by each of the Members of the Managing Committee, who were present in the meeting dated 30th September 2024, to be paid to the writ petitioner/respondent no. 1 within three weeks from date.

Urgent Photostat certified copy of this order, if applied for, be given to the parties within three days from the date of the application.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)