

**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 No. 2171 Of 2024

Biswajit Jana

-Versus-

The State of West Bengal & Ors.

For the Appellant : **Mr. Sudip Ghosh Chowdhury,**
Ms. Shreyeta Mitra,
Ms. Debolina Chakraborty.

For the W.B.B.S.E. : **Ms. Koyeli Bhattacharyya,**
Ms. Keya Panja
Mr. Bibek Dutta.

For the SSC : **Mr. Sumit Kr. Roy**

Delivered on : **10.01.2025**

Prasenjit Biswas, J:-

1. Let the certified copy of the impugned order dated 25.11.2024 filed by the appellant today, be tagged with the memorandum of appeal.
2. The instant appeal is directed against the impugned order dated 25.11.2024 passed by the learned Single Bench of this Court in WPA no. 27416 of 2024.
3. By passing the impugned order learned Single Bench dismissed the application filed by the present appellant. Being aggrieved and dissatisfied with the said impugned order passed by the learned Single Bench the present appeal is preferred at the behest of the appellant/petitioner.
4. The petitioner joined in the school as Assistant Teacher on 06.12.2013 pursuant to the appointment letter issued by the school. The appellant/petitioner applied for transfer on the ground of distance on 13.08.2021 and 14.08.2021 but those two applications were rejected by the school authority on technical reason. Thereafter, the petitioner again applied for transfer in the portal on 05.01.2022 on the ground of distance. The school authority issued no objection and forwarded the application to the District Inspector of Schools and in turn the District Inspector of Schools forwarded it to the West Bengal Central School Service Commission with remark, *'Forwarded to the WBCSSC for Transfer in favour of Biswajit Jana AT'*. The said application was rejected by the commission on 25.01.2022 with remark *'Prayer is returned due to low rank in preferred school applied by the candidate'*. Finding no other way this appellant/petitioner filed a writ petition before this Court which was dismissed by the learned Single Bench by passing the impugned order dated 25.11.2024.
5. At the time of hearing learned Advocate for the appellant said that the learned Single Bench has committed an error in passing the impugned order for not considering the amended provision of Rule 6 of the West Bengal School Service

Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 which has come into effect on 8th September, 2021. The present appellant has applied under the amended Rule and as such rejection of the transfer application of this appellant without adhering to the provision of amended Rule does not stand under the eye of Law. Consequently, dismissal of the writ application filed by the present petitioner challenging the order of rejection of transfer application by the authority concerned is erroneous. At the time of hearing our attention is drawn by the learned Counsel to the provision of Rule 6(2) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 as well as amended provision of Rule 6 which has come into force by gazette notification dated 8th September, 2021.

6. Rule 6(2) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 provides that:

“An incumbent desirous of General Transfer/General Transfer on Special Ground within the meaning of these rules shall apply in the Form (containing Part A and Part B) as appended to these rules. The filled up form with requisite fees of Rs. 2,000/- payable in favour of “The West Bengal Central School Service Commission”, within the period as will be notified by the School Service Commission by submitting application Form. One incumbent may submit only one application for maximum 03(three) of such vacant posts as per his/her priority of choice in application forms as prescribed. Handwritten or online applications may be accepted. Application submitted without fees shall be rejected.

Change of preference/preferences after making application by the incumbent, shall not be entertained.”

7. Thereafter amendment of that Rule has come into force by a gazette notification dated 8th September, 2021 by which the previous Rule 6 has been substituted and concept of applying only one application for maximum three of such vacant posts as per his/her priority of choice in application form as prescribed has been repealed. The appellant has applied under the amended Rule and as such the authority concerned cannot reject the transfer application of the appellant with observation that “Prayer is returned due to low rank in preferred school applied by the candidate’. The only issue involved in this case is that whether the appellant/applicant could be facilitated one more option to substantiate his transfer. Under the amended Rule there is no statutory bar to give one more vacancy option if the original vacancies selected by the candidates are not available. The authority concerned without adhering to the provision of the amended Rule which has come into force by gazette notification dated 8th September, 2021 rejected the application.

8. Learned Trial Court dismissed the writ application on the ground that the petitioner did not come within the zone of consideration for transfer to any of the vacancies as indicated in the transfer application due to low rank in preferred school applied by the candidate. Amended Rule has come into picture by gazette notification dated 8th September, 2021 in which previous Rule 6 has been substituted and concept of applying only one application for maximum three of such vacant posts as per his/her priority of choice as prescribed has been repealed. So, the application filed by the appellant under the amended Rule should not be rejected on the ground of low ranking in preferred schools applied by the candidates.

9. In view of the above facts and circumstances and discussions made above we find that learned Single Bench committed an error in dismissing the writ application without adhering to the provision of the amended provision of Rule 6 of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 which has come into effect by gazette notification dated 8th September, 2021.

10. Thus, the impugned order passed by the learned Single Bench dated 25.11.2024 is hereby set aside and the appeal be and the same is hereby allowed.

11. Concerned respondent is hereby directed to reconsider the representation made by the appellant/petitioner praying for his transfer as per provision of law within four weeks from this date.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)