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09.01.2025  
Ct. No. 18  
(ARPAN)

**W.P.A. 29096 of 2024**

**Baisakhi Saha  
Vs.  
The State of West Bengal & Ors.**

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

...for the Petitioner

Mr. Amartya Pal

...for the State

Mr. Sourav Mitra  
Mr. Sunit Kumar Roy

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

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

Matter relates to transfer of the petitioner which was considered by a co-ordinate bench in connection with a writ petition being WPA No.10835 of 2022 and an order was passed on 23<sup>rd</sup> August, 2022. Said order dated 23<sup>rd</sup> August, 2022 has two parts. In the first part of the order it has been observed that 10% Rule is impliedly abandoned by reason of a notification dated 3<sup>rd</sup> January, 2022 in consideration of the Transfer Rules of 2015 wherein transfer of teachers in excess of the 10% of the teaching staff in a school has been prohibited in terms of Rule 5(6).

Subsequently, two notifications have been issued. One dated 3<sup>rd</sup> January, 2022 being No.9-SE wherein it has been provided that if applicant teacher is a single teacher in the subject in a school in that event, such transfer application should not be rejected rather

the concerned District Inspector of Schools (S.E.) shall make endeavour to make local arrangements as defined in the aforesaid notification. There is another notification dated 3<sup>rd</sup> January, 2022 being No.10-SE which contemplates to deal with an issue when total number of teaching staff in a school is five (5) or less than five (5) on the anvil of the embargo imposed in terms of rule 5(6) of West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015. Therefore, both the notifications dated 3<sup>rd</sup> January, 2022 being numbered as 9-SE and 10-SE deal with two different issues as enumerated above which do not have direct bearing with regard to an embargo clamped in terms of Rule 5(6) of the aforesaid Transfer Rules of 2015 in the event the number of teaching staff in a school is more than five (5).

Therefore, this court is not concurring with the view expressed by the coordinate bench that 10% Rule is impliedly abandoned by reason of the notification dated 3<sup>rd</sup> January, 2022. Moreover, this court is in the dark as to which notification has been referred by the coordinate bench, whether it is notification dated 3<sup>rd</sup> January, 2022 being No.9-SE or notification dated 3<sup>rd</sup> January, 2022 being No.10-SE. However, post 12<sup>th</sup> May, 2023 order passed in contempt proceeding being CPAN 541 of 2023 this issue is not germane in deciding the present writ

petition as such issue is not forwarded for getting decision from a bench of higher strength.

At present issue hinges upon availability of willing teacher for making local arrangement in terms of notification dated 3<sup>rd</sup> January, 2022 being No.9-SE to explore possibility to transfer the petitioner.

The other part of the order dated 23<sup>rd</sup> August, 2022 deals with reconsideration of the transfer application of the petitioner in terms of the said notification dated 3<sup>rd</sup> January, 2022 being 9-SE. While dealing with this aspect coordinate bench directed transfer of the petitioner, if allowed, in terms of the relevant rules, the respondent shall post a suitable number of teacher/ teachers in the school.

Since transfer application of the petitioner could not be allowed based on the observation made by the coordinate bench in the order dated 23<sup>rd</sup> August, 2022 the petitioner filed a contempt petition being CPAN 541 of 2023 which was disposed of *vide* order dated 12<sup>th</sup> May, 2023 wherein, considering the inability of the State respondents to enforce local arrangement in the school of the petitioner, it has been held that the issue may give rise to separate cause of action and may not be agitated appropriately in a contempt proceeding.

Today on behalf of the State respondents nothing is placed before this court showing that the concerned District Inspector of Schools (S.E.) was able to make alternative arrangement on making available willing teacher to man the post of the petitioner. Therefore no further order can be passed on this writ petition in order to facilitate transfer of the petitioner.

Hence, the writ petition stands disposed of.

There shall be no order as to costs.

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

**(Saugata Bhattacharyya, J.)**