

**IN THE HIGH COURT AT CALCUTTA
(CIRCUIT BENCH AT JALPAIGURI)**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

MAT 25 of 2024

Prasun Sundar Tarafdar

Vs

The State of West Bengal & Ors.

For the Appellants : Mr. Amales Ray, Sr. Adv.
Mr. Biplab Sengupta
Mr. Nigam Mittal
Ms. Prerna Mitra

For the State : Mr. Subir Kumar Saha, Ld. AGP
Mr. Nabankur Paul

Judgement Delivered On : 02.05.2025

Supratim Bhattacharya, J.:

1. The present intra court appeal has been preferred by the appellant writ petitioner being aggrieved by and dissatisfied with the judgment/order passed by an Hon'ble Single Judge on 21.12.2023 in WPA 2209 of 2021.
2. Through the said judgment the Hon'ble Single Judge has been pleased to pass the following :

“Thus, the writ petition is not maintainable at the instance of the writ petitioner on the ground of lack of locus standi”

3. Facts of the present lis

The appellant/ writ petitioner is an approved Assistant Head Master of Shree Guru Vidya Mandir High School. The appellant/writ petitioner has challenged the transfer order by the School Service Commission (hereinafter to be referred to as ‘SSC’) of the respondent No. 12 namely Santa Mondal to the post of Head Mistress through general transfer on 15th July 2016 to Shree Guru Vidya Mandir High School.

The said respondent No.12 had participated in the SLST recruitment of Head Masters and was selected. After being selected as per the recommendation of the SSC the said respondent No. 12 was initially appointed as head Mistress at the Birpara Girls High School which is also a higher secondary school.

On 19.12.2019 the respondent No. 12 took lien leave from Shree Guru Vidya Mandir for a period of one year and joined the Birpara Girls High School as Head Mistress. The lien leave was thereafter once again extended.

At the instance of the said respondent the said respondent was transferred to the Amiyo Pal Chowdhury Smrity Vidya Mandir but she did not join there. Ultimately on 29.10.2021 the said respondent was

recommended by the SSC to the post of Head Mistress at the Shree Guru Vidya Mandir on special ground under general transfer.

4. Challenging the said order of transfer the appellant/writ petitioner instituted the writ petition.
5. Through the said writ petition the petitioner had alleged contravention of the West Bengal School Service Commission (General Transfer, Transfer on special grounds and reallocation) Rules, 2015 (hereinafter to be referred to as the '2015 Rules').
6. As per Rule 3 (1) of the 2015 Rules an incumbent shall be eligible for general transfer only if he or she is confirmed on service and has completed 5 years of satisfactory service in that particular school and in particular post from which he/she seeks general transfer.

Rule 3 (3) states that where an incumbent refuses to join his or her preferred school after due recommendation by the commission such incumbent shall not be allowed to submit transfer application for 3 consecutive terms of general transfer.

The appellant/writ petitioner in his writ petition raised the issue that the said respondent contravened such provision by seeking transfer within 5 years of her service in the same post and that too after refusing to join in the Amiyo Pal Chowdhury School. It has also been raised that the said respondent sought transfer on the ground that her father is suffering from fourth stage of cancer and she being unmarried is required to look after her father while rule 4 (1)(a)

specifically provides that any teacher or non teaching staff or his /her son or daughter or spouse suffering from malignant disease including heart disease, renal failure, thalassemia, replacement of organ, serious gynecological disorder or physical disablement of 40% or more ought to assist in proper treatment of self or son/daughter or spouse is a valid special ground for such transfer but in this present case the said transfer was granted on the ground of the illness of her father.

- 7.** The Ld. Counsel Mr. Amales Ray, Sr. Adv., ably assisted by Mr. Biplab Sengupta, Mr. Nigam Mittal and Ms. Prerna Mitra representing the appellant /writ petitioner has submitted that the appellant is the Assistant Head Master of the Shree Guru Vidya Mandir High School which is a higher secondary school and the respondent No. 12 namely Santa Mondal has been transferred to the said school as Head Mistress violating the rules laid down under Rule 3(1), 3(3) and Rule 4 of the 2015 Rules.

He further submits that the said respondent No.12 is in the habit of taking undue advantage and she is granted so on the grounds which are not at all within the knowledge of the appellant.

The Ld. Counsel in support of his contention has relied upon several judgments which are as follows:

- i) Judgment of the Hon'ble Apex Court passed in the case between M.S. Jayaraj Vs. Commissioner of Excise Kerala and Ors. Published in **(2000) 7 SCC 552.**
- ii) Judgment passed by the Hon'ble Apex court in the case between AyaaubKhan Noor Khan Pathan Vs. State of Maharashtra and ors. Cited in **(2013) 4 SCC 465.**

Banking upon the aforementioned judgments the Ld. Counsel has prayed for allowing the present appeal by setting aside the judgment passed by the Ld. Single Judge

11. The Ld. Counsel Mr. Subir Kumar Saha, Ld. AGP being assisted by Mr. Nabankur Paul representing the State at the very beginning raised the issue that the writ petition and as such the present appeal is not at all maintainable.

He further submitted that the right of the petitioner has not been infringed by any means as such he is not entitled to any relief as sought for under Article 226 of the Constitution of India.

The Ld. Counsel has prayed for dismissal of the present appeal and prayed for affirming the judgment passed by the Ld. Single Judge.

12. From the contention of the Ld. AGP representing the State it transpires that the respondent/State has emphasized upon the locus standi of the petitioner as regards to preferring the lis.

In such circumstances this Court is of the view that *locus standi* of the petitioner being the significant issue, maintainability of the lis and adjudication of the disputes depends upon the same as such the issue of maintainability involving the *locus standi* of the petitioner is being dealt with first. On the issue of *locus standi* of the petitioner the appellant has cited the judgment passed by the Hon'ble Apex Court in the case of M.S. Jayaraj (*supra*) through the said judgment the Hon'ble Apex Court by considering several previous judgments passed by the Hon'ble Apex Court has observed that some change has taken place from the earlier strict interpretation regarding *locus standi* and a much wider canvass has been adopted in later years regarding a person's entitlement to move the High Court regarding writ jurisdiction. In the aforementioned judgment, the case of ***Jasbhai Motibhai Desai*** a four Judge Bench has been considered, wherein it has been stated that there are three categories of persons *vis a vis* the *locus standi*.

- i) Person aggrieved
- ii) Stranger and
- iii) Busy body or a meddlesome interloper

Through the said judgment the Hon'ble Apex Court has cautioned that the High Court should do well to reject the petitions of such busy bodies at the threshold itself. Their Lordships observed that the distinction between a person aggrieved and a stranger is though real but is not always well demarcated. The first category has, as it were,

two concentric zones; a solid central zone of certainty and a grey outer circle of lessening certainty in a sliding centrifugal scale with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second inter mix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be 'persons aggrieved'.

In the said judgment the Hon'ble Apex court has also taken into consideration a decision delivered by the Hon'ble Apex Court in the case between ***Chairman, Railway Board Vs. Chandrima Das*** wherein it has been stated that in the context of public interest litigation, the Court in its various judgments has given the widest amplitude and meaning to the concept of locus standi. In ***People's Union for Democratic rights Vs. Union of India*** it was laid down that public interest litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to Court. In ***Bangalore Medical Trust Vs B.S. Muddappa*** the court held that the restricted meaning of 'aggrieved person' and the narrow outlook of a specific injury has yielded in favour of a broad and wide construction in the wake of public interest litigation. The court further observed that public spirited citizens having faith in the rule of law are rendering great social and legal service by

espousing causes of public nature they cannot be ignored or overlooked on a technical or conservative yardstick of the rule of *locus standi* or the absence of personal loss or injury. There has thus been a spectacular expansion of the concept of the *locus standi*. The concept is much wider and it takes in its stride anyone who is not a mere busy body. On this standing the Hon'ble Apex Court in the said case did not wish to stop the motion solely on the ground of *locus standi*.

In the case of **Ayuubkhan Noor Khan Pathan** (*supra*) the Hon'ble Apex Court as regards to 'person aggrieved' has stated that it is settled legal proposition that a stranger cannot be permitted to meddle in any proceeding unless he satisfies the authority /Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act, action /order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body using its writ jurisdiction at the behest of a person, provided that such person satisfies the court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for

invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the court. The legal right that can be enforced must ordinarily be the right of the appellant himself who complains of infraction of such right and approaches the court for relief as regards the same.

Legal right has also been dealt with in the said judgment and it has been stated that a 'legal right' means an entitlement arising out of legal rules. Thus, it may be defined as an advantage or a benefit conferred upon a person by the rule of law. The expression, person aggrieved does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized.

The Apex Court has concluded that under ordinary circumstances, a third person, having no concern with the case at hand cannot claim to have any *locus standi* to raise any grievance whatsoever. This Court would also take into consideration the decision of a five Judge Bench of the Hon'ble Apex Court in the case between ***State of Odisha Vs. Ram Chandra Dev*** reported in ***AIR 1964 SC 685***. In Paragraph 8 of the following has been laid down:

"8. On the merits, the position is absolutely clear. Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be

issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226. ...”

From the plain reading of the aforestated Paragraph it transpires that the Hon’ble Apex court has opined that though the jurisdiction of the High Court under Article 226 is wide but the concluding words of the Article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. Thus, unless and until there is illegal invasion or threatening of the right of the party Article 226 cannot be invoked.

This Court also relies upon a judgment passed by Hon’ble three judge Bench of the Hon’ble Apex Court in the case of ***D. Nagaraj and ors. Vs. State of Karnataka and Ors.*** reported in **(1977) 2 SCC 148**. In paragraph 7 of the said judgment following has been laid down:

“7. ...It is well settled that though Article 226 of the Constitution in terms does not describe the classes of persons entitled to apply thereunder, the existence of the right is implicit for the exercise of the extraordinary jurisdiction by the High Court under the said article. It is also well established that a person who is not aggrieved by the discrimination complained of cannot maintain a writ petition. ...”

Through the said judgment the Hon’ble Apex Court has laid down that a person who is not aggrieved cannot maintain a writ petition.

In the case between ***Ghulam Qadir Vs. Special Tribunal and ors.*** reported in ***(2002) 1 SCC 33*** the Hon’ble Apex Court in Paragraph 38 has laid down as follows:

“38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with

the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his not having the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.”

Through the said judgment the Hon’ble Apex Court has laid down that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for *habeas corpus* or *quo warranto*.

The hon’ble Apex court has also laid down that if a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision a petition filed by such a person cannot be rejected on the ground of his not having the *locus standi*. Thus, there shall have to be an adverse effect on the right of the petitioner which will entitle him to seek relief under Article 226 of the Constitution.

In the present lis the appellant/writ petitioner has challenged the transfer of the Head Mistress of the said school. He himself being the Assistant Head Master of the said school the appellant has challenged the transfer and appointment of his superior, a Head Mistress on the

ground that it violates the Rule 3 (1), Rule 3 (3) and Rule 4 of the West Bengal School service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015.

The challenge is not based on an alleged violation of any legal or fundamental right. The learned Senior Counsel has submitted that petitioner is concerned with the general standard of the school, which in our opinion may in an appropriate case be a ground for any public spirited person as person having such concern to raise by way of a PIL. From the aforementioned judgments of the Hon'ble Apex court it is crystal clear that until and unless there is infringement of fundamental or legal right one cannot seek relief of mandamus under Article 226 of the Constitution of India.

In Paragraph 4 of the writ petition the petitioner has stated that the petitioner is not at all interested to oppose the action of the respondents for filling up the post of head master/head mistress in the school in question. The grievance of the petitioner is against the private respondent who managed to get the transfer order from the SSC by ignoring the provision of law as such the petitioner has approached this Hon'ble Court.

On going through the averments made in the writ petition and considering the submission of the learned Senior Counsel representing the petitioner we find that the petitioner has not made any allegation whatsoever that he has a right which in any manner is infringed or

invaded upon by posting of the private respondent as Head Mistress. There is no personal injury alleged and there is no right casting corresponding duty on any authority, which is sought to be espoused by the petitioner by invoking Article 226 of the Constitution of India, to file a writ petition.

In fact, the learned Senior Counsel has submitted that the petitioner by virtue of being Assistant Head Master is interested in the general standard of the school. Such submission also would not confer any locus on the writ petitioner to maintain the writ petition. Insofar as the general standard of the school is concerned it is an issue which may be espoused by a public spirited person or a person having interest in the general standard of education in the school by raising such issue by way of a PIL. The writ petitioner has not filed a PIL, whether he could file a PIL or not, since he is Assistant Head Master of the school itself, regarding standard of which he is raising a concern, whether a suit is maintainable or not is an issue which we need not delve upon in the present proceedings.

In the conspectus of the aforementioned discussion it transpires that the petitioner has no *locus standi* to prefer the lis against the transfer order of the Respondent No. 12.

Thus, this Court finds that there is no scope for interference with the impugned judgment passed by the Hon'ble Single Judge.

Hence this instant appeal being No. **MAT 25 of 2024** stands **dismissed**, there will be no order as to costs.

- 13.** Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.
- 14.** Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)