

Form: J(2)

CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI

APPELLATE SIDE

**Present :
The Hon'ble Justice Aniruddha Roy**

WPA 2805 of 2022

Sri Rathin Dhali

-vs-

The State of West Bengal & Ors.

**For the Petitioners : Mr. Sanjib Das
Mr. Debajit Kundu.**

**For the Respondents : Mr. Hirak Barman
State Mr. Momenur Rahman.**

Heard on : 20.01.2025

Judgment on : 20.01.2025

Aniruddha Roy, J. :

FACTS:

1. This is hearing of a writ petition upon affidavits.
2. The writ petitioner was appointed as an **Assistant Teacher** for **Pure Science Pass Category** on or about **September 23, 2008** at **Baniapara Chowrasta High School (XII) (for short, the School)**. The petitioner has been still working as such at the said school. The appointment of the

petitioner was approved by the jurisdictional **District Inspector of School (for short, D.I.)** on **September 27, 2008**.

3. On the ground of distance travelling from the permanent residence of the petitioner at the said school, on **August 13, 2021** the petitioner ***For the First Time*** applied for transfer at a nearer school through “**Utsashree Portal**”. The transfer application was transmitted by the Head of the Institution to the D.I.. On **August 24, 2021** the D.I. rejected the transfer and returned the application to the head of the institution on the ground of **10%** of the total strength would not be there at the relevant school. For the ***Second Time on September 3, 2021*** the petitioner once again applied on the same ground of distance travelling. The said second application of the petitioner was again rejected by the D.I. on the same ground of **10%** strength will not be there in the event of petitioner’s transfer. ***Third Time*** the petitioner applied for transfer on **April 5, 2022** on health ground, i.e., **medical ground**. The State authority examined the application through its appropriate medical authority and ultimately the fitness certificate was issued by the appropriate medical authority of the State dated **May 27, 2022** rejecting the said third application of the petitioner. The Certificate of Fitness is at **pages 10 and 11** to the affidavit in opposition. The petitioner submitted a representation/complaint dated **August 26, 2021** at **page-61** to the writ petition before the D.I., the same has not been considered. The petitioner is aggrieved.

4. Referring to the private respondent no.10, Mr. Sanjib Das, learned counsel for the petitioner submits that though he is junior by age to the petitioner but his application was immediately allowed on the distance ground whereas the petitioner's one was rejected repeatedly.
5. In this regard, learned counsel for the petitioner refers to a document at **page-29** to the affidavit in reply dated **September 1, 2021** and submitted that private respondent was born on **April 25, 1974** whereas the petitioner was born on **February 19, 1974**, this shows that the petitioner is senior by age. The private respondent joined in the school on **May 23, 2006** whereas the petitioner joined in the school on **September 27, 2008**, so the petitioner is junior in profession.
6. Referring to **Rule 6 from the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Re-allocation) Rules, 2015 (for short the said Transfer Rule)**, Learned counsel for the petitioner submits that since by age petitioner is senior under the same circumstance the petitioner must get the preference for transfer. He submits that the candidate is senior by age shall get the priority over seniority in service. Referring to the document at **page-29** to the affidavit in reply, he submits that the number of teachers mentioned in the pure science stream to be two was wrong and there was five numbers of teachers. Thus, the entry in the said document entered by the school was wrong for which petitioner cannot suffer. He further submits that, the number of teachers for Geography to which the private respondent

belonged to was actually **two** but it was shown as **three** wrongly by making a wrong entry. These wrong entries cannot render the petitioner's right to transfer negated.

7. In view of the above, the petitioner has filed the instant writ petition with the following prayers:-

“a) A writ in the nature of Mandamus commanding the respondents, their men, agents and servants, particularly the respondent no. 6 and 9, the District Inspector of Schools Secondary Education, Jalpaiguri Sadar, and the Head Master (HOI), Baniapara Chowrasta High School (XII), Jalpaiguri, to set aside and/or quashed and/or cancel and/or rescind and/or withdraw the impugned rejection/backward order as passed on 24.08.2021 and 24.10.2021 in connection with the transfer application of the petitioner as Assistant Teacher in Pure Science, from Baniapara, Chowrasta High School (XII) to any other school nearer to his residence at Siliguri, District-Darjeeling.

b) A writ in the nature of mandamus commanding the respondents, their men, agents and servants, particularly the respondent no. 6 and 9 the District Inspector of Schools, Secondary Education Jalpaiguri Sadar and the Head Master Baniapara Chowrasta High School (XII) to consider the transfer application dated 13.08.2021 and 03.09.2021 of the petitioner as he made through ‘Utsashree Portal’ for transfer from Baniapara Chworasta High School (XII) to Iswar Chandra Vidyasagar High School and/or Tarbandh High School at Siliguri District Darjeeling as an Assistant Teacher in Pure Science (Pass) being annexure ‘P-10’ and ‘P-13’ to the writ petition.

c) A writ in the nature of mandamus directing the respondents each one of them to show cause as to why the recommendation was made in favour of the private respondent no. 10, namely Arindam Basu, Assistant Teacher in Geography of Baniapara Chworasta High School (XII) who is junior in age to the petitioner and transferred him from the said school to

Punam Chan Mittal Memorial High School nearer to his residence should not be cancelled and/or set aside and/or quashed.

d) A writ in the nature of certiorari directing the respondent to transmit the entire records in connection with the transfer of the petitioner from Baniapara Chowrasta High School (XII) to any other school nearer to his residence at Siliguri before the Hon'ble Court so that the conscionable justice may be administered by quashing the impugned action of the respondent no. 6 and 9 and/or passing appropriate order or orders.

e) Rule NISI in terms of prayer (a), (b), (c) and (d) above.

f) To make the rule absolute;

g) An-interim order be passed restraining the respondent authorities, their men, agents and servants, particularly the respondent no. 6 and 9, the District Inspector of Schools Secondary Education, Jalpaiguri Sadar and the Head Master, Baniapara Chworasta High School (XII) Jalpaiguri, from giving any effect and/or further effect of the impugned rejection/backward order 24.08.2021 and 24.10.2021 in connection with the transfer application dated 13.08.2021 and 03.09.2021 of the petitioner from Baniapara Chworasta High School (XII), to any other school nearer to the residence of the petitioner which he applied through 'Utsashree Portal'.

h) An interim order be passed restraining the respondent authorities from filling up the vacancy of Assistant teacher in pure science (Pass), in Iswar Chandra Vidyasagar High School and Tarbandha High School situated, being annexure 'P-13' to the writ petition.

i) An ad-interim order be issued directing the respondent authorities, particularly the respondent no. 6 and 9 the District Inspector of Schools (SE), Jalpaiguri and the headmaster, Baniapara Chowrasta High School, to consider the transfer application of the petitioner him from Baniapara Chowrasta High School (XII) to Iswar Chandra Vidyasagar High School and/or

*Tarabandh High School at Siliguri, District Jalpaiguri
forthwith;*

j) To pay the cost;

*k) Any other order or orders, direction or directions as
to Your Lordships may deem fit and proper.*

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Submissions:

8. Mr. Sanjib Das, learned counsel appearing for the petitioner through virtual mode submits that there is no bar if a teacher applies for transfer for unlimited number of times. The **first** and **second** applications for transfer on the distance ground of the petitioner was rejected wholly in a wrongful manner and the fact that there was sufficient strength of teachers for the subject being taught by the petitioner, the ground for rejection in both the times that insufficient strength of teachers less than **10%** was bad in law.
9. In so far as, the rejection of the **third** application is concerned on medical grounds on which the petitioner had applied for after due medical examination, the appropriate authority of the State found the petitioner to be fit and the application of the petitioner was rejected.
10. At this juncture, the learned counsel for the petitioner submits that the previous two rejections were bad in law. Inasmuch as a junior teacher who was junior by age, the private respondent, was allowed to be transferred whereas the prayers for transfer made by the petitioners were rejected. Though **Rule 3** of the said **Transfer Rule** provides for transfer of an elder teacher who is elder by age still the application of the petitioner

on the distance ground was rejected *de hors* the Rule. He further refers to **Rules 4, 5 and 6** from the said Transfer Rules to show the eligibility of the petitioner to be transferred. He further submits that the representation of the petitioner dated **August 26, 2021** was not considered by the D.I. and the representation dated **August 30, 2021** made before the Principal Secretary, Education Department has also not been considered.

11. In the light of the above, learned counsel for the petitioner submits that this writ petition should be allowed, allowing the petitioner to be transferred at a nearer school which is nearer to his residence as mentioned in the writ petition.
12. Mr. Momenur Rahaman, learned State counsel referring to **Sub-Rule 4 to Rule 3 of the Transfer Rule** submits that an application for transfer can be submitted by the incumbent teacher once in a year, whereas the petitioner applied twice in **2021 on August 13 and September 3, 2021**, therefore, the provisions under **Rule 3** is of no assistance to the petitioner. Then, he draws attention of this Court to **Rule 6 of the Transfer Rule** and submits that mere procedures are laid down therein when an application is submitted under **Rule 3** of the Transfer Rule. So substantive provisions are laid down under **Rule 3** and the procedural provisions are **Rule 6**. When the petitioner is disqualified under **Rule 3**, the question of applying **Rule 6** would not arise, as in the facts of this case.

13. Mr. Rahaman, learned State counsel then refers to the provisions laid down under **Rule 4** of the **Transfer Rule** and submits that the third application of the petitioner was submitted on **April 5, 2022** on the medical ground which is contemplated under **Rule 4 of the Transfer Rules** and was rejected on the basis of the expert's opinion, who issued the fitness certificate in favour of the petitioner.
14. He further submits that, the first two rejections were not challenged by the petitioner and there is no scope for any challenge to the rejection of the third application which was applied on medical ground, as the fitness certificate issued in favour of the petitioner by the medical experts.
15. Referring to the document at **page-29** to the affidavit in reply, learned State counsel submits that the said document has also not been challenged by the petitioner. He then refers to the entire summery of procedure from **page-45** to the petitioner and submits that the grounds for rejections for each three numbers of applications submitted by the petitioner were clearly spelt out and was published in the official web site of the Education Department, i.e. "**Utsashree Portal**" at the relevant point of time.
16. In the light of the above, learned State counsel submits that this writ petition is totally devoid of any merit and should be dismissed.

Decision:-

17. After considering the rival contentions the parties and upon perusal of the materials on record, on the admitted facts this Court finds that, the

rejection of two applications submitted one after another within a span of one month in the **year of 2021** on the ground of distance travelling was rejected by the authority on the same ground that sufficient teachers strength will not be available at the relevant school. None of these rejections was challenged by the petitioner.

18. Inasmuch as **Sub-Rule 4 to Rule 3** creates a clear bar for an incumbent to apply more than once within a year, whereas the petitioner admittedly applied twice within the span of one month. Thus, **Rule 3** of the Transfer Rule created a specific bar in the facts of this case.
19. On a plain and meaningful reading of **Rule 6 of the Transfer Rules**, this Court is of the firm view that, the same is a procedural Rule. In the event **Rule 3** applies then the procedures will have to be followed under **Rule 6 of Transfer Rules**. The moment petitioner is barred to apply for the second time within a year, the said second application of the petitioner seeking transfer on the self-same distance ground was barred by law.
20. Therefore, the question of applying the procedures laid down under **Rule 6** of the Transfer Rule would not arise at all.
21. Inasmuch as, when the first two applications were rejected, the petitioner applied for third time on medical ground. It shows that the petitioner has accepted the first two rejections as none of these rejections were challenged.
22. On a true, proper and meaningful construction **of Rule 4 read with Rule 6** of the **Transfer Rules**, this Court is of the view that, **Rule 4** is the

substantive Rule for transfer to which the procedures shall have to be applied under **Rule 6** of the Transfer Rules when an incumbent teacher applies for transfer on medical grounds. The rule provides a detailed check up by the medical experts of the State.

23. The record shows following the due procedures medical check up of the petitioner has taken place and the fitness certificate dated **May 27, 2022** was issued in favour of the petitioner at **pages- 10 and 11** to the affidavit in opposition.

24. The said medical examination and the fitness certificate is also not under challenge. Inasmuch as, this Constitutional Court in exercise of its power under judicial review shall seldom interfere with an expert's opinion, unless the perversity or illegality on such expert's opinion is so apparent, which shocks the conscience of the Court at a first glance. This is not such a case in the instant writ petition.

25. When the petitioner has been declared to be physically fit candidate, **Rule 4 of the Transfer Rule** debars the petitioner seeking transfer on any medical ground.

26. In so far as, the contention of the petitioner with regard to the private respondent no.10 is concerned, the moment the petitioner is ineligible to apply for transfer on distance ground in view of the bar created under **Rule 3 of the Transfer Rule**, as discussed above, such issue raised by the petitioner is not at all required to be taken cognizance of. Accordingly, such plea raised by the petitioner also stands rejected.

27. In view of the foregoing reasons and discussions, this Court finds no reason to interfere with the decision of the State authority in rejecting the prayers for transfer repeatedly made by the petitioner. The decisions of the State authority rejecting the prayers for transfer of the petitioner stands **affirmed** and not **interfered with**.
28. Accordingly, this writ petition being **WPA 2805 of 2022** being devoid of any merit stands **dismissed** with costs assessed at **Rs. 10,000/-** to be paid to the State Legal Aid Services, West Bengal positively within **two weeks** from date.
29. However, dismissal of this writ petition shall not preclude the writ petitioner to apply afresh seeking transfer in accordance with law, if the petitioner is eligible for the same but this liberty shall not create any right or equity in favour of the petitioner, if the petitioner is otherwise found to be ineligible for transfer in accordance with law.
30. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)