

D/L 12
03.01.2025
Court. No. 3
Aritra

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Appellate Side**

WPA 2581 of 2024

**Paramita Kar Banik
Vs.
The State of West Bengal & Ors.**

*Mr. Saktipada Jana
Mr. Debjit Kundu*

*....for the petitioner
Mr. Subir Kumar Saha, Ld. A.G.P.
Mr. Sandip Guha Roy
....for the State*

1. The affidavit of service as filed today on behalf of the petitioner is taken on record.
2. None appears on behalf of the respondent No.7 i.e., The Headmaster, Ananda Vidyapith High School, despite service.
3. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ upon the respondents more specifically upon the respondent No.3 and 5 for considering her application for transfer favourably which has been submitted through Utsashree portal.
4. In course of his argument Mr. Jana, learned advocate for the writ petitioner appearing through virtual mode at the very outset draws attention of this Court to page no.46 of the instant writ petition being Annexure P5. It is submitted by Mr. Jana that from the aforementioned Annexure P5 of the instant writ petition it would reveal that the writ

petitioner had initially submitted her application for transfer with the respondent No.7 i.e., The Headmaster on 21/08/2021 in the Utsashree portal however such appreciation was returned to the writ petitioner on 03/09/2021 on the ground that the writ petitioner was not falling within 10% of the senior most applied teachers.

5. In his next fold of submission, Mr. Jana further contends that through the selfsame portal the writ petitioner submitted her second application for transfer on 20/04/2022 with the respondent No.7 for forwarding the same to the respondent No.3 but on 05/05/2022 the respondent No.7 again returned the said second transfer application of the writ petitioner on the ground that such application exceeds 10% within a year.
6. Mr. Jana further submits that from paragraph No.3 of the report dated 13/12/2024 as submitted by the respondent No.3 it would reveal that in the year 2022 only one teacher namely; Anjana Choudhury applied for transfer and therefore, there cannot be any justification on the part of the respondent No.7 for returning the application for transfer of the writ petitioner since the application for transfer by the writ petitioner does not exceed the 10% of the total teaching staff as reveals from the paragraph No.3 of the said report dated 13/12/2024.
7. In course of his argument Mr. Jana also places his reliance upon a judgment dated December 5, 2024 as passed in MAT 1706 of 2024 by a Division Bench of this Court (*Mithun Roy vs. The State of West Bengal & Ors.*)

wherein the Hon'ble Division Bench expressed the view that there is no difficulty on the part of the State or Commission to take a print out of the application for transfer from the suspended Utsashree portal and can process the same manually strictly in terms of the statutory Rules and/or Act provided in this regard.

8. Learned advocate appearing on behalf of the respondent No.3 submits before this Court that from the report dated 13/12/2024 it would reveal that operation of the Utsashree portal has been suspended. It is further submitted that the respondent No.3 could not consider the application for transfer by the writ petitioner since it has not been forwarded to him by the respondent No.7 within the specified time.
9. No report is submitted by the respondent No.7 as to what prevented him/her for not forwarding the application for transfer dated 20/04/2022 as submitted by the writ petitioner through the said portal to the respondent No.3 for consideration.
10. On consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties this Court considers that for effective adjudication of the instant *lis* the paragraph No.3 of the report dated 13/12/2024 as submitted by the respondent No.3 is required to be looked into and the same is quoted hereinbelow *in verbatim*:-

“3. Total no of teacher in the school at the material point of time was 12 and total 2 (Two)

teachers applied for transfer. The West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 clearly mentions that “The school authority of a particular school shall not forward applications received from more than 10% (rounded up to next higher digit) of total number of teachers of that school.”; so, prayer of Anjana Choudhury, AT being the senior most teacher was considered by the School Managing Committee and forwarded the same to the Higher Authority. As 10% quota of transfer exhausted, prayer of the petitioner was rejected as per the said rule.”

11. Sufficient materials have been placed before this Court to substantiate that on April 20, 2022 the writ petitioner submitted her online application for transfer with the respondent No.7 with a request to forward the same to the respondent No.3. However, such application for transfer was returned to her on 05/05/2022 on the ground that such application exceeds the ceiling of 10% within a year. On perusal of the relevant portion of the report as has been quoted hereinabove it reveals that in the year 2022 the prayer for transfer of one assistant teacher namely; Anjana Choudhury was forwarded to the respondent No.3 by the respondent No.7. Admittedly in the year 2022 the total number of teacher in the said school was 12 and therefore, there cannot be any justification on the part of the respondent No.7 for not forwarding the application for transfer dated 20/04/2022 since it does not exceed more than 10% (rounded up to next higher digit which would be 2).

12. In view of such and in absence of any report of the respondent No.7 this Court found no justification on the part of the respondent No.7 for not forwarding the online application for transfer of the petitioner dated 20/04/2022 to the respondent No.3 Authority.
13. Since learned advocate for the respondent No.3 has submitted that for the present Utsashree portal has been suspended this Court proposes to look to the judgment as passed by the Hon'ble Division Bench in the case of Mithun Roy (supra) wherein the Hon'ble Division Bench expressed the following view:-

“9. Mere suspension of the facilities and/or access cannot ipso facto repeal the statutory provisions nor can curtail such statutory right and therefore, it is obligatory on the part of the State to take a conscious decision on the application made by the appellant. Even if the portal is suspended, there is no difficulty on the part of the State or the Commission to take a printout of the said application and can process the same manually strictly in terms of the statutory Rules and/or Act provided in this regard.”

14. In view of the facts and circumstances as discussed supra and in view of the aforementioned categorical finding of the Hon'ble Division Bench in the case of Mithun Roy (supra) this Court while disposing the instant writ petition permits the writ petitioner to download the copy of the application for transfer dated 20/04/2022 from the said portal and shall annex the documents which form part of an attachment of the said application at the time of uploading the same, when the portal was active and to

forward the same to the respondent No.7 within a fortnight from today.

15. The respondent No.7 shall thereafter place the same with the respondent No.6 i.e., Managing Committee of the School which shall take a conscious decision on the said application and being satisfied shall issue a 'No Objection Certificate' and also forward all such documents to the respondent No.3 also within a fortnight from the date of receipt of such application.
16. The respondent No.3 on receipt of such application along with all relevant documents and no objection certificate from the respondent No.6 shall forward the same to the respondent No.5 also within a fortnight from the receipt of such application from the respondent No.6/7.
17. The Chairman, West Bengal School Service Commission, i.e., respondent No.5 herein shall thereafter take a conscious decision on such application after giving opportunity of hearing of the writ petitioner and/or her learned advocate and shall pass a reasoned order and/or necessary recommendation within a month from the date of receipt of such application from the respondent No.3.
18. It is further directed that the respondent No.5 shall communicate his decision to the writ petitioner forthwith preferably through e-mail if the e-mail details of the writ petitioner is furnished either to the respondent No.3 or to the respondent No.5.
19. The time limits as fixed by this Court are mandatory and peremptory.

20. The respondent Nos.3, 5, 6 and 7 are directed to act on the server copy of this order.
21. Liberty is given to the learned advocate for the respondent No.3 to communicate the server copy of this order both to the respondent No.3 as well as respondent No.5 forthwith. Similar liberty is given to learned advocate for the writ petitioner to communicate the server copy of this order to the respondent Nos.3, 5, 6 and 7.
22. With the aforementioned observation the instant writ petition being **WPA 2581 of 2024** is disposed of with all connected pending applications, if there be any.
23. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Partha Sarathi Sen, J.)