

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 1483 of 2024

Prapti Chakraborty

Vs.

The State of West Bengal & Ors.

For the Petitioner

: Mr. Biswarup Biswas

: Mr. Pradip Kumar Ghosh

For the State

: Mr. Pinaki Bhattacharyya

: Ms. Priyanka Jana

For the WBCSSC

: Mr. Kanak Kiran Bandyopadhyay

Heard on

: 02.04.2026

Judgment on

: 21.04.2026

Rai Chattopadhyay, J. :-

- 1.** An order of the Commissioner of School Education, West Bengal dated October 05, 2023 is under challenge in the instant writ petition. In the same, pursuant to the direction of the Division Bench of this Court dated August 10, 2023, the said respondent has been considering the writ petitioner's prayer to seek transfer and rejects the same.
- 2.** The subject matter of the writ petition is with regard to the alleged unauthorized and illegal refusal by the respondent authorities of the prayer of the petitioner for transfer. The said respondent has turned down the petitioner's prayer for transfer on the grounds

that, she being a single teacher in the subject Sanskrit in the school, her transfer would not be feasible for benefit of the students. Also, that in accordance with the unamended West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 [vide Notification No. 159-SE/S/1S-4/95(Part) dated February 27, 2015], the petitioner would not be competent and eligible for such transfer. The respondent has stated in the said impugned order while rejecting the petitioner's prayer as above that Rule 6(5) of the Notification No. 159-SE/S/1S-4/95(Part) dated February 27, 2015, which is applicable in case of the writ petitioner, bears no express provision for transfer of a single subject teacher.

3. The writ petitioner is an approved Assistant Teacher in Honours/Post-graduate category in the subject Sanskrit in the respondent school. She was appointed therein with effect from July 14, 2011.
4. The petitioner's first application through Utsashree transfer portal was made on August 12, 2021. The same was forwarded by the Head of the Institution to the respondent No. 4/District Inspector of Schools on August 31, 2021 with the comment "*As per M.C. meeting vide Memo No. 02/2021 dated 31/08/2021 all the present members have been decided that considering the application of the above-mentioned teacher, the school managing committee have no objection to release*". However, the prayer of the petitioner so forwarded by the Head of the institution was rejected by the respondent/D.I. on September 01, 2021 for the reason "*due to single teacher*".
5. On September 24, 2021, the petitioner made her second application similarly in the Utsashree transfer portal, when her

prayer was refused by the Head of the Institution on September 29, 2021 for the reason “out of 10 per cent”.

6. The third and last application in the similar manner was filed by the petitioner in the portal on February 10, 2022, which was again rejected by the Head of the Institution on March 01, 2022 for the reason shown “out of 10 per cent”.
7. The petitioner has placed reliance on the Division Bench order of this Court in ***Prapti Chakraborty Vs. State of West Bengal in 2023 SCC OnLine Cal 2403***. It is submitted that, while remanding back the petitioner’s grievance and prayer before the respondent/Commissioner of School Education, the Hon’ble Division Bench has held unequivocally that rights the petitioner do exist for being transferred in terms of the Rules. During argument, Mr. Biswarup Biswas, learned advocate for the petitioner has relied on the following portion of the said judgment:-

“5. Learned counsel for the appellant has relied upon the decision of the coordinate bench presided over by one of us (Soumen Sen, J.) in FMA 1082 of 2019 (Amar Jana v. West Bengal Central School Service Commission, Secretary) decided on 22nd December, 2020 and submits that the application for transfer has to be considered on the basis of relevant circular prevalent at the relevant point of time and not in terms of any subsequent circular unless such circular is made specifically retrospective. In any event, the record would reveal that the writ petitioner was entitled to the benefit of transfer having regard to the rules existing and applicable to her at the time of consideration of her application.

6. Mr. Biswabrata Basu Mallick, learned AGP appearing for the State and Mr. Sourav Mitra, learned advocate representing the Central School Service Commission submit that the pupil-teacher ratio should be the paramount consideration in deciding transfer and in view of Notification dated 29th September, 2022 the teacher has no vested right to claim transfer.

7. We are not unmindful of the fact that in view of the Right of Children to Free and Compulsory Education Act, 2009 it is the obligation of the State to implement the provisions of the said Act. We cannot also lost sight of the fact that there is a need for rationalization of policy of transfers of the teachers.

8. The service conditions gives right to claim transfer on fulfillment of certain conditions. An application for transfer has to be considered on the basis of existing and/or prevailing rules. We do not find any material to reject the said application of the petitioner by the Head of Institution on the ground of "out of 10%" and no sufficient material is produced before us to justify the said stand. The order of rejection has to be considered on the basis of the reasons mentioned and not on any other extraneous consideration. The argument made that pupil-teacher ratio was a relevant factor is not borne out from the impugned order of the Head of the Institution. There cannot be any doubt that in an appropriate situation interest of the student could be the over-riding consideration. However, at the same time if a teacher fulfills the eligibility criteria for transfer under the relevant existing rules there are procedures prescribed to fill up the resultant vacancy. In a given situation it is possible that although a teacher is eligible for transfer an immediate replacement may not be possible and the recruitment process for the said post would take such time the transfer may be given effect to from a future date. However, once a teacher fulfills the eligibility criteria, the authority must take steps to fill up the resultant vacancy as per the norms existing at the relevant point of time by way of local arrangement or by recruiting a permanent teacher for the said post within a reasonable time."

- 8.** Mr. Biswas, learned advocate for the petitioner has submitted that, while delivering the said impugned order dated October 05, 2023, the respondent/Commissioner of School Education, West Bengal has given a complete go by to the findings of the Hon'ble Division Bench of the Court in the judgment as above. Therefore, the impugned order stands in violation of the findings of the Hon'ble Division Bench. Hence, it would not be maintainable in view thereof.

- 9.** Mr. Biswas, learned advocate for the petitioner has further submitted that, the ground taken by the respondent/ Commissioner of School Education in the impugned order of the writ petitioner being the single subject teacher in the school, is only untrue and unsubstantiated. On the contrary, according to him, one *para teacher* is available for the same subject. Mr. Biswas has categorically submitted that, such fact has been duly elaborated by the petitioner on affidavit in the writ petition and not denied by the respondent authority. He has further indicated that, it is now the settled law that, in the context of transfer for compelling reasons, a *para teacher* would be considered on similar footing as a subject teacher. Mr. Biswas has further submitted that, the amended West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 [vide the notification No. 707/SE/S/1 S-04/95(Pt) dated September 8, 2021] has duly crystallized the right of the petitioner for being transferred on cogent and reasonable grounds. He submits that, it is only the statutory provision that, in such a case, the respondent is duty-bound to make local arrangements on temporary basis till the time another permanent teacher can be appointed in the said post which fell vacant due to such transfer.
- 10.** Mr. Biswas, learned advocate for the petitioner has further submitted by mentioning Rule 6 of the amended Rule [vide the notification No. 707/SE/S/1 S-04/95(Pt) dated September 8, 2021] as above, that as per the provision thereof, the school is duty-bound to approve the transfer application of teacher and in case the approved teacher in a subject falls at zero due to such transfer, the statutory measures have been made to be undertaken in such situation. Therefore, according to the petitioner, there would not be any scope for either the school authority or the District Inspector of Schools to turn down the petitioner's prayer for transfer under any pretext whatsoever. On the contrary they

have statutory duty to make local arrangement upon transfer, when there remains no other subject teacher, after giving effect to his/her application for transfer.

11. As such, it is submitted that, the exercise to reject the petitioner's prayer firstly by the respondent/D.I., also by the Head of the Institution and finally by the Commissioner of School Education, West Bengal, vide the impugned order passed by him is the result of illegal, arbitrary and unauthorized exercise of power. By referring to a Supreme Court judgment in ***Pancham Chand and Others Vs. State of Himachal Pradesh and Others*** reported in **2008 7 SCC 117**, wherein the Court has relied on the earlier case in ***Mohinder Singh Gill And Another Vs. The Chief Election Commissioner, New Delhi and Others*** (1978 1 SCC 405), it has been submitted that, the respondent authority is not permitted to shift stand and strengthen its case with time by incorporating ever new grounds in support of its decision. A judgment of this Court in ***Namita Chowdhury Vs. State of West Bengal*** reported in **[2003] Volume 2 Calcutta Law Times, Page No. 63** is referred to in support of his contention that, the principles of *res judicata* is also applicable in a proceeding before the administrative authority as they are bound on public policy of justice.
12. To buttress his argument that in an appropriate case, a *para teacher* can be treated similar as a permanent and approved subject teacher for the limited purpose, Mr. Biswas has referred to a judgment of this Court in **WPA 20382 of 2022 [Chandrima Dasgupta Vs. The State of West Bengal & Ors.]** dated **June 19, 2024**. The Court has held and directed therein that, while making local arrangement, presence of *para teacher* in the subject of the petitioner (therein), should be taken into consideration by the concerned respondent. By specifically pointing out to the different stands undertaken by the respondent authority at different points

of time while rejecting the prayer of the petitioner, Mr. Biswas refers to a decision of the Supreme Court in ***Central Warehousing Corporation Vs. Adani Ports and Special Economic Zone Limited (APSEZL) and Others*** reported in **2022 15 SCC 110**. In the same, the Hon'ble Supreme Court by referring to its earlier decision in ***Lloyd Electric and Engineering Limited Vs. State of H.P.*** reported in **2016 1 SCC 560** has held that, the State Government cannot speak in two voices.

- 13.** For all the reasons as argued and discussed above, Mr. Biswas insists that, the present writ petition may be allowed with appropriate directions.
- 14.** In this case to the contentions and prayer of the petitioner, there is strong objection raised on behalf of the respondent/State. In their affidavit-in-opposition, the respondent has taken out a further ground that, the application for general transfer of the petitioner would not be maintainable as the same is not commensurate with the provision of the Rules for maintaining "Pupil-teacher ratio (PTR)". The State has submitted that, in case, the petitioner's application for transfer is accepted, the pupil-teacher ratio (PTR) of the school would fall deficient as to the norms laid down in the Right of Children to Free and Compulsory Education Act, 2009. It is submitted that it is more so, since the petitioner's application is not on medical grounds.
- 15.** This is not the first time that the petitioner has approached this Court, to seek due implementation of her right. The finding of the Division Bench in her case is pertinent to note, that the record would reveal that the writ petitioner was entitled to the benefit of transfer having regard to the rules existing and applicable to her at the time of consideration of her application. The Division Bench found that that in view of the Right of Children to Free and

Compulsory Education Act, 2009 it is the obligation of the State to implement the provisions of the said Act. That, there is a need for rationalization of policy of transfers of the teachers. Further finding of the Division Bench in respect of the prayer for transfer of the present petitioner is that the service conditions gives right to claim transfer on fulfillment of certain conditions. An application for transfer has to be considered on the basis of existing and/or prevailing rules. We do not find any material to reject the said application of the petitioner by the Head of Institution on the ground of “out of 10%” and no sufficient material is produced before us to justify the said stand. The order of rejection has to be considered on the basis of the reasons mentioned and not on any other extraneous consideration. The argument made that pupil-teacher ratio was a relevant factor is not borne out from the impugned order of the Head of the Institution. There cannot be any doubt that in an appropriate situation interest of the student could be the over-riding consideration. However, at the same time if a teacher fulfills the eligibility criteria for transfer under the relevant existing rules there are procedures prescribed to fill up the resultant vacancy. In a given situation it is possible that although a teacher is eligible for transfer an immediate replacement may not be possible and the recruitment process for the said post would take such time the transfer may be given effect to from a future date. However, once a teacher fulfills the eligibility criteria, the authority must take steps to fill up the resultant vacancy as per the norms existing at the relevant point of time by way of local arrangement or by recruiting a permanent teacher for the said post within a reasonable time.

- 16.** Therefore, existence of the right of the petitioner has already been narrated by the Division Bench, which is binding on this Court too. The respondent authority could have hardly ignored the finding of the Hon’ble Division Bench in this regard, though the

ground reality is that the same has largely ignored the Court's findings as above and imposed fresh reasons of its own to reject the petitioner's prayer, instead of following the Court's verdict. An administrative authority, in its decision is duty bound to follow the verdict of the Court on the issue, or otherwise its order tantamount to be beyond scope of the law settled on the subject. Hence, the impugned order being not in conformity with the directions and findings of the Division Bench, amounts to be not maintainable.

- 17.** This Court now proceeds to examine the issue from the standpoint of a comparative analysis of the Notification No. 159-SE/S/1S-4/95(Part) dated February 27, 2015 and the subsequent amended Notification No. 707/SE/S/1 S-04/95(Pt) dated September 8, 2021. The unamended Rules of 2015 did not expressly contemplate a situation where transfer of a single subject teacher would result in temporary absence of a teacher in that subject. This legislative silence appears to have been relied upon by the respondent authority to deny the petitioner's claim. However, the amended Notification of 2021 significantly alters the legal position by introducing a more pragmatic and structured mechanism. The amended provisions clearly recognize that transfer of a teacher cannot be indefinitely stalled merely on the ground of temporary inconvenience and expressly provide for making local arrangements in the event of a resultant vacancy. Therefore, the 2021 amendment is not merely procedural but substantive in nature, as it seeks to balance administrative exigencies with the service rights of teachers.
- 18.** The effect of the amended Rules is to dilute the rigidity that was previously being applied by the authorities under the 2015 framework. The introduction of provisions mandating local arrangements, even where a post temporarily falls vacant, reflects

a conscious policy decision of the State to ensure that legitimate transfer claims are not frustrated on hyper-technical grounds. Thus, when the petitioner's application was under consideration, the authority was duty-bound to apply the amended Rules of 2021, which were in force at the relevant point of time. Failure to do so renders the decision-making process fundamentally flawed and legally unsustainable. Be it mentioned that the amended Rules had come into force within one month of the date of first application of the writ petitioner.

19. In this context, the contention of the respondent that the petitioner's transfer is impermissible due to her being a single subject teacher loses its force in view of the amended statutory framework. The Rules of 2021 clearly envisage such contingencies and obligate the authorities to adopt alternative arrangements rather than reject the application outright. Therefore, the reliance placed by the respondent on the earlier Notification of 2015, ignoring the subsequent amendment, is misconceived and contrary to settled principles of administrative law. It is also arbitrary, in so far as at the later stage the respondent has consciously changed its stand and shifted the ground of rejection from '*a single teacher*' ground to others like '*out of 10 percent*' and '*pupil-teacher ratio*'. The inconsistency in the stand taken by the respondent at different stages further weakens its case. In ***Central Warehousing Corporation (supra)***, referring to ***Lloyd Electric (supra)***, the Hon'ble Supreme Court has held that the State cannot "speak in two voices". In the present case, the respondent initially rejected the application on the ground of "single teacher", then on "out of 10%", and subsequently attempted to rely on PTR considerations. Such shifting stands clearly demonstrate lack of bona fides and arbitrariness in the decision-making process.

- 20.** Further, this Court finds substance in the submission of the petitioner regarding the presence of a para teacher in the concerned subject. The order of this Court dated June 19, 2024 passed in WPA 20382 of 2022, recognizes that a para teacher can serve as a suitable stop-gap arrangement for the purpose of maintaining continuity in teaching. The said decision reinforces the principle that administrative flexibility must be exercised to ensure that students do not suffer, while at the same time not depriving a teacher of her legitimate service benefits. The presence of a para teacher, therefore, sufficiently addresses the concern of disruption in teaching and negates the primary ground on which the petitioner's application was rejected.
- 21.** This Court is of the view that the concept of a "stop-gap arrangement" is intrinsic to the amended transfer regime. The statutory scheme does not mandate immediate availability of a permanent replacement as a pre-condition for transfer. Instead, it contemplates interim measures, including engagement of para teachers or other temporary arrangements, until regular appointment is made. Hence, the existence of a para teacher in the petitioner's school ought to have been considered as a relevant and sufficient factor to facilitate, rather than obstruct, her transfer.
- 22.** The grounds taken by the respondent in the impugned order as well as in the affidavit-in-opposition are also liable to be tested in light of settled judicial principles. In **Pancham Chand (supra)**, relying on the Constitution Bench decision in **Mohinder Singh Gill (supra)**, it has been unequivocally held that the validity of an administrative order must be judged on the reasons stated therein and cannot be supplemented by fresh reasons through affidavits. Applying the said principle, the additional grounds sought to be introduced by the respondent, particularly relating to pupil-teacher ratio (PTR), cannot be taken into consideration since the

same did not form part of the original impugned order. The attempt of the respondent to justify its decision by introducing new grounds at a later stage is impermissible in law. The impugned order must stand or fall on its own reasoning. The subsequent reliance on PTR norms, therefore, appears to be an afterthought and cannot cure the inherent defects in the decision-making process.

- 23.** Moreover, the principle laid down in ***Namita Chowdhury (supra)*** that administrative authorities are bound by principles akin to res judicata also applies in the present case. The Division Bench has already adjudicated upon the petitioner's entitlement and has laid down binding directions regarding consideration of her transfer application. The respondent authority was not at liberty to re-open the issue on grounds which either stood rejected earlier or were not raised at the appropriate stage. Such conduct undermines judicial discipline and the finality attached to judicial determinations.
- 24.** This Court finds that the respondent authority has failed to adhere to the principles of consistency, transparency and fairness which are fundamental to administrative action. The impugned order reflects a mechanical and predetermined approach, rather than a reasoned consideration of the petitioner's case in light of the applicable statutory framework and binding judicial pronouncements. In view of the discussions made hereinabove, it is evident that the reasons assigned in the impugned order are not only contrary to the amended Rules of 2021 but also violative of settled principles of administrative law. The existence of a para teacher, the statutory mandate for local arrangements, and the binding nature of the Division Bench judgment collectively render the respondent's decision unsustainable.

- 25.** The present case engages principles of fairness in decision-making, non-arbitrariness, consistency of State action and fidelity to binding precedent. The doctrine that an administrative authority must act within the four corners of the statute, while also adhering to reasonableness as envisaged under Article 14 of the Constitution, stands clearly attracted herein. Equally relevant is the principle that statutory discretion must be exercised to advance the object of the law and not to defeat it. The amended Rules of 2021, being beneficial in nature, are required to receive a purposive construction so as to effectuate the right of eligible teachers to seek transfer, subject to manageable administrative safeguards. The prohibition against supplementing reasons, the bar on shifting stands, and the binding nature of prior judicial determinations together form part of a coherent doctrinal framework that restrains arbitrary State action. Tested on these principles, the impugned decision fails to meet the minimum standards of legality, rationality and procedural propriety, thereby warranting interference by this Court in exercise of its writ jurisdiction.
- 26.** For all the discussions as made above, this writ petition should succeed and the impugned order of the respondent/Commissioner of School Education dated October 5, 2023, is liable to be set aside and quashed.
- 27.** Hence the instant writ petition WPA 1483 of 2024 is allowed with the directions as follows:
- a.* The impugned order of the respondent/Commissioner of School Education dated October 5, 2023, is set aside and quashed;

b. The petitioner's application for transfer shall suitably be allowed by the respondent No.5 and 6/the West Bengal Central School Service Commission by duly obtaining vacancy position from the respondent No. 4/District Inspector of Schools (Secondary Education) Uttar Dinajpur, maximum within a period of 6 weeks, from the date of communication of this judgment;

c. Adequate and appropriate measure shall be undertaken by the concerned respondent authority to create interim, stop gap arrangement as envisaged in the Rules.

28. The instant writ petition is allowed and disposed of along with the application pending if any.

29. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)