

26.02.2026
Ct. no.14
Sl. Nos.1-4
SS

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**WPA 23024 of 2024
Munna Kundu
Vs.
The State of West Bengal & Ors.
with
WPA 23917 of 2024
Rekharani Mahato
Vs.
The State of West Bengal & Ors.
with
WPA 23967 of 2024
Alaka Mahato
Vs.
The State of West Bengal & Ors.
with
WPA 28510 of 2024
Purba Dan
Vs.
The State of West Bengal & Ors.**

Mr. Rudranil De
Mr. Soumo Charan
... for the petitioners

Mr. Subir Sanyal, Sr. Adv.
Mr. Ratul Biswas
Mr. Kaushik Chowdhury
... for the WBBPE

Mr. Sayan Datta
... for the State (in WPA 23024 of 2024)

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee
... for the State (in WPA 23917 of 2024)

Mr. Tapas Kumar Dey
Mr. Malay Krishna De
...for the State (in WPA 23967 of 2024)

Ms. Sukanya Datta
... for the State (in WPA 28510 of 2024)

Mr. B.P. Vaisya
Mr. Gourav Das
Ms. Tapati Sarkar
...for the DPSC, South 24-Parganas in
WPA 23917/24.WPA28510 of 2024

Mr. B.P. Vaisya
Mr. Nilay Baran Mandal
... for the DPSC, Purulia in WPA 23024 of 2024,
WPA 23967 of 2024 and 28510 of 2024

1. These matters are appearing in the list under the heading ‘For Orders’.

2. Since the subject matter of the aforementioned writ petitions are similar in nature, these writ petitions were heard analogously.
3. For better appreciation the necessary facts are enumerated as follows.

(i) The petitioner, Munna Kundu, in WPA 23024 of 2024, previously filed a writ petition being WPA 25110 of 2023 seeking for inter-district transfer on the ground of distance. The aforesaid writ petition was disposed of on 28th February 2024 as follows.

“In the above circumstances, West Bengal Board of Primary Education after receiving an appropriate report from the District Primary School Council, South 24 Parganas and District Primary School Council, Bankura and subject to availability shall consider the petitioner’s application in accordance with law and dispose of the same within a period of two months from date mandatorily and positively.”

Pursuant to such order, Secretary, West Bengal Board of Primary Education rejected the prayer of the petitioner on 21st August 2024 with the following observation.

“ 5..... As per Rule 4 Clause (b) of the West Bengal Board of Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 as amended vide Notification No. 1072-SE/EE/10M-45/2021 dated 13/09/2021 wherein it states that ‘on an application from a teacher, transfer approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher, in case of mutual transfer, is confirmed and in case of single transfer, is confirmed and has completed minimum five years of continuous service’. Thus, it is seen that in case of single transfer the confirmation of service is mandatory and the teacher has to be completed minimum five years of service. At the time of hearing, the petitioner could not submit the confirmation letter of her service and she has not completed 5 years of service, which was pointed out and discussed with the petitioner at the time of hearing.

6. Having considered the facts as above, the prayer of the petitioner for single transfer is not considered as the petitioner did not fulfil the eligibility criteria as stipulated in Rule 4(b) of the West Bengal Primary Education (Transfer of Teachers and Head Teacher) Rules, 2002. Consequently, no relief can be granted to the petitioner.

(ii) The petitioner, Rekharani Mahato, in WPA 23917 of 2024, previously filed a writ petition being WPA 25980 of 2023 seeking for inter-district transfer on the ground of distance. The aforesaid writ petition was dismissed on 28th February 2024. Challenging the said order the aforementioned petitioner filed an appeal being MAT 607 of 2024.

(iii) The petitioner, Alka Mahato, in WPA 23967 of 2024, previously filed a writ petition being WPA 25979 of 2023 seeking for inter-district transfer on the ground of distance. The aforesaid writ petition was dismissed on 28th February 2024. Challenging the said order the aforementioned petitioner filed an appeal being MAT 608 of 2024.

(iv) Both the appeals being MAT 607 of 2024 and MAT 608 of 2024 were disposed of on 13th May 2024 with similar direction as follows.

“In view of such submission, the appeal and its connected application are disposed of granting liberty to the appellant to submit a fresh representation annexing all the documents in support of contention to the Secretary, West Bengal Board of Primary Education within a period of two weeks. If such representation is made within the time, as specified, the Secretary shall consider the same in accordance with law and communicate the decision to the appellant within a period of four weeks from date of receipt of the representation.”

Pursuant thereto, both the appellants submitted their respective representations before the authority concerned. The representation of Rekharani Mahato was disposed of by the Secretary, West Bengal Board of Primary Education on 2nd September 2024 as follows.

“ In Rule 4 Clause (b) of the West Bengal Board of Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 as amended vide Notification No. 1072-SE/EE/10M-45/2021 dated 13/09/2021 it is clearly stated that- ‘on an application from a teacher, transfer approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher, in case of mutual transfer, is confirmed and in case of single transfer, is confirmed and has completed minimum five years of continuous service’.

In the instant matter the petitioner/appellant has joined as a primary teacher on 23.7.2021 i.e her period of service in the present school is less than five years.

Hence using all information, records, the relevant rules, government orders and in terms of the extant norms, the prayer of the petitioner/appellant for transfer from South 24 Parganas to Purulia cannot be accepted as per Rule 4(b) of the West Bengal Board of Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 and its amendment vide Notification No. 1072-SE/EE/10M-45/2021 dated 13/09/2021. So, no relief can be granted to the petitioner/appellant.”

Similarly, the representation of Alka Mahato was disposed of 2nd September 2024 as follows.

“ In Rule 4 Clause (b) of the West Bengal Board of Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 as amended vide Notification No. 1072-SE/EE/10M-45/2021 dated 13/09/2021 it is clearly stated that- ‘on an application from a teacher, transfer approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher, in case of mutual transfer, is confirmed and in case of single transfer, is confirmed and has completed minimum five years of continuous service’.

In the instant matter the petitioner/appellant has joined as a primary teacher on 20.7.2021 i.e her period of service in the present school is less than five years.

Hence using all information, records, the relevant rules, government orders and in terms of the extant norms, the prayer of the petitioner/appellant for transfer from South 24 Parganas to Purulia cannot be accepted as per Rule 4(b) of the West Bengal Board of Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 and its amendment vide Notification No. 1072-SE/EE/10M-45/2021 dated 13/09/2021. So, no relief can be granted to the petitioner/appellant.”

(v) The petitioner, Purba Dan, in WPA 28510 of 2024, previously filed a writ petition being WPA 9769 of 2023 seeking for inter-district transfer on the ground of distance. The aforesaid writ petition was dismissed on 21st May 2024. Challenging the said order the aforementioned petitioner filed an appeal

being MAT 1245 of 2024. The appeal court set aside the aforesaid order and directed as follows.

“The Secretary of the Board is directed to consider the said application in the light of the said notification dated November 2, 1991 as amended from time to time and conscious decision shall be taken within four weeks from the date of communication of this order.”

Pursuant thereto, the Secretary of the Board passed order on 5th November 2024, observing that as there was no specific principles and procedure for transfer of teacher or non-teaching staff in a primary school between two primary councils, so the Board in the year 1991 had to set the said principles and procedure for the purpose of clause (k) of sub-section (1) of section 19 of the West Bengal Primary Education Act, 1973 to transfer a teacher or non-teaching staff from a primary school within the jurisdiction of one Primary School Council to primary school within the jurisdiction of another Primary School Council. In the said notification, there is no specific saying about the age and length of service of the teacher at the time of application for his/her transfer. Later the School Education Department, Government of West Bengal framed the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 as amended which is in vogue and is introduced in supersession of all previous rules or notifications. Further the ground of suffering of the father and loss of pregnancy (miscarriage) is not covered under 5(3) (a) of Rules of

2002. Though the ground of long distance between the working place of the petitioner and spouse may be covered under Rule 5(3A)(a) but the Pupil Teacher Ratio (PTR) in the applicant's school is adverse. On such score, the prayer of the petitioner for transfer was rejected.

4. Being aggrieved by the aforesaid orders passed by the Secretary of the Board, rejecting the prayer of the petitioners for transfer, the present writ petitions have been filed challenging such action on the part of the said respondent authority.
5. Mr. Rudranil De, learned advocate appearing for the petitioners submit that the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules 2002 (*hereinafter referred to as the 'Rules of 2002'*) has been promulgated in exercise of power conferred under clause (k) of sub-section (2) of section 106 of the West Bengal Primary Education Act, 1973 (*hereinafter referred to as 'Act of 1973'*) containing exhaustive provision relating to transfer of teachers including Head Teacher. It is pertinent to note that the aforesaid rule has its applicability only in respect of transfer of the primary school teacher from one primary school to another within the territorial jurisdiction of the respective Primary School Council and does not expand its horizon in case of transfer of primary school teachers from one territorial jurisdiction of the council to another

council. Rule 1(2) of Rules of 2002 clearly provides that the rules shall apply to teachers including Head Teacher for the purpose of transfer from one primary school to another within the jurisdiction of a council, therefore under no stretch of imagination the Rules of 2002 would apply in case of inter-district transfer. In order to decide the transfer application in respect of inter-district transfer of primary school teachers the principles and procedures for transfer of a teacher or non-teaching staff in a primary school between two primary school councils introduced vide Notification dated 2nd November 1991 is to be followed by the Board and not the Rules of 2002. As per the notification dated 2nd November 1991 there is no such embargo that the concerned teacher has to complete continuous five years of service prior to making application for transfer. In MAT 1245 of 2024, preferred by the petitioner Purba Dan, the Hon'ble Division Bench directed the Secretary of the Board to consider the said application of the petitioner/appellant in the light of the said Notification dated 2nd November, 1991 as amended from time to time and take a conscious decision. However, the authority concerned in utter contravention of the direction of the Hon'ble Division Bench did not apply the procedures as laid down in Notification dated 2nd November 1991 and applied the provisions of Rules of 2002, which is palpably

illegal and cannot be sustained in law. He also indicates that the Board has applied the procedures of the Notification dated 2nd November, 1991 in case of one Monika Meheta pursuant to order passed in appeal being MAT 1189 of 2024.

In light of his aforesaid submissions, he prays that the impugned orders passed by the Secretary of the Board is liable to be set aside.

6. Mr. Subir Sanyal, learned Senior Advocate appearing for the West Bengal Board of Primary Education, on the contrary, submits that in the year 1991 the Board for the first time introduced the principles and procedures for transfer of primary school teacher from one Primary School Council to another vide Notification dated 2nd November, 1991 for the purpose of section 19(1) (k) of the Act of 1973. Subsequent thereto, in exercise of the rule making powers conferred under section 106(1) of the Act of 1973 the State in order to carry forward the purpose of the Act, introduced the Rules of 2002, in supersession of previous rules and notifications, which precisely deals with transfer of teacher of a primary school. The State government has the legislative power and competence to frame rules for the purpose of section 19(1) (k) i.e. inter-council transfer and also for transfer of teachers within the jurisdiction of the council i.e. intra-council transfer. Section 19 (1) of the Act of 1973 empowers the Board

to transfer a teacher or non-teaching staff from a primary school within the jurisdiction of a Primary School Council to a primary school within the jurisdiction of another Primary School Council. Although Rule 1(2) of Rules of 2002 provides that the rules shall apply to teachers including Head Teacher for the purpose of transfer from one primary school to another within the jurisdiction of the council, yet, Rule 8 thereof, prior to amendment, clearly stipulated that in case of inter-council transfer, the council shall follow the principles and procedures of the Board in accordance with provisions conferred by clause (k) of section 19 (1) of the Act of 1973. With the amendment of Rule 8 it is specifically provided that while considering inter-council transfer in accordance with the provisions of section 19(1)(k) of the Act of 1973, the Board shall *mutatis mutandis* follow the provisions of these Rule. Therefore, Rules of 2002 covers both intra-council transfer as well as inter-council transfer as has been framed by the State in exercise of its statutory powers. Consequently, it cannot be said that Rules of 2002 only applies in case of intra-council transfer and has no manner of application in respect of inter-council transfer in view of the language used in Rule 1(2). From the very beginning Rule 8 was introduced to deal with inter-council transfer, which has been amended from time to time in order to carry out the

purpose of the Act. It is settled proposition of law that the statute has to be read as a whole. Thus, when the transfer Rules of 2002 contain specific provision for inter-council transfer, the said rule cannot be said to be applicable only for intra-council transfer. Moreover, the rules have to be read in its entirety. The title of the statute is no doubt an important part of an enactment and can be referred for determining the general scope of legislation, however, the nature of any such enactment is always to be determined not on the basis of the label given to it but on the basis of its substance. To buttress his contention, he relies on the following decision of Hon'ble Supreme Court **(i) *Manohar Lal versus State of Punjab*** reported in ***AIR 1961 SC 418***; **(ii) *Amarendra Kumar Mohapatra and Others versus State of Orissa and Others*** reported in ***(2014) 4 SCC 583***. In this context, he also refers to the book on *Interpretation of Statutes by G.P Singh, 7th Edition*.

Furthermore, he indicates that although in the appeal being MAT 1245 of 2024 filed by one of the petitioners namely Purba Dan a direction was passed by the Hon'ble Division Bench to consider the application of the petitioner in terms of the Notification dated 2nd November 1991, however, in a similar situation the Hon'ble Division Bench dismissed the appeal being MAT 114 of 2025 (*Saroj*

Kanti Bag versus State of West Bengal & Others) after considering the amended provisions of Rule 8 of Rules of 2002, which was not placed before the appellate court for its consideration in the appeal filed by Purba Dan.

In light of the above, he submits that the impugned orders passed by the Secretary of the Board does not call for interference.

7. In reply to the aforesaid contention raised on behalf of the Board, Mr. De, learned advocate for the petitioner relying on the decision of Hon'ble Supreme Court passed in ***Poppatlal Shah versus The State of Madras, Union of India and Others*** reported in ***AIR 1953 SC 274*** submits that the statutes shall have to be considered in its entirety and picking up one word from one particular provision and thereby analysing it in a manner contrary to the statement of objects and reasons is neither permissible nor warranted.
8. Upon hearing the learned advocates for the respective parties, following issues have fallen for consideration.

Firstly, whether the Rules of 2002 as amended would apply or the Notification No. 230/91-92 dated 2nd November, 1991 in respect of transfer of primary school teachers from one District Primary School Council to another?

Secondly, whether the Secretary of the Board is justified in passing the orders rejecting the prayer of the petitioners for inter-district transfer as per existing Rules of 2002?

9. Both these issues being interrelated are taken up together for the sake of brevity and convenience of discussion.
10. At the outset, there cannot be any quarrel that the statute shall have to be read and considered in its entirety. Though short title and application of a statute is no doubt important part of an enactment which can be referred for determining the general scope of the legislation, however, the true nature of an enactment has to be determined on the basis of substance and the title cannot obviously control the express operative provisions of the Act. It is settled principles of law that the statute has to be read as a whole and picking of one word from one particular provision and thereby analysing it in a manner contrary to the statement of objects and reasons is neither permissible nor warranted as has been rightly indicated by the learned advocate for the petitioners. Such position of law culls out from the decisions and references made by either of the parties in the course of hearing. In such backdrop, let me assess as to whether Rule 1(2) of the Rules of 2002 make the rules applicable only in case of intra-council transfer. Rule 1(2) of the Rules of 2002

provides that these rules shall apply to teachers including Head Teacher for the purpose of transfer from one primary school to another within the jurisdiction of a council. Be that as it may, Rule 8, prior to amendment, provided that in case of inter-council transfer the council shall follow the principles and procedures of the Board in accordance with the provisions conferred by clause (k) of sub-section (1) of section 19 of the Act. Thus, it is found that from the very inception of the rules, the provisions for inter-council transfer were introduced in the rules.

11. Subsequent thereto, the Rules of 2002 was amended on 13th September 2021. The Rule 8 after amendment read as follows.

“8. Inter Council Transfer- While considering inter-council transfer in accordance with the provisions of clause (k) of section 19 (1) of the Act, the Board shall *mutatis mutandis* follow the provision of these rules particularly sub-rule (3) of rule 5 of these rules;
Provided that the Board may or basis of application or otherwise transfer any female teacher who is victim of crime with the concurrence of the State government in the school education department. It shall maintain due confidentiality in regard to the identity of such victim”

It manifests from the aforesaid amended provision, that the Rules of 2002 are to be applied by the Board *mutatis mutandis* in case of inter-council transfer. It is a principle enshrined therein which is required to be followed by the authorities before deciding the application for transfer filed by the primary school teacher. Section 19 (1) (k) of the Act of 1973 empowers the Board to transfer a teacher or non-

teaching staff from a primary school within the jurisdiction of a Primary School Council to a primary school within the jurisdiction of another Primary School Council. Thus, upon conjoint reading of section 19(1)(k) of the Act of 1973 as well as the express provisions of Rule 8 as amended, it leaves no manner of doubt that the Rules of 2002 squarely apply in case of inter-council transfer authorizing the Board to act in accordance with the said Rules for effecting transfer of primary school teachers.

12. It has been strenuously argued on behalf of the petitioners that in case of inter-council transfer, the Notification dated 2nd November 1991 is to be followed. The principles and procedures for transfer of primary school teacher from one Primary School Council to another vide Notification dated 2nd November, 1991 was introduced in order to carry forward the purpose of section 19(1) (k) of the Act of 1973. Subsequent thereto, in exercise of the rule making powers conferred under section 106(1) of the Act of 1973 the State in order to carry forward the purpose of the Act, introduced the Rules of 2002 vide Notification No. 809-SE (Pry) dated 15th July 2002, in supersession of previous rules and notifications, which precisely deals with transfer of teacher of a primary school. Therefore, with the coming into effect of the Rules of 2002, the earlier notification and/or principles and procedures relating to inter-council

transfer stands superseded. Consequently, the applicability of said Notification dated 2nd November 1991 for inter-council transfer lost its force after promulgation of Rules of 2002 dealing with transfer of teacher and Head Teacher in case of both intra-council as well as inter-council transfers.

13. In the appeal filed by petitioner namely Purba Dan the Hon'ble Division Bench directed the Secretary of the Board to consider the application of the petitioner/appellant in light of the Notification dated 2nd November 1991. Be that as it may, it is found that the amended provisions of Rule 8 of Rules of 2002 were not placed before the Hon'ble Division Bench in the appeal preferred by Purba Dan (MAT 1245 of 2024). It is relevant to note that the Hon'ble Division Bench in a subsequent appeal while dealing with similar question in *Saroj Kanti Bag (supra)* in MAT 114 of 2025 dismissed the appeal upon considering the amended provisions of Rule 8 of the Rules of 2002.
14. The precise challenge to the impugned orders of the Secretary of the Board is that he applied Rules of 2002 while deciding the application of transfer of petitioners instead of Notification dated 2nd November 1991, where there is no embargo of completing five years of continuous service. In the foregoing paragraph it has already been held that Rules of 2002 applies in case of inter-district

transfers. Admittedly, none of the petitioners had completed five years of continuous service at the time when the prayers were sought to be considered by the authority on the ground of distance. The amended provisions of Rule 4(b) of Rules of 2002 provides that the council on an application from a teacher, transfer approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher, in case of mutual transfer, is confirmed and in case of single transfer, is confirmed and has completed minimum five years of continuous service. As per Rule 8 while considering inter-council transfer in accordance with the provisions of clause (k) of section 19 (1) of the Act, the Board shall *mutatis mutandis* follow the provision of the Rules of 2002. Thus, the Board is under statutory obligation to consider the provisions of Rule 4(b). In terms of the aforesaid Rule 4(b), it goes without saying that there is clear embargo to consider and entertain a prayer for transfer of primary School teacher prior to completion of minimum five years of continuous service. A Statutory authority is bound to act in accordance with existing rules and cannot transgress the limited sphere. Such being the position as the impugned orders of the Secretary of the Board is passed following the existing Rules of 2002 as

amended, the same cannot be said to be contrary to law requiring intervention of the court.

15. It has been vociferously argued on behalf of the petitioner, relying on a reasoned order dated 5th February 2025 passed by the Secretary of the Board in case of Monika Meheta, pursuant to order of the Hon'ble Division Bench passed in MAT 1189 of 2024, wherein the prayer of the petitioner for transfer was allowed following the Notification dated 2nd November 1991, that similar benefit be extended to the petitioners. However, in view of the discussions made herein above in the foregoing paragraphs, such order of the Secretary of the Board cannot be a precedent to extend benefit to the petitioners on the ground of parity *dehors* the existing rules.
16. In light of the above discussion, the impugned orders passed by the Secretary, West Bengal Board of Primary Education rejecting the prayer of the petitioners for grant of inter-district transfer does not call for any interference and as such the writ petitions for short of merit.
17. Accordingly, the writ petitions being **WPA 23024 of 2024, WPA 23917 of 2024, WPA 23967 of 2024** and **WPA 28510 of 2024** stand dismissed.
18. All connected applications, if any, stand disposed of.
19. Interim order, if any, stands vacated.
20. There shall be no order as to costs.

21. Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)