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Ct-08

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MAT 205 of 2023

with

I.A No. CAN 1 of 2023

Prapti Chakraborty

Vs.

State of West Bengal & Ors.

Mr. Biswarup Biswas

... For the Appellant

Mr. Sourav Mitro

... For W.B.C.S.S.C

Mr. Biswabrata Basu Mallick

... For the State

Ms. Koyeli Bhattacharyya

... For W.B.B.S.E

1. We have heard the learned counsel appearing for the parties.

2. The appeal is arising out of the judgment and order dated 30th January, 2023 passed in WPA 10682 of 2022. In the writ petition the petitioner has challenged the order of the Head of the Institution in rejecting her application on the ground of "out of 10 percent". The writ petitioner is an Assistant Teacher of Churamon PC High School, Uttar Dinajpur in the subject Snaskrit. She applied for transfer through Utsashree Portal thrice, as would be evident from the General Transfer status and the documents disclosed in the writ petition. The first transfer application was submitted on 12th August, 2021 before the Head of the Institution. It appears

that the managing committee of the school on 31st August, 2021 on consideration of the application had expressed their no objection to release the petitioner, however, the District Inspector of School (S.E), Uttar Dinajpur refused it on the ground of Single Teacher. This order was not challenged by the petitioner. The second application was submitted by the petitioner on 24th September, 2021, which was rejected by Head of the Institution on the ground of “out of 10%”. The third application of the petitioner was submitted on 10th February, 2022, which was also rejected on similar ground. This time she challenged the order of the Head of the Institution in refusing to consider her application for transfer by filing a writ petition.

3. Learned Single Judge on a meaningful reading of the provision laid down in Gazette Notification dated 29th September, 2022 was of the view *“in the event a transfer application is made on medical ground and on other grounds, referred to in **Clauses (a) to (d) of Rule 4 under the said Transfer Rules of 2015, may be considered without any restrictions. There was no such relaxation provision made for the application made under Rule 4(e) of the***

said Transfer Rule of 2015. The change in the **Rule 4(e) of the Transfer Rule of 2015** was made under the said gazette notification to the extent that transfer on such ground can be considered **twice in an academic year, i.e. summer and winter vacation of the schools** as the case may be, so that the academic interests of the students not hampered.

Inasmuch as, from a meaningful reading of the said **gazette notification dated January 3, 2022 at page 49 to the writ petition** it also appeared to this Court that, the same shall apply for a school where the **sanctioned strength of teacher is 5 or less.** In the present case, the school where the petitioner is teaching has a sanctioned strength of **42** teachers. Therefore, this **gazette notification dated January 3, 2022 at page 49 to the writ petition** has no manner of application or relevance in the facts of this case”.

4. In dismissing the writ petition it was also observed “Last but not the least, while dealing with the transfer matters this Court has found that, there is an alarming situation. It is true that though right to opt for transfer is not a vested right of a teacher as settled in law but since the

provisions and Rules are made for transfer of a teacher under which a teacher can opt for transfer, such provisions also cannot be ignored. A reasonableness and balance must work together. The teachers are employed to impart education to the students, the future of the nation. So the interest of the students must be of paramount importance while considering the case of transfer of a teacher. The discretion of the State authority has to be exercised judiciously and squarely within the framework of law relating to transfer but equally keeping in mind that the interest of the students should be of paramount importance where the Pupil-Teacher Ratio must have a crucial and decisive role to be weighed."
(emphasis supplied)

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 Vs. West Bengal Central School Service Commission, Secretary & Ors.)** 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.

9. In view thereof, we feel that the issue can be decided by the appropriate authority. Mr. Biswabrata Basu Mallick has suggested that the Commissioner of School Education is the appropriate authority to decide the said issue.

10. Under such circumstances, we direct the Commissioner of School Education to consider the application for transfer of the petitioner on verification of the record and production of relevant documents by the school authorities. It is needless to mention that the application for transfer shall be considered on the basis of norms prevalent at the relevant point of time and not on the basis of any subsequent circular. The interest of the students would also be a relevant consideration.

11 The order under challenge is thus, set aside.

12. The Commissioner of School Education shall decide the issue within six weeks from the date of communication of this order by either of the parties upon giving an opportunity of hearing to the writ petitioner and the school authorities and decide the matter by passing a reasoned order to be communicated to the parties within one week thereafter.

13. Under such circumstances, the appeal succeeds.

14. The appeal being MAT 205 of 2023 is accordingly disposed of.

15. In view of disposal of the appeal CAN 1 of 2023 is also disposed of.

16. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

