
(2018) 12 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 14833(W) Of 2018

Arpita Biswas

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 — Rule 4, 4(1)(c), 6(3), 7

Citation : (2018) 12 CAL CK 0031

Hon'ble Judges : Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Sujit Kr. Rath, Sukumar Sarkar, Subroto Ghosh, Raja Ram Banerjee, Barnaly Chatterjee

Final Decision : Disposed Off

Judgement

1. Affidavit of service filed in Court is kept with the record.
2. The petitioner is aggrieved by inaction on the part of the school authorities in granting the petitioner 'No Objection' that is required as per Rule 4(1)(c) read with Rule 6(3) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as "the Rules").
3. Counsel on behalf of the petitioner submits that the writ petitioner is unable to complete the application form for general transfer on special grounds as per Rule 6(3) since she has not obtained 'No Objection' from the concerned school that is to be attached with the said form.
4. He further submits that the petitioner should be allowed to initiate the process of transfer. He further submits that simpliciter initiating the process does not amount to transfer of the writ petitioner and the fact that the petitioner is the only Biology teacher in no way affects the functioning of the concerned school if she is allowed to make such an application. Counsel for the petitioner submits

that transfer of the petitioner without replacement of another teacher in the Biology subject, would result in difficulty to the school.

5. Counsel on behalf of the School authorities submits that the petitioner is the only Biology teacher teaching classes XI and XII and accordingly, granting of a 'No Objection' to her would deprive the students of a Biology subject.

6. Counsel on behalf of the petitioner relies on an unreported decision in the case of Mithu Rani De Bag Vs. The State of West Bengal & ors. (W.P. 3279(W) of 2017), wherein a Co-ordinate Bench of this High Court had held that if the concerned teacher comes within the purview of Rule 4 of the 2015 Rules and if she submits an application in accordance with Rule 7 of the 2015 Rules, his/her application cannot be rejected solely on the ground of scarcity of the teacher in the school concerned.

7. I have heard the learned Counsel for the appearing parties and perused the materials on record placed before me.

8. I am of the view that the school authorities should grant 'No Objection' to the writ petitioner allowing her to apply for general transfer on special ground under Rule 4(1)(c) without prejudice to their rights of withholding the teacher, if they do not get a replacement teacher to teach the Biology subject. The right of the school authorities shall continue till another Biology teacher is appointed by the relevant authorities.

9. The School authorities shall be at liberty to make an application for filling up vacancy in the school with reference to a Biology teacher and the concerned respondent authorities shall immediately act on the said application.

10. It is made clear that the concerned authorities who are required to take the decision of general transfer on special ground shall do so on the merits of the case.

11. Counsel on behalf of the petitioner had undertaken before the Court that even if the transfer is allowed by the authorities concerned, his client shall not insist on transfer till the vacancy in the school is filled up as directed in this order above.

12. With the above direction, the writ petition being W.P.14833(W) of 2018 is disposed of.

13. Since no affidavit is called for the allegations made in the writ petition are deemed not to have been admitted.

14. All parties are to act on the website copy of this order.