

(2017) 01 CAL CK 0011
In the Calcutta High Court
Case No : 12986 (W) of 2016

Lakshapati Mandal

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Citation : (2017) 01 CAL CK 0011

Hon'ble Judges : Chinnasamy Swaminathan Karnan

Bench : SINGLE BENCH

Advocate : Partha Sarathi Bhattacharya, ?Sougata Bhattacharya, ?Sakti Pada Jana, ?Bhaskar Prasad Vaisya, ?Sk.Md. Masud, ?R.N.Saha

Final Decision : Dismissed

Judgement

1. By filing this writ application, the writ petitioner has assailed the impugned memo No.0417/6 dated 02.06.2016 wherein the petitioner has been transferred from Primary School BaikunthapurFP to Primary School Horendra Nagar B Smriti F P, District South 24 Parganas, Circle Kakdwip South, Chairman, South 24 Parganas District Primary School Council.

2. The learned counsel appearing for the petitioner submits that the petitioner was appointed as an Assistant Teacher in a Primary School and posted at Baikunthapur Free Primary School, District- South 24 Parganas on 09.11.2005 and joined his place of posting on 16.11.2005.

3. The learned counsel for the petitioner further contends that the petitioner has acknowledged an order of transfer on 11.7.2016 from the Sub-Inspector of Schools, Namkhana Circle which was issued by the Chairman of the Council vide Memo No.0417/6 dated 02.06.2016 wherein the petitioner has been transferred to Harendranagar Birendra Smriti Free Primary School, with the direction to join the said school within one/two months from the issuance of the transfer letter. It was further contended that the transfer order issued by the Chairman of the District Primary School Council is absolutely without jurisdiction and is liable to

be annulled as the respondent authority did not follow the relevant guidelines as reflected in the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002 as well as the provisions of the Right of Children to Free and Compulsory Education Act, 2009.

4. Per contra, the learned counsel appearing for the Council and for the state submits that the transfer order does not suffer from any infirmity as the same was issued in terms of the relevant guidelines as stipulated in the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002 as well as the provisions of the Right of Children to Free and Compulsory Education Act, 2009. It was further submitted on behalf of the respondents that the petitioner has remedy before the West Bengal Board of Primary Education, if the petitioner is drastically aggrieved by the order of transfer wherein the petitioner did do so. As such, the writ petition is liable to be dismissed on the ground non-availing of efficacious remedy made available to him in terms of clause 10 of the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002.

5. I have heard the rival submissions made by the learned counsel appearing for the respective parties. It is not in dispute that the petitioner's service is obviously governed by the West Bengal Primary Education Act, 1973 and with regard to transfer, the petitioner is also coming under zone of consideration of the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002. It is also not in dispute that the transfer order was issued with the approval of the School Education Department, West Bengal and also in the interest of local children as per the provisions of RTE Act, 2009. It is also crystal clear that the petitioner did not avail the remedy available to him under clause 10 of the Rules, 2002.

6. Clause 10 of the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002 provides - "10. Appeal: (1) A teacher aggrieved by an order of transfer may, within thirty days of the date of receipt of such order, prefer an appeal to the Board.

(2) Such an aggrieved teacher shall, before preferring any appeal against an order of transfer under these rules, be required to comply with the order of transfer.

(3) The board may dismiss the appeal, or pass an order directing the Council to modify or reverse the decision, and the Council shall comply with such order."

7. Therefore, this court specifically finds that the order of transfer has been issued on the basis of the approval of the School Education Department West Bengal vide Memo No.44/ES(E)/98-37/2015 dated 25.01.2016 even in the interest of local children as per provision of RTE Act, 2009 and in terms of clause 4 of the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002, as such the petitioner is required to join his place of posting in terms of the order of transfer dated 02.06.2016.

8. In view of the aforesaid, the order of transfer issued by the respondent no.4 does not suffer from any infirmity at all. Accordingly, the writ petition stands dismissed.