
(2015) 05 CAL CK 0024
In the Calcutta High Court
Case No : Writ Petition 3845 (W) of 2015

Nasim Us Saba

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Citation : (2015) LabIC 2626

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Himadri Barua and Biswajit Das, for the Appellant; Chama Mookherji, Advocates for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.

1. The West Bengal Central School Service Commission (hereafter the Central Commission), in terms of the provisions of the West Bengal School Service Commission (General Transfer) Rules, 2013 (hereafter the Transfer Rules) issued an advertisement inviting applications from interested approved assistant teachers to seek transfer to a school of his/her choice, subject to existence of a vacancy. The petitioner, an approved assistant teacher in Geography, presently employed in Belur T.H. Memorial Urdu High School, District Howrah, had expressed interest for appointment on transfer, inter alia, in Badshah Khan Centenary Girls High School, Kidderpore, Kolkata (hereafter the said girls' school). Other approved teachers had also expressed interest for being transferred thereat. The Petitioner's application was processed by the Central Commission and upon allotment of marks in terms of the formula mentioned in the Transfer Rules, the petitioner was found entitled to 11 marks. One Asma Khatoon, respondent No. 10, an approved assistant teacher in Geography employed in Md. Jan Higher Secondary School, Jorasanko, Kolkata, was one teacher who had expressed interest for appointment on transfer in the said girls' school. She scored 13 marks and, therefore, secured a position higher than the

petitioner. Resultantly, the respondent No. 10 was recommended for appointment on transfer as assistant teacher in Geography in the said girls' school vide letter dated November 24, 2014, issued by the Chairman of the Central Commission. However, it is not in dispute that the respondent No. 10 has since declined to join the said girls' school on transfer as an assistant teacher. A request letter for cancellation of the recommendation has also been issued by the Secretary of Md. Jan High School, addressed to the Central Commission. It was thereafter that the petitioner requested the Chairman of the Central Commission to transfer her as an assistant teacher in Geography in the said girls' school, vide her representation dated December 23, 2014. This was followed by a reminder dated January 16, 2015. Since the representation and the reminder did not evoke any positive response, this writ petition was presented by the petitioner seeking, inter alia, an order on the Chairman of the Central Commission to take necessary step for issuing recommendation in relation to her appointment on transfer at the said girls' school.

2. Mr. Barua, learned advocate for the petitioner invited the attention of the Bench to the final list of incumbents at page 21 of the writ petition, containing names of candidates who had expressed interest for transfer in various schools including the said girls' school, and the marks obtained by each of them. According to him, although the petitioner was not recommended for appointment on transfer in any of the three schools for which she had expressed interest, one Durdana Roushan who secured lesser marks than the petitioner was recommended for appointment on transfer in a school of her choice. It was contended by him that recommendation in favour of a candidate securing lesser marks than the petitioner would obviously give rise to a genuine discontent in the mind of a candidate securing higher marks and the Central Commission ought to have worked out ways and means within the four corners of the statute to ameliorate the petitioner's grievance. He also urged that if indeed the respondent No. 10 had accepted the recommendation for her appointment on transfer in the said girls' school, the petitioner could not have laid any valid claim but now that the respondent No. 10 is no longer interested, the Central Commission owed a duty to recommend the petitioner for appointment on transfer in the said girls' school because of the space created by the respondent No. 10.

3. The writ petition has been vehemently opposed by Mr. Gangopadhyay, learned advocate for the Central Commission and its Chairman. According to him, the Transfer Rules do not postulate recommendation in favour of a candidate upon an earlier recommendation not having been accepted by the candidate recommended first. It was contended that the system of counseling, which is otherwise available for appointment of teachers in pursuance of the regional level selection tests conducted by the Central Commission, has been consciously excluded from the Transfer Rules and, therefore, the vacancy in the said girls' school which has not been filled up due to the disinclination of the respondent No. 10 to join there would have to be filled up by the process pertaining to the

next regional level selection test. It was further submitted by him that if counseling were introduced in respect of prayers for postings on transfer, the process would be an unending one and the Central Commission would face severe inconvenience. He also submitted that there has been no mala fide on the part of the Central Commission in not recommending the petitioner for appointment on transfer and that the entire action being based on proper reading, understanding and interpretation of the Transfer Rules, which do not postulate a second recommendation being issued in favour of a candidate in respect of one particular vacancy, no illegality was committed warranting interference. He, accordingly, prayed for dismissal of the writ petition.

4. Ms. Mookherjee, learned advocate for the State and its officers adopted a neutral stand.

5. This Bench has heard the parties at length.

6. The contention raised by Mr. Gangopadhyay may appear to be attractive at the first blush but regard being had to the scheme, purpose and object of the West Bengal School Service Commission Act (hereafter the Act), whereby the Central Commission and the regional school service commissions (hereafter the regional commissions) have been created for the purpose of making proper selection of candidates for appointment as teachers in schools within the respective jurisdiction of the regional commissions and the rules/regulations that have been framed under the Act to facilitate a fair and transparent process of selection together with the specific aim and object that the Transfer Rules seek to achieve, this Bench is inclined to hold that the Chairman of the Central Commission has failed to exercise a jurisdiction vested in him by the Act. The Government in the School Education Department despite being faced with several complaints from teachers that they had been recommended to schools at far off places and were severely inconvenienced necessitating a policy for transfer, did not act on its own. In fact, the Government slept over such complaints. It was after the prodding of this Court in very many matters that the Government had to ultimately look into the sensitive issue with some degree of compassion resulting in amendment of the Act and consequent framing of the Transfer Rules as well as the West Bengal School Service Commission (Mutual Transfer) Rules, 2012. It would be worthwhile to note section 10-B of the Act, introduced w.e.f. July 11, 2013. For facility of reference, to the extent it is relevant, section 10-B is quoted below:

"10B. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Central Commission may, on the basis of application made to it in the prescribed proforma by an eligible Teacher, make recommendation for placing his service from one school to another school having same category of vacant post, on general transfer basis, in such manner, on such condition and within such period, as may be prescribed: Provided that such general transfer of an eligible teacher shall be made between two posts of same category of vacancies, posts and subjects in schools with same medium of

instruction."

7. The right of a teacher, in approved service, to seek general transfer stems from section 10-B(1). The legislative will is that upon the conditions specified in section 10-B(1) being fulfilled, the concerned teacher could legitimately claim that he/she ought to be transferred. It is only the manner, the condition and the period within which transfer is to be effected is left to the executive by way of framing of rules.

8. Having regard to the facts of the present case, the petitioner stands deprived of the benefit flowing from section 10-B(1) of the Act merely because requisite provisions have not been made in the Transfer Rules authorizing the Central Commission to issue a second recommendation in respect of a particular vacancy, upon the first recommended candidate declining to join. As the stream can rise no higher than the source, a fortiori, a rule cannot rise higher than the enactment to which it (the rule) owes its existence. There cannot be such interpretation of the Transfer Rules giving it an exalted status that the beneficent effect of introduction of section 10-B(1) in the Act is stultified; what was required in the circumstances was a purposive interpretation, which the Central Commission was found to be wanting.

9. It has been gathered from the contentions advanced on behalf of the Central Commission that inconvenience could be a factor for not entertaining the prayer of the petitioner and, therefore, no decision either positive or negative was taken. It might be so that non-acceptance of the contention of Mr. Gangopadhyay in relation to interpretation of the Transfer Rules might lead to some inconvenient result but the duty of the Court is to read the statute, understand its language and give effect to the same. When the language of the statute is clear and explicit, the same should be given effect to irrespective of its consequences. Inconvenience of a party resulting from a particular construction cannot be a ground to deter the Court from granting relief in an appropriate case. Full effect and meaning to the provisions of the Act have to be given.

10. Once the Central Commission derived information from the Secretary of Md. Jan High School, where the respondent No. 10 was employed, that she was not interested to join the said girls' high school, there was no legal embargo not to consider the petitioner's prayer since she continued to express interest for appointment as an assistant teacher in such school. Inconvenience and/or hardship in a given case cannot be a valid ground to act against the legislative intent and the object that the statute seeks to achieve. The Transfer Rules being silent on the aspect of issuing a second recommendation in respect of a particular vacancy could be overcome having regard to the provisions of the Act, which permits appointment on vacant teaching posts only on the recommendations of the Central Commission/relevant regional commissions having jurisdiction subject to fulfillment of the conditions mentioned in section 10-B(1) of the Act and the other provisions thereof. The Chairman of the Central Commission and the other officers subordinate to him ought to rise to the

occasion to give full effect to the Act, instead of nursing a perception that power could not have been exercised to favour the petitioner with a recommendation for appointment on transfer in the said girls' high school.

11. For the reasons aforesaid, this writ petition succeeds. The Chairman of the Central Commission shall immediately but not later than 30 (thirty) days from date of receipt of a copy of this order, issue recommendation in favour of the petitioner for appointment as an assistant teacher in Geography in the said girls' high school. After offer of appointment is issued by the authority of the said girls' high school, the petitioner shall be entitled to proceed in accordance with law.

12. Parties shall bear their own costs.

Urgent photostat certified copy of this judgment and order, if applied for, shall be furnished to the applicant at an early date.