

(2008) 05 CAL CK 0029
In the Calcutta High Court
Case No : F.M.A. No. 982 of 2007

Rampada Das and Another	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 07-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 2 CALLT 522 : (2008) 2 CHN 984 : (2008) 118 FLR 904

Hon'ble Judges : Tapan Mukherjee, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Anami Sikdar and Animesh Bhattacharyya, for the Appellant;Samiran Giri, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred at the instance of the writ petitioners assailing the judgment and order passed by the learned single judge whereby and whereunder the said learned single judge dismissed the writ petition filed by the appellants herein on merits.

2. Going through the records we find that both the writ petitioners on being recommended by the School Service Commission were appointed as assistant teachers in the respective schools. The writ petitioners herein are also undisputedly the approved assistant teachers in Zoology in two different schools of two different districts namely, Bankura and Purba Medinipur. The appellants/ writ petitioners herein approached the respondent authorities for according approval to their mutual transfer since the managing committee of both the schools expressed their willingness to accept such mutual transfer of the teachers concerned.

3. Initially, the learned single judge of this Court while entertaining the earlier writ petition filed on behalf of the appellants herein directed the Director of School Education, West Bengal to decide the aforesaid claims of the said

appellants for mutual transfer upon obtaining the views and comments from the respective schools and the District Inspector of Schools concerned. In terms of the said order the Director of School Education, West Bengal considered the aforesaid claims of the appellants herein for mutual transfer and ultimately, rejected the same since according to the said Director of School Education, West Bengal, grounds mentioned by the appellants herein for mutual transfer are not based on exceptional facts and circumstances which deserves special consideration by the authority even in absence of specific directive of law in force.

4. The aforesaid decision of the Director of School Education, West Bengal was communicated to the appellants herein under Memo No. 31(7)LC dated 7th April/10th April, 2006. Pursuant to the order dated 5th May, 2005 passed by learned single judge in the earlier writ petition bearing W.P. No. 17107 (W) of 2004 filed by the appellants herein, Director of School Education, West Bengal decided the claim of the appellants herein for mutual transfer and passed a reasoned order was communicated by the aforesaid Memo dated 7th April/10th April, 2006. The relevant portion of the said order is quoted hereunder:

Having considered all these factors above, I am of the opinion that the difficulties of the individual teachers cited in this instant case, namely distance of the school from the ordinary place of residence of the petitioner, family commitments, etc. are rather general and vague in nature. Such grounds are generally cited in almost all the cases. These cannot be, as I understand, said to be an exceptional facts and circumstances which deserves special consideration by the authority even in absence of a specific directive of Law in force.

I am therefore, unable to give any relief to the applicants. The matter is thus disposed of.

Sd/-

(A.S. Biswas) Director of School Education, West Bengal.

5. Since the Director of School Education, West Bengal refused to grant any relief to the appellants herein, another writ petition was filed by the appellants challenging the validity and/or legality of the aforesaid decision of the Director of School Education, West Bengal and the said writ petition was ultimately disposed of by the learned single judge by the judgment and order under appeal whereby and whereunder the said learned single judge affirmed the decision of the said Director of School Education, West Bengal. While affirming the decision of the Director of School Education, West Bengal, learned single Judge held that in absence of any power the Director of School Education, West Bengal cannot permit mutual transfer of the teachers and furthermore, according to the said learned single judge, the appellants herein had no statutory or other enforceable right to seek such mutual transfer.

6. Most surprisingly, the same learned single Judge on an earlier occasion while deciding the previous writ petition filed on behalf of the appellants herein

specifically directed the Director of School Education, West Bengal to consider the claims of the appellants herein for mutual transfer and pursuant to such direction, Director of School Education, West Bengal considered the issue relating to mutual transfer of the appellants herein and ultimately passed an order which was communicated by the Memo dated 7th April/10th April, 2006. In the said order, the Director of School Education, West Bengal also specifically admitted that under exceptional, facts and circumstances, special consideration can be made even in absence of a specific directive of law in force.

7. In any event, after commencement of the West Bengal School Service Commission Act appointments to the post of teachers in a school are made by the concerned Managing Committee of that school on the recommendation of the Regional Commission having jurisdiction. The function of the School Service Commission comes to an end immediately after sending recommendation to the school concerned for appointments to the post of teachers.

8. In the present case, undisputedly, both the appellants were appointed to the post of Zoology teachers by the duly constituted Managing Committees of the concerned schools on the recommendation of the Regional School Service Commission. The School Service Commission under no circumstances can retain any authority or jurisdiction over the teachers concerned after recommending their names to the schools concerned for appointment to the posts of teachers. Therefore, in the present case, also the School Service Commission had no role to play in the matter of mutual transfer of the appellants herein.

9. Under extraordinary and compelling circumstances, the appellants being the teachers of two different schools prayed for mutual transfer and the Managing Committees of both the schools being the employers of the teachers concerned agreed to the aforesaid proposal of mutual transfer and passed a specific resolution to that effect which have also been annexed with the writ petition. According to the Director of School Education, West Bengal, grievances of the appellants herein are general in nature and, therefore, the same does not deserve special consideration by the authority concerned.

10. While considering the identical issue, several writ petition were filed on the earlier occasions before this Court and pursuant to the directions of this Hon'ble Court, Director of School Education, West Bengal, accorded approval for mutual transfer of the teachers. Unfortunately, in the present case, grievances of the appellants herein were not favourably considered by the Director of School Education, West Bengal and the learned Single Judge also affirmed the decision of the said Director of School Education, West Bengal.

11. On examination of the reasonings given by the Director of School Education, West Bengal as well as the learned single judge while affirming the decision of the said Director of School Education, West Bengal, certain relevant facts were altogether ignored. In our opinion, if the prayer of the appellants herein for mutual transfer is allowed then neither the State authorities nor the School

authorities would suffer any prejudice and both the teachers would be immensely benefited by such mutual transfer as the said teachers will be able to discharge the duties in peaceful mind and in a better living condition avoiding various difficulties presently faced by them. By the aforesaid mutual transfer none of the teachers would enjoy any financial benefit or any other service benefits, which are not available to the other teachers of the concerned schools. Both the teachers on the recommendation of the School Service Commission accepted their appointment and joined the school concerned. Thereafter, accidentally in the same subject two teachers serving in two different recognised secondary schools facing identical difficulties agreed to transfer their present place of posting upon obtaining specific consent of their respective employer.

12. The School Service Commission is bound to evolve a policy for recommending the candidates to the respective posts of teachers for appointments in the schools. However, subsequently if two teachers, suffering due to their appointments in the schools concerned, decided to minimise their suffering by way of mutual then the State Government is the appropriate authority to come to the aid of the said teachers and the competent authority of the State Government is entitled to issue appropriate direction upon appreciating the compelling need of the teachers under special circumstances even in absence of any express provision of law since the competent authority of the State Government has inherent power and authority to issue such direction in an appropriate case. Furthermore, in the discharge of its functions, the School Service Commission is guided by the directions as are issued to it by the State Government from time to time. The competent authority of the State Government, namely, the Director of School Education, West Bengal cannot be helpless and silent spectator in resolving the grievances of the teachers who were appointed on the recommendation of the School Service Commission in different schools.

13. Though the writ petitioners were selected by the School Service Commission and appointed by the Managing Committees of the respective institutions yet after appointment, their service is under the control of the State Government and they are State Government employees. In a welfare state the State Government should play the role of model employer and should not act as an autocrat quite unmindful to the difficulties of its subjects. The fact that a teacher has been appointed and posted in a particular school does not permit the concerned authority to be callous to the difficulties which are being faced by the teacher in his or her present post and thus, to sacrifice the genuine case in the altar of unjustified and uncontentious heartless rigidity.

14. In the case *Reena Rani Roy (Sarkar) v. State of West Bengal* reported in 2005 (2) CIJ 490 (Cal), this Court while endorsing the case of mutual transfer observed that a Government in a welfare state must act fairly, judiciously and as a model employer. The Government should consider the difficulties of the appointees since the Government is going to recruit them for a particular

purpose.

15. In another unreported case being M.A.T. 2284 of 2005 (The State of West Bengal v. Debasis Paria), the Division Bench of this Court had the occasion to consider the judgment and order of a learned single judge of this Court approving mutual transfer. The said Division Bench found the balance of interest of justice in favour of mutual transfer as the same would be for the best interest of the education of both the schools and, therefore, affirmed the judgment of the learned single judge.

16. In the present case, employers namely the Managing Committees of both the schools have agreed to accept the appellants herein in the respective schools as Assistant Teacher. It is also not in dispute that both the teachers are qualified and were appointed upon observing prescribed rules and procedures. Furthermore, pursuant to the recommendations of the School Service Commission aforesaid appellants were appointed in the respective schools. The State-respondents herein are only required to record the mutual transfer of the petitioners herein in order to keep the records in order. In the event, the prayer made on behalf of the appellants for mutual transfer is given effect to then no statutory provisions will be violated. There is no provision in law which prohibits the aforesaid mutual transfer. In absence of any statutory prohibition aforesaid mutual transfer is permissible especially when such transfer will not only benefit the respective teachers but will also benefit the schools concerned and ultimately the students concerned as the teachers would be able to discharge their duties in peaceful mind in view of such mutual transfer. The respondent-authorities herein if otherwise satisfied that the concerned employers, namely the Managing Committees of both the schools concerned are ready and willing to release and appoint the respective qualified teachers upon accepting the request of mutual transfer then there cannot be any valid reason to raise objection to such mutual transfer by not according necessary approval. A formal approval by the respondents-authorities will simply regularise the mutual transfer of the teachers concerned with the consent of their employers without violating any provision of law. As a matter of fact, the Director of School Education, West Bengal previously on many occasions granted approval to the mutual transfers of the teachers.

17. The Director of School Education, West Bengal unfortunately did not consider the issue relating to mutual transfer of the appellants herein in the manner the learned single judge had earlier directed by the order dated 5th May, 2005. The relevant orders passed by the learned single judge on the earlier occasions were not considered by the said Director of School Education, West Bengal.

18. The reasons assigned by the Director in refusing the prayer of the mutual transfer of the petitioners are vague, ambiguous and it shows that the Director did not apply his mind to the matters in issue. The said Director did not consider the valid grounds made out by the petitioners in support of the claim of mutual transfer. The grounds were negated by the Director on the plea that those cannot be exceptional facts and circumstances which would deserve special

consideration by the authority. The exceptional facts and circumstances in the opinion of the Director have not been defined. The Director failed to take into account matters which he ought to take into account. The findings of the Director, in our opinion, are unreasonable and we do not consider that the said Director acted fairly in the matter. In the circumstances, this Court finds sufficient reasons to interfere with the decision of the Director.

19. It is true that the relevant rules guiding the service conditions of the teachers in the secondary schools do not expressly provide for mutual transfer. It is also true that mutual transfer is not prohibited under the rules or by any statute. When the grievances are not unlawful and unjustified courts of law are not helpless in granting equitable relief in a writ petition under Article 226 of the Constitution of India and, therefore, cannot refuse to consider the grievances of the teachers for the purpose of granting appropriate relief. The grievances of the petitioners herein are not at all unlawful and unjustified. The mutual transfer will benefit the petitioners as they will be in a position to serve the respective institutions with more vigour and peace of mind and obviously not being haunted by the hazards of attending school from their distant houses sacrificing peace in family life. The teachers concerned will get peaceful and proper atmosphere to teach the students and the students would thus be more benefited. So not only in the interest of the teachers but also in the interest of proper educations in the schools concerned the claim for mutual transfer must be accepted especially when other teachers of different schools would not suffer any prejudice on account of such mutual transfer of the appellants herein. The State Government also will not suffer in any way as such transfer will not be burdened with extra financial liability. Therefore, in order to do substantial justice to the cause of the teachers who are engaged in building the nation by imparting education to the students and also in the interest of education as a whole and further considering the principles of equity and fair, we are of the firm opinion that the competent authority namely, the Director of School Education, West Bengal should have accorded formal approval to the mutual transfer of the teachers concerned namely the appellants herein specially when the respective employers namely, the Managing Committees of the concerned schools are agreeable to accommodate them in their respective schools on accepting such mutual transfer. The State exchequer will not be taxed also as petitioners will not be entitled to claim any T.A. or expenses from the Government for such mutual transfer.

20. For the aforementioned reasons, we are unable to approve the decision of the Director of School Education, West Bengal as communicated under Memo dated 7th April/10th April, 2006 and the said decision is, therefore, quashed. We direct the Director of School Education, West Bengal to reconsider the matter afresh in the light of our aforesaid observations for the purpose of according formal approval to the mutual transfer of the appellants herein.

21. Since a considerable time has already been lapsed, the Director of School Education, West Bengal is directed to issue necessary order in the matter of

granting approval to the aforesaid mutual transfer of the appellants herein in terms of this order at an early date but positively within a period of three weeks from the date of communication of this order.

22. With the aforesaid directions, this appeal stands allowed and the judgment and order under appeal passed by the learned single judge is set aside.

23. In the facts and circumstances of this case, there will be, however, no order as to costs.

24. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Tapan Mukherjee, J.

25. I agree.