
(2019) 09 CAL CK 0325

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 17876 (W) Of 2019

Sujit Chowdhury & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 25

Citation : (2019) 09 CAL CK 0325

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : Saikat Banerji, Arijit Bakshi, Ranjan Saha, Sarwar Jahan, Sk. Nayeemul Haque

Judgement

Tapabrata Chakraborty, J

The petitioners herein challenged an order dated 10th July, 2019 passed by the respondent no. 4 by three writ petitions, being W.P. No. 13172 (W) of 2019, W.P. No. 13625(W) of 2019 and W.P. No. 13812 (W) of 2019. Upon contested hearing, all the writ petitions were disposed of by a common order dated 31st July, 2019 setting aside the order dated 10th July, 2019 passed by the respondent no. 4 and directing the said respondent to take a fresh decision upon ascertaining as to whether the pupil-teacher ratio had been disturbed due to the issuance of the temporary orders of transfer and orders of extension of temporary orders of transfer during the period from 1st June, 2018 till 31st December, 2018 (in short, the mischief period). Pursuant to the said order, three orders all dated 4th September, 2019 have been passed by the respondent no. 4, appearing at pages 204 to 212 of the present writ petition.

Mr. Banerji, learned advocate appearing for the petitioners submits that in the event the petitioners are sent back to their respective mother schools, the pupil-teacher ratio would stand disturbed. In many cases cancellation of the temporary orders of transfers there would lead to surplus teachers in the mother schools.

Drawing the attention of this Court to Section 25 of the Right of Children to Free and Compulsory Education Act, 2009 (in short, the said Act of 2009), Mr. Banerji argues that for the purpose of maintaining the pupil-teacher ratio, no teacher posted in a school shall be made to serve in any other school or office. The rigors of such mandatory provision has been sought to be diluted by the respondents placing reliance upon the Transfer Rules framed under the West Bengal Primary Education Act, 1973. Reliance has been placed upon judgment delivered in the case of Sant Ram Sharma - Vs- State of Rajasthan & Ors., reported in A.I.R. 1967 SC 1910.

Mr. Banerji further submits that in order to wriggle out of the constraints, the respondents have sought to jumble up the issues and to frustrate the earlier direction of the Court. The impugned order is arbitrary and unreasonable.

Per contra, Mr. Jahan, learned advocate appearing for the Council submits that the issue involved in the present writ petition pertains to temporary orders of transfer and extension of temporary orders of transfer. In the earlier order dated 10th July, 2019 passed by the respondent no. 4 the permanent orders of transfer were not interfered with. The order of cancellation, which was passed, was in respect of temporary orders passed during the mischief period. In the orders impugned the respondent no. 4 had arranged the petitioners serial wise and had given reasons in respect of each and every petitioner. As an example he refers to the transfer order issued in respect of one Kushal Kumar Bagchi, appearing at serial no. 4 at page 204 of the writ petition and submits that the school in which the said petitioner had been transferred was having 19 sections and there were 30 teachers. 19 sections can be taught by 19 teachers and as such 11 teachers were there in excess, who would have to sit idle.

He submits that temporary orders of transfer have been cancelled for the purpose of bringing back the teachers to their respective mother schools and to take a fresh decision towards permanent transfer to harmonize the pupil-teacher ratio in respect of all the schools under the Council.

From the impugned orders challenged in the present writ petition and the chart, as produced by Mr. Banerji, it appears that during the mischief period most of the temporary transfers were effected ignoring the existing teacher-pupil ratio. In respect of some of the petitioners, temporary orders of transfers were tested considering the total strength of the students and the total number of sections in the respective schools.

In the said conspectus the argument of Mr. Banerjee that the impugned orders are unreasonable, is, prima facie, not acceptable to this Court. The competent authority had expressed a plausible reason in the order towards cancellation of the temporary orders or the orders of extension of temporary orders.

In view thereof, the interim order, as prayed for by Mr. Banerji, is refused.

The main writ petition would, however, be heard after the parties exchange their

affidavits.

Accordingly, the respondents are directed to file their affidavit-in-opposition within two weeks after the Puja vacation. Reply thereto, if any, be filed within two weeks thereafter.

The parties would be at liberty to mention the matter for final hearing after expiry of the period, as fixed above, towards exchange of affidavits.