

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

W.P.A. No. -19356 of 2022

IN THE MATTER OF

Suvankar Jana

Vs.

State Of West Bengal

**For the Petitioner : Mr. Swarup Banerjee, Adv.,
Mr. Sajal Kumar Ghosh, Adv.,
Mr. Abhishek Bose, Adv.,
Ms. Dipa Bhattacharya Adv.**

**For the Respondent nos. 6-7 : Mr. Arunava Banerjee, Adv.
Mr. Sk. Qareeb Adv.**

**For the Respondent nos. 3-5 : Mr. Subhrangshu Panda, Adv.
Ms. Mithu Singha Mahapatra, Adv.**

**For the Respondent nos. 8-10 : Mr. Nilanjan Bhattacharjee, Adv.
Mr. Saikat Dey Adv.**

**For the State : Mr. Arjun Roy Mukherjee, Adv.
Ms. Sayntanee Bhattacharjee Adv.**

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Judgment on : 06.10.2023

Subhendu Samanta, J.

The Petitioner is an Assistant Professor in the Department of English at Dhupguri Girls College Dhupguri, Jalpaiguri, West Bengal. He joined in the said college on 8th of April 2017. The petitioner applied for transfer of own seeking according to the prescribed format to the Director of Public Instructions Bikash Bhaban in the year 2019 according to the Rule of West Bengal College (transfer of employees) rules 2017. He filed an application seeking no objection certificate (in short NOC) from the college. Thereafter several applications for seeking NOC was made by the petitioner to the college authority but the college authority did not reply to any of the applications.

Hence, the petitioner is before this court for necessary directions upon the authorities.

The college authority i.e. respondent No. 8, 9 and 10 in their affidavit in opposition has submitted that the department of English in Dhupguri Girls College consists with only two sanctioned posts, though according to the G.O of the Government dated 27.09.2018 the college must have 05 professors in English department. The teacher student ratio in the said college for the department of English in session 2022-23 is 188:1 instead of 40:1. The GB meeting of the Dhupguri

Girls college held on 24.06.2022 and 23.08.2022, though the GB principally agreeing to cause general transfer of the petitioner but it has been mentioned that due to extreme shortage of teachers, the college is not in a position to agree the prayer for transfer of the petitioner by which the interest of the student would be hampered. However the general body of the college has taken decision that they are agreed to allow mutual transfer.

Learned Advocate for the petitioner submits that the petitioner's residential house is at Tamluk which is about 780 k.m. away from the college. The parents of the petitioner are at their old age they are suffering from various ailments. To look after the family including his old ailing parents, he submitted the prayer of transfer. Being a son it is his prime duty to look after his old parents if he was not permitted or allowed to do his duties towards his parents, his moral duty would be hampered. The prayer for transfer is bona fide and solely for the purpose to look after his family including his old parents. But the college authority has not acted upon the prayer of the petitioner and tried to debar the same on same flimsy grounds.

The Learned Advocate for the petitioner further submits that there are two sanctioned posts in the department of English in the said college. Recently, two new visiting lecturers

were also appointed in the department of English in the said college. It would be evident from the conduct of the college authority that one assistant professor in History Dept. of the said college was transferred after obtaining no objection from the said college though there is a dearth of teachers in the department of history. He further argued that the college authority is trying to deny the logical prayer of the petitioner without any reasonable grounds.

Learned Advocate for the college authority (respondent nos. 8, 9, 10) submits that the college authority has written to the Director of Public Instruction for creation of full time teacher posts in the colleges. The said prayer with the Government is now pending for consideration. The reason U G Programmes in colleges advice 70 classes per week for Honours Programmes and 60 classes per week for any general programme. If the teachers are transfer the said directives of UGC cannot be fulfilled. He further argued that the another teacher of the English Department also made prayer for general transfer thus it is quite impossible for the college authority to issue NOC in favour of the petitioner.

Heard the Learned Advocates. Perused the petitions including the affidavit in opposition filed by the respondent and the affidavit in reply on behalf of the writ petitioner. It is true

the application is being filed for transfer according to the form prescribed in the West Bengal Colleges (Transfer of Employees) Rules 2017 (hereinafter shall be referred as a Said Rule). The said rule (4) permits a teacher to apply for transfer. The condition of transfer of own seeking before the completion of 5 years satisfactorily and continues service in college as an exception; a teacher may allowed to be transfer of his own seeking prior to the completion of 5 years if there is exigencies and hardship upon the employees. The ground for seeking transfer of the petitioner are two fold **firstly**, his residential house is 780 k.m. away from the school and **secondly**, he wanted to look after his old alien parents including his family.

The ground appears to be justified and can be considered to be an exigency and if the transfer is not made it would be a hardship upon the petitioner.

The college authority is of opinion that if the transfer is being made the students interest would be hampered in a large scale.

Let me assessed the scenario in the present facts and circumstances. Since the beginning the Dhupguri Girls College there are two sanctioned posts of teachers in English Department. The Dhupguri College is maintaining study of the students by the strength of such two professors of English

Department till today. The notion of students teachers ratio i.e. 40:1 have never been complied in the said college. Moreover, it appears to me that two new visiting lecturers are appointed in the department of English.

The Rule 5 of the Said Rule has laid down the procedure for submission for application for transfer of own seeking. The feasibility and the suitability of transfer from one college to another is to be looked into by the Directorate of Public Instructions. The college authority has actually no role or domain according to the rule itself to consider the suitability of a transfer of a teacher. According to the Rule 5(6) of the said Rule, the State Government is the sole authority to examine the merits and demerits of each case and to pass a final order.

Part I of the form I (application for transfer of own seeking) requires the information required to be given by the applicant supported by relevant documents. Part (II) of the said Form indicates the format of no objection and declarations of the colleges. The president of the Governing Body/Administrator of the college or the principal/Vice Principal/Teacher In Charge of the college is required to declare the particulars mentioned in paragraph 2 and 3 and 4 of Part I of the application form are true and correct as per the

records maintained by the college and no such particulars are incorrect.

On a plain reading of the said part II of the Form it appears to me that the college concern has no domain or authority to consider the suitability or feasibility of an application of transfer which is only permitted by the concerned State Directorate of Public Instruction Authority shall maintain the database of colleges to consider the possibility of transfer.

It appears that the petitioner being a teacher fulfils the eligible criteria for transfer under the existing rules. It has been discussed earlier that the college authority has no domain or jurisdiction to consider the suitability and feasibility of the said application thus the college authority has acted arbitrarily for not answering promptly to the petitioner regarding his application for seeking NOC. The prayer of the petitioner appears to me justified and it can be considered on humanitirian ground under the principle of Natural Justice. Concern State Authority shall have to take prompt action in respect of creation of post of teachers and the college authority shall arrange for temporary visiting lecturers till the creation of posts and recruitment of permanent teachers.

Hence the college authority i.e. respondent nos. 8,9 and 10 is directed to issue NOC in favour of the petitioner within 02 weeks from the date of passing of this order. The other respondent authorities shall dispose of the application of the petitioner regarding transfer of the petitioner from Dhupguri Girls College to any other colleges at District Purba Medinipur as early as possible most preferably within 10 weeks considering the suitability, feasibility and the merits of the application.

Accordingly the writ petitioner is disposed of.

Connected CRAN applications if pending are also disposed of.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)