

20
15.12.2023
Court No. 35
D.Hira

WPA 26746 of 2022

**Uttam Bhakta
Vs.
State of West Bengal & Ors.**

**Mr. Srijib Chakraborty,
Mr. Deeptangshu Kar.
... for the petitioner**

**Mr. D. N. Mukherjee,
Mr. J. Mondal.
... for the State**

The writ petitioner is by profession teacher of a school namely Radhaballavpur B C B Vidyapith. The writ petitioner is aggrieved with the unlawful way by dint of which the private respondent namely Shri Tarapada Shit has been transferred and posted as headmaster of Radhaballavpur B C B Vidyapith from a school namely Mallickchak A.S. Vidyapith.

The order of transfer, bearing Memo no. 05469/6962/18/GT/CSSC/Utsashree/2021 dated 26.09.2021 has been challenged and necessary orders has been prayed for, to be passed, so that the said order of transfer of the private respondent named above, be set aside.

Mr. Chakraborty, learned counsel appearing for the writ petitioner has strongly relied on the notification no. 159-SE/S/1S-4/95 (Part) dated 27.02.2015 to submit that Rule 3 thereunder, specifically, Rule 3 sub-rule (2), is the existing and governing provision, under which all general transfers are effected. He says that the rule provides

a general transfer to be eligible to be effected if done between two schools situated at a distance of more than 25 kilometers.

According to Mr. Chakraborty, this rule is a mandatory provision and any transfer made in contravention of the same should be rendered as an illegal and invalid transfer. So far as this case is concerned the writ petitioner has alleged that a distance between the school from which the private respondent has been transferred to the present school is much less than the prescribed limit of 25 kilometers. The petitioner has relied on a copy of an online map to show that the distance between those two schools is only 11 kilometers and odd.

Mr. Chakraborty has further referred to one letter written by the present writ petitioner to the authority dated 30.04.2022, to ventilate this grievance and says that the same has never been considered by the authorities.

Mr. Chakraborty, says that in view of gross violation of the applicable rules of transfer, to transfer the private respondent to the present school, the order of transfer is illegal and necessary order be passed in this writ petition for setting aside the said transfer order.

Mr. D.N. Mukherjee, learned counsel along with Mr. J. Mondal, learned counsel appear for the State respondent. The State respondent has submitted its report in the form of an affidavit in the Court earlier. No other respondents are appearing

when the matter is taken up, in spite of service of due notice.

From the affidavit-in-opposition submitted by the State respondent it transpires that the initial stand of the State respondent was that the self-declaration made by the private respondent in the “Utsashree” Portal, showing distance between two schools to be 52 kilometers, was the source of information for it to conceive about the distance between two schools.

According to the said respondent, there is no mechanism to cross check, such declaration, made by an applicant, on the portal and orders are passed, taking into consideration the declarations on portal only.

Therefore, the State respondent proceeded in terms of the declaration made by the private respondent in the “Utsashree” Portal as above and issued a transfer order dated 26.09.2021, having found all the criteria and norms as duly fulfilled.

From the report submitted as per Court’s order, vide an affidavit dated 23.08.2023, it transpires that the concerned respondent has declared on affidavit regarding the distance between two schools namely Mallickchak A. S. Vidyapith, and Radhaballavpur B C B Vidyapith to be 11.3 kilometers.

The same being the factual aspects relating to the present case, it is found that the provision under Rule 3 sub-rule 2, of the notification dated

27.02.2015, is the rule governing the general transfers or transfers on special ground or re-allocation of the teachers. It has been mandate that no application under general transfer shall be entertained if the incumbent teacher intends to get transfer to a school within a distance of 25 kilometers from the present school.

This being the substantive rule for transfer of a teacher, in West Bengal, in case of each and every transfer, it has to be abided by. Any transfer, under whatever scheme, if violates the same, is not sustainable, being illegal.

The same being a mandatory condition cannot be flouted or varied under any circumstances. It appears that the private respondent has been transferred through “Utsashree” Portal by necessary input of the relevant data into the portal for consideration of the authorities. It clearly appears that the data put in by the private respondent as regards the distance between the two schools in the “Utsashree” Portal, is not an authentic data and rather false.

On the other hand, on perusal of the report submitted by the State authorities on affidavit there is scope of no doubt that the distance between the said two schools is much less than what has been prescribed in the relevant rules for mandatory compliance.

There is no scope left for any doubt that transfer of private respondent, namely Sri Tarapada

Shit, has been done in violation of the prevalent rules and thus the order of transfer suffers from gross illegality.

Under such circumstances, the order of transfer of the private respondent vide Memo no. 05469/6962/18/GT/CSSC/Utsashree/2021 dated 26.09.2021 appears to be de hors the rules of 2015 and thus illegal and not sustainable in the eye of law.

On the ground as above, this Court finds it proper to set aside the impugned transfer order of respondent no. 4 dated 26.09.2021.

It is further noted that the authorities who have been vested with the sacred responsibility of maintaining and upholding the law, could not have acted blind foldedly, without ensuring that an order issued by it, if done in compliance with the law or not – as it has been done in the present case.

The transfer order issued vide memo no. 05469/6962/18/GT/CSSC/Utsashree/2021 dated 26.09.2021 is set aside.

The authority of the private respondent to act as a headmaster of Radhaballavpur B C B Vidyapith shall cease to be effective any further.

The writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)