

Biswajit Jana Vs State Of West Bengal & Anr

Court: Calcutta High Court (Appellate Side)

Date of Decision: Jan. 10, 2025

Acts Referred: West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 – Rule 6, 6(2)

Hon'ble Judges: Harish Tandon, J; Prasenjit Biswas, J

Bench: Division Bench

Advocate: Sudip Ghosh Chowdhury, Shreyeta Mitra, Debolina Chakraborty, Koyeli Bhattacharyya, Keya Panja, Bibek Dutta, Sumit Kr. Roy

Final Decision: Allowed

Judgement

Prasenjit Biswas, J

1. Let the certified copy of the impugned order dated 25.11.2024 filed by the appellant today, be tagged with the memorandum of appeal.
2. The instant appeal is directed against the impugned order dated 25.11.2024 passed by the learned Single Bench of this Court in WPA no. 27416 of 2024.
3. By passing the impugned order learned Single Bench dismissed the application filed by the present appellant. Being aggrieved and dissatisfied with the said impugned order passed by the learned Single Bench the present appeal is preferred at the behest of the appellant/petitioner.
4. The petitioner joined in the school as Assistant Teacher on 06.12.2013 pursuant to the appointment letter issued by the school. The appellant/petitioner applied for transfer on the ground of distance on 13.08.2021 and 14.08.2021 but those two applications were rejected by the school authority on technical reason. Thereafter, the petitioner again applied for transfer in the portal on 05.01.2022 on the ground of distance. The school authority issued no objection and forwarded the application to the District Inspector of Schools and in turn the District Inspector of Schools forwarded it to the West Bengal Central School Service Commission with remark, "Forwarded to the WBCSSC for Transfer in favour of Biswajit Jana". The said application was rejected by the commission on 25.01.2022 with remark "Prayer is returned due to low rank in preferred school".

applied by the candidate. Finding no other way this appellant/petitioner filed a writ petition before this Court which was dismissed by the learned

Single Bench by passing the impugned order dated 25.11.2024.

5. At the time of hearing learned Advocate for the appellant said that the learned Single Bench has committed an error in passing the impugned order

for not considering the amended provision of Rule 6 of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds

and Reallocation) Rules, 2015 which has come into effect on 8th September, 2021. The present appellant has applied under the amended Rule and as

such rejection of the transfer application of this appellant without adhering to the provision of amended Rule does not stand under the eye of Law.

Consequently, dismissal of the writ application filed by the present petitioner challenging the order of rejection of transfer application by the authority

concerned is erroneous. At the time of hearing our attention is drawn by the learned Counsel to the provision of Rule 6(2) of the West Bengal School

Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 as well as amended provision of Rule 6 which has

come into force by gazette notification dated 8th September, 2021.

6. Rule 6(2) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 provides

that:

"An incumbent desirous of General Transfer/General Transfer on Special Ground within the meaning of these rules shall apply in the Form (containing Part A

and Part B) as appended to these rules. The filled up form with requisite fees of Rs. 2,000/- payable in favour of The West Bengal Central School Service

Commission, within the period as will be notified by the School Service Commission by submitting application Form. One incumbent may submit only one

application for maximum 03(three) of such vacant posts as per his/her priority of choice in application forms as prescribed. Handwritten or online applications

may be accepted. Application submitted without fees shall be rejected. Change of preference/preferences after making application by the incumbent, shall not be

entertained."

7. Thereafter amendment of that Rule has come into force by a gazette notification dated 8th September, 2021 by which the previous Rule 6 has been

substituted and concept of applying only one application for maximum three of such vacant posts as per his/her priority of choice in application form as

prescribed has been repealed. The appellant has applied under the amended Rule and as such the authority concerned cannot reject the transfer

application of the appellant with observation that "Prayer is returned due to low rank in preferred school applied by the candidate. The only

issue involved in this case is that whether the appellant/applicant could be facilitated one more option to substantiate his transfer. Under the amended

Rule there is no statutory bar to give one more vacancy option if the original vacancies selected by the candidates are not available. The authority

concerned without adhering to the provision of the amended Rule which has come into force by gazette notification dated 8th

8. Learned Trial Court dismissed the writ application on the ground that the petitioner did not come within the zone of consideration for transfer to any

of the vacancies as indicated in the transfer application due to low rank in preferred school applied by the candidate. Amended Rule has come into

picture by gazette notification dated 8th September, 2021 in which previous Rule 6 has been substituted and concept of applying only one application

for maximum three of such vacant posts as per his/her priority of choice as prescribed has been repealed. So, the application filed by the appellant

under the amended Rule should not be rejected on the ground of low ranking in preferred schools applied by the candidates.

9. In view of the above facts and circumstances and discussions made above we find that learned Single Bench committed an error in dismissing the

writ application without adhering to the provision of the amended provision of Rule 6 of the West Bengal School Service Commission (General

Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 which has come into effect by gazette notification dated 8th September, 2021.

10. Thus, the impugned order passed by the learned Single Bench dated 25.11.2024 is hereby set aside and the appeal be and the same is hereby

allowed.

11. Concerned respondent is hereby directed to reconsider the representation made by the appellant/petitioner praying for his transfer as per provision

of law within four weeks from this date.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.