

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Abhijit Gangopadhyay

WPA 17159 of 2019

**Aparna Munshi
Versus
State of West Bengal & Ors.**

with

WPA 6598 of 2021

**Gandhi Memorial Girls' High School & Anr.
Versus
The State of West Bengal & Ors.**

For the petitioner : Mr. Ujjal Ray

For the State-respondents : Mr. Biswabrata Basu Mallick
Mr. Pinaki Bhattacharya
Mr. Sanjib Das

For the respondent nos. 6, 7 : Mr. Anjan Bhattacharya
& 8 Ms. Anita Shaw

Heard on : 19.08.2021 and 23.08.2021

Judgement on : 23.08.2021

Abhijit Gangopadhyay, J.:

1. The two writ applications being WPA 17159 of 2019 and WPA 6598 of 2021 are taken up together.
2. There was an order passed by this court on 07.04.2021 for taking up the two matters at a time as those are related matters.
3. Learned advocate for the petitioner in WPA 17159 of 2019 came up on 19.08.2021 with one written instruction from his client for not pressing her application, being WPA 17159 of 2019. When that matter was called on that day, learned advocate for the related school, who is the petitioner in WPA 6598 of 2021, raised an objection as to how one matter out of the two matters, which the court directed to be taken up together, can be withdrawn. He also raised serious objection as to withdrawal of the writ application of the teacher, being WPA 17159 of 2019. However, without entering into such dispute, I decided to take up the matters together today as the matter relates to transfer of a lady teacher from her present school to another school which is pending for almost for 2 (two) years as WPA 17159 (W) of 2019 was filed on 30.08.2019.
4. In course of hearing of WPA 17159 of 2019, learned advocate for the teacher who is the petitioner (the teacher, in short) has submitted that the transfer order issued earlier by the authority for transfer from Gandhi Memorial Girls' High School to Digra Mallickhati Deshbandhu Vidyapith has been withdrawn by the

authority and subsequently by a fresh order dated 30th July, 2021 the order of transfer has been passed by the West Bengal Board of Secondary Education (WBBSE, in short) from Gandhi Memorial Girls' High School (the school, in short) to Rabindra Smriti Vidyaniketan. Learned advocate has submitted that the vacancy is still there in Rabindra Smriti Vidyaniketan where the petitioner can join by order of WBBSE pursuant to an order of the Commissioner of School Education but release order has not been given to her by the school. The writ application of the teacher was not allowed to be withdrawn despite the instruction given by the teacher to her learned advocate on 19.08.2021 or today. When the petitioner was asked why she wanted to withdraw the application it has been submitted that the school had directed her to withdraw otherwise release order would not be given to her by the school. After hearing the writ application and after considering the case including the teacher's difficulties relating to condition of her health and other surrounding circumstances I direct the authority of the School to issue release order forthwith to the teacher/petitioner and the petitioner should approach immediately thereafter the other school where she has been transferred by the order of WBBSE dated 30.07.2021. A copy of the order of WBBSE for transfer as has been produced in this court be kept on record.

5. The school and its Headmistress has made a nasty effort in not issuing the no-objection certificate to the teacher (a Lady) for her transfer which we will see from the discussion made below.
6. Here I join the other related matter, being WPA 6598 of 2021, which is a writ application filed by the School and its Headmistress against the State and its functionaries like Commissioner of School Education and the WBBSE etc.
7. This application is absolutely (I repeat, absolutely) a frivolous and mischievous one and want of bona fide is writ large in each line of the writ application.
8. Learned advocate appearing for the school when asked about the right-duty relationship between the school and the transferring authorities of a teacher by asking him the question with details to show to this court what is the right of the school to raise objection as to the transfer of the teacher and what is the corresponding legal duty of the concerned authorities, being the Commissioner of School Education and WBBSE, he has failed to show any such right and any such corresponding Legal duty. In more than one paragraph of the writ application (application, in short) the school has stated that the school management never issued no-objection certificate. Perhaps they have taken a pride in doing so. Here I must quote some lines from the application made by the teacher to the Headmistress

for issuance of a no-objection certificate which is in her writ application (being WPA 17159 of 2019 at page 55 thereof) :

“Madam, many often times with folded hands I prayed to you for issuance of NOC for General transfer on special ground. I had accordingly verbally and written prayed to you for a NOC to forward my transfer application but in vain.”

(Emphasis mine)

9. Some other lines are also there in the said representation of the teacher. What surprises me as a judge of this court that in a democratic country like ours when a person like the school teacher is seeking no-objection certificate from the school which he/she is entitled under the law and when the school is mandated by the law to issue no-objection certificate why a school teacher has to write to the Headmistress with folded hands unless the Headmistress time and again has denied to give NOC and unless she has posed herself a feudal head of some fiefdom in this country that a teacher has to pray for a no-objection certificate in folded hands ! Rule 6(3) of the **West Bengal Central School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015** (under which the transfer application was processed) is as follows:

“6(3) – The Head of the Institution, the Secretary of Managing Committee or the Administrator, as the

case may be, of the concerned school, shall issue No Objection Certificate to an incumbent to be recommended for General Transfer under these regulations. The No Objection Certificate will not exceed the number as stated under Rule 5(6) of these rules.”

(Emphasis mine)

- 10.** The school has filed one affidavit-in-opposition (affirmed on 09.04.2021) to the writ application of the teacher being WPA 17159 (W) of 2019 wherein there is no denial by the Headmistress of the school that any such representation was made by the teacher. Thus, it has been accepted by the Headmistress that such a representation was made by the petitioner.

It is kept in mind as written by the teacher in the said representation that:

- (a) The distance of the school from the residence of the teacher is more than 200 kilometers;
- (b) The teacher has been suffering from complicated gynecological disease and has undergone operations for such disease;
- (c) she delivered a child in the year 2016 i.e. on the date of application for no objection the child was aged about 3 (three) years and finally
- (d) The teachers cancer antigen result report was of a higher level than that of referral range.

(Emphasis mine)

The teacher supplied her all treatment papers twice to the school and on demand of the school again from Government hospital as stated in her writ application and not denied by the school in its affidavit-in-opposition. Even then No Objection was

not given by the Headmistress of the school, who is the Secretary of the Managing Committee of the school.

11. The above rule gives a mandate to the head of the institution, the Secretary of the Managing Committee or the Administrator directing that no-objection certificate to an incumbent to be recommended for general transfer under the said regulations had to be given. The word 'shall' has been used in the said Rule 6 (3).
12. This mandate of the said rules has been blatantly, shamelessly and deliberately violated by the Headmistress of the School. The school has referred to one provision of the aforesaid rules in its writ application at paragraph 4 which says that – “Every teacher and non-teaching staff will get the benefit general transfer/mutual transfer once in his/her entire service period.” (sic).
13. General transfer has been defined in the aforesaid rules which is as follows:

“2(f) – “General Transfer” means transfer of an employee of a school from his present place of posting in a school to another place in same category of vacancy, subject and post in another school;”
14. In the writ application the school has made an endeavour to show that the teacher, being the private respondent, had made application for mutual transfer which was allowed by the

Managing Committee (I will come to such decision of the Managing Committee later) and, therefore, it is his second transfer of the petitioner for which she has prayed for No Objection Certificate which is forbidden by law. The school has further stated in paragraph 6 of its writ application that the teacher had made incorrect and false application but when this court wanted to know from the learned advocate of the school what is the incorrectness and what is the false application, he has only been able to show a resolution of the school dated 18.05.2018 (Annexure P-2) by saying that already resolutions had been taken in respect of her application for mutual transfer on 18th May, 2018 and the school has gone to the extent by saying that the school's hands are tied in respect of issuance of further no-objection certificate to the teacher.

- 15.** Surprising fact here is the school has not disclosed in its writ application any such application by the teacher for mutual transfer nor it has shown the no-objection certificate, if any, that was issued to the teacher by the school. Learned advocate for the school has submitted repeatedly that for mutual transfer no-objection certificate is not required. But he has failed to show any such rule as to mutual transfer where there is no mentioning of no-objection certificate. In fact he has not placed the Mutual Transfer Rules at all before this court despite

direction given to him more than once by this court in the course of hearing.

- 16.** Learned advocate for the teacher has submitted that such a resolution was never shown to the teacher and no no-objection certificate was given to her in connection thereof. Learned advocate for the school, i.e., the writ petitioner, countered it by saying that in the resolution of the school dated 18th May, 2018 the name of the counterpart of the teacher is mentioned and this shows that there was an order of mutual transfer. I do not understand how before the no-objection certificate and before the decision of the appropriate authority of the Education Department of this State as to mutual transfer one name of the counterpart of the teacher in respect of mutual transfer comes into the picture.
- 17.** Hence, I totally disbelieve, due to the suppression of the two documents, (i.e., application for mutual transfer by the teacher and the no-objection certificate of the school in respect of the mutual transfer) the resolution of the school dated 18.05.2018 and further for the reason that how before such no-objection certificate and before the process is initiated a name of the counterpart of the teacher could be mentioned in the resolution of the school.
- 18.** The school has made the prayer in their writ application that the transfer order passed by the Commissioner of School

Education dated 22nd February, 2021 and 23rd February, 2021 is to be set aside and verification of the documents of transfer application of the private respondent, being the teacher, should be verified again and an order of stay as an interim measure be granted on the orders dated 02.02.2021 and 03.02.2021 be passed.

- 19.** As the petitioner school has failed to show any right of it to raise any objection as to the transfer order of the teacher and the corresponding legal duty on the part of the Commissioner of School Education and the WBBSE I hold that the petitioner school does not even have any cause of action to move this writ application and any locus to file the writ application. Except for harassing the teacher who has prayed with folded hands before the said feudal head in the form of a headmistress for issuance of a no-objection certificate there was no other object for filing such a frivolous writ application by the school. The question of issuance of No Objection is thus pending almost 2 (two) years. The school wanted to cause delay relating to the transfer of the teacher by filing such a frivolous writ application which they have been able to do successfully for last almost 2 (two) years. The Headmistress, I hold therefore, has abused the process of justice of this country beside deliberately violating the law as has been stated above.

20. Another surprising fact is an e-mail (this is actually a copy mail of e-mail dated 24.02.2021) sent by the headmistress, which is at pages 44 and 45 of the writ application which reads as follows:

“Respected Sir,

I have got two letters as referred above through mail on the matter of General Transfer on special ground to the post of AT against the application done by Aparna Munshi, who is an Asst. Teacher of subject Bengali in Upper Primary group of my school till date. But it is for your kind information that a case bearing WP No. 17159(W) of 2019 has been lodged by her in the Hon’ble Calcutta High Court against school authority, Headmistress and Secretary on the matter of transfer is still pending.

In these circumstances, the school authority of Gandhi Memorial Girls’ High School is unable to release her as per general law. It is for your kind information and do the needful.

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Chhabi De
Headmistress
Gandhi Memorial Girls’ High School (HS)”

21. It appears that the headmistress is a law-knowing person, otherwise she could not have said that her school was unable to release the petitioner “as per general law”. When I wanted to know from the learned Advocate of the School as to what is the general law in this regard he showed his helplessness to clarify

the expression. There is one instruction of District Inspector of Schools dated 01.03.2021 at page 43 of the school's writ application stating that joining and releasing were not permissible up to 2nd May, 2021 because of imposition of model code of conduct in the last assembly election of this State. This letter dated 01.03.2021 has got no reference in the said e-mails of the Headmistress where she has stated that the Gandhi Memorial Girls' High School was unable to release the school teacher as per general law.

Thus the decision of not releasing the petitioner was an earlier decision taken on or about 24.02.2021.

(Emphasis mine)

This shows that the teacher's submission as to the school's direction to withdraw her writ application is not baseless. By taking such an arm-twisting method for withdrawal of the teacher's writ application and for other illegalities stated above the Headmistress has

- (1)** deliberately violated the law
- (2)** has abused the process of the justice of this country and
- (3)** has pressed a citizen, the teacher, to withdraw her writ application for issuing release order, as a bargain, from the school and thereby violated the liberty granted the constitution of this county to a citizen, here the teacher by using the arm-twisting method.

- 22.** I hold that the entire writ application shows want of bona fide and the same is mischievous in nature and is wholly frivolous with an aim to harass the teacher, being the writ petitioner in WPA 17159 of 2019.
- 23.** Such a mischievous headmistress is wholly unfit as a Headmistress of the school and the headmistress who is to issue the release order has actually violated the law and further the constitutional right of a citizen who can maintain his writ application in the High Court. She has even filed a frivolous writ application which is nothing but abuse of process of justice, to stall the transfer of the teacher. She cannot be allowed to act as a Headmistress of the school. The headmistress is before me through her learned counsel who has argued the matter in full. I, exercising the writ court's plenary power under the writ jurisdiction, in the special facts and circumstances of these cases, denude the Headmistress from all her powers as a Headmistress of the school forthwith; she is removed from the post of Headmistress of the school. Henceforth she will act as an assistant teacher of the school and will take classes like any other assistant teachers; her scale of pay etc., if necessary can also be varied by the appropriate authority; if there is an assistant headmistress, she will perform the duty of the headmistress of the school and if there is no assistant headmistress, the senior-most teacher (except Smt. Chhabi De

Konar) will act as the headmistress of the school till a regular Headmistress is appointed in the school. The post of the headmistress shall be treated as vacant and the appropriate authority will take immediate steps for filling up the post of the headmistress. If said Chhabi De Konar is found to be an excess teaching staff of the school, the commissioner of School Education shall be approached by the School's managing committee for transfer of the said excess teacher to any other school as per of her option.

- 24.** A cost of Rs. 20,000/- is imposed upon the petitioners of the writ application, being WPA 6598 of 2021. It would be paid to the petitioner of WPA 17159 of 2019 within two weeks from date.
- 25.** While I am exercising my jurisdiction under Group II (Education) as a judge of this court I have found a large number of cases are coming to this court for not issuing no-objection certificate to the teachers by the schools. I have passed appropriate directions in such matters for issuance of such certificates.

Today, I feel, a direction is required to be passed for all the schools in respect of which the general transfer or mutual transfer is applicable to issue the no-objection certificate to the teachers who will file application for no-objection, within a period of four weeks from the date of receiving of such

application by a school unless issuance of such no-objection certificate is barred by law. There is no rule within which period the no-objection is to be issued by a school to the intending teacher who want a transfer and for this reason this provision is made and as soon as any appropriate rule in this respect would be framed and given effect to by the State, this general direction will automatically become inoperative.

- 26.** With the above directions, the two writ applications are disposed of.
- 27.** The Registrar General is directed to send a copy of this order to the Principal Secretary of School Education Department for its circulation to the Schools through District Inspectors of Schools (Secondary Education) immediately.

(Abjijit Gangopadhyay, J.)