

14.08.2025
Item No.03
Court No.11
KCP

**FMA 937 of 2025
with
IA No. CAN 1 of 2025**

**Mallika Naskar
- Versus -
The State of West Bengal & Ors.**

Mr. Shyamal Kumar Mukherjee,
Mr. Susanta Kumar Gangopadhyay,
Mr. Arun Kumar Chakraborty.
.....for the appellant

Mr. Manas Kundu.
.....for the State

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 22nd January, 2025 passed by the learned single Judge in the writ petition being WPA 1086 of 2025.

Mr. Mukherjee, learned advocate appearing for the appellant submits that the order impugned was passed taking into consideration a memo dated 1st October, 2024 issued by the respondent no. 5 in which the said respondent had observed, *inter alia*, that in the absence of any willing teacher, no local arrangement could be made for placing any teacher in the vacancy that would occur in the event the appellant's prayer for transfer is allowed.

He further submits that the phrase '*local arrangement*' has been referred to in the notification dated 3rd January, 2022 and a perusal of the same would reveal that it is the obligation of the respondent no. 5 to mandatorily make a local arrangement within a time-bound manner and such arrangement is not dependent on the issue of willingness of any teacher. Reliance has been placed upon a judgment delivered by a co-ordinate Bench in the case of *Gokul Chandra Mallick Vs. State of West Bengal & Ors. (MAT 1281 of 2024)*. Such argument, as urged, was glossed over by the learned Judge and no finding was returned on the same. Such infirmity warrants interference in appeal.

Mr. Kundu, learned advocate appearing for the State, however, submits that the order impugned in the present appeal had been passed strictly in consonance with the directions contained in a notification dated 3rd January, 2022 and that as such, no interference is called for in the present appeal.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

In the notification dated 3rd January, 2022 there is no rider that the District Inspector of Schools

(Secondary Education) [hereinafter referred to as DI(SE)] has to make any endeavour to find out any '*willing*' teacher of neighbouring school, who can man the post of the appellant temporarily till a regular incumbent joins that post. The term '*willing*' does not feature in the said notification. The said notification casts a duty upon the DI(SE) to make arrangement within a time-bound manner and does not invite any option or choice of any other teacher to volunteer in rendering his/her service to a school from which the appellant seeks transfer. In view thereof, the observation of the learned single Judge that only in the event a willing teacher of neighbouring schools is found, steps shall be taken for transfer of the appellant, is not sustainable.

Accordingly, the order impugned is modified to the effect that the respondent no.5 shall consider the appellant's application for transfer strictly in terms of the notification dated 3rd January, 2022 and in the light of the observations made in this order and take a decision and communicate the same to the appellant within a period of 3 (three) months from the date of communication of this order.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)