

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble SAYEED AHMED BABA, Member (A)

Case No. – OA-563 of 2022

Serial No. and Date of order	Apurba Sarkar & Ors. For the Applicant	:	VERSUS – The State of West Bengal & Ors. Mr. M.N. Roy, Learned Advocate.
<u>03</u> 13.09.2022	For the State Respondents	:	Mrs. S. Agarwal, Learned Advocate.

In the present application, the applicants have challenged the authority of the issuing authority in passing the impugned order of transfer.

Mr Roy, learned counsel appearing for the applicants invites the attention of the Tribunal that Rule 6 of the West Bengal Service (Classification, Control and Appeal) Rules, 1971 as amended upto date has not been complied with, wherein, the power has been vested to the delegated authority of the Governor of West Bengal. According to him, such delegation empowers the Secretary, Education Department to act in compliance of the provision of Rule 6 supra.

Refuting the contention of Mr. Roy learned counsel, Mrs Agarwal, learned counsel for the State respondents relies on the e -office note appearing at page 27 of the Reply filed by the State which indicates the Secretary *prima facie* agree with the proposed transfer subject to some condition.

Having heard the counsel of the parties and perusing the materials on record, it transpires that the Secretary, School Education Department, has not passed the order of transfer in compliance of Rule 6 of the West Bengal Service (Classification, Control and Appeal) Rules, 1971. Mere consideration of the proposal

of transfer seems to have not been complied with the aforesaid Rule considering the order of transfer (Annexure P at page 39) which has been issued by the Commissioner of School Education. Admittedly, it has not been denied that the Commissioner of School Education has not been delegated authority under Rule 6 of the said Rule. It is no more *res integra* that sub-delegation beyond the authority of law is impermissible.

Moreover, there is no submission of the State Respondents that on the previous occasion, final order passed in OA 485 of 2022 has been challenged before the higher forum, wherein, Mrs Agarwal appeared for the state respondents who is also appearing for the State in this present case.

In view of the above, it appears that *prima facie*, Rule 6 of the above Rule has not been complied with in its true letter and spirit, apart from the above, to avoid further multiplicity of the proceedings during the pendency of the original application, an interim order is granted by staying the operation of the order of transfer in respect the applicants of this application for a period of 14 days from today. Prayer for filing rejoinder against the reply is allowed. The same be filed on the next date with a direction to serve the same upon the learned counsel for the state respondents in advance.

Let the matter appear on **27.09.2022** under the heading “For Orders”.

Learned Counsel for the applicants is directed to serve a copy of this order downloaded from the official website of the Tribunal be communicated to the state respondents at once and file an affidavit of the

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service on the next date fixed above.

SAYEED AHMED BABA
MEMBER (A)

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