

ORDER

APO/104/2020  
WITH  
WPO/306/2020  
IA NO: GA/1/2020  
IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
ORIGINAL SIDE

DEEPA BASU  
Versus  
THE STATE OF WEST BENGAL & OTHERS

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ARIJIT BANERJEE

Date : 9<sup>th</sup> October, 2020.

(VIA VIDEO CONFERENCE)

APPEARANCE:

Mr. Soumya Majumder, Advocate

Mr. Sakti Pada Jana, Advocate

...for the appellant.

Mr. Kishore Datta, Advocate General

Mr. Joydip Banerjee, Advocate

...for State of West Bengal.

Dr. Sutanu Kumar Patra, Advocate

Ms. Supriya Dubey Chakraborty, Advocate

...for WBCSSC.

Ms. Koyeli Bhattacharya, Advocate

...for WBBSE.

The Court:- The appeal arises out of an order dated September 30, 2020 passed on a petition challenging the transfer of the appellant from one Government-aided school to another. The primary ground urged on behalf of the appellant is that the State cannot be regarded as the appointing authority of the appellant and this may not be regarded as a case of transfer since the appellant is being moved from one school to another, where the two schools are administered by different Managing Committees.

It appears that in similar matters, ad interim orders had been passed by a Single Bench, restraining the transfers from taking effect. However, such ad interim orders were carried in appeal and the relevant appeals were disposed of by an order of August 17, 2020 staying the operation of the impugned orders of restraint. While dealing with such interlocutory appeals, a tentative view was expressed by the Division Bench that Section 10C of the West Bengal School Service Commission Act, 1997 could not be said to be “invalid/arbitrary or unreasonable or incompatible with the other provisions of the Act.” The order went on to add that the power to transfer a teacher from one school to another appeared to be justified “when most Government appointments are subject to the rule of transfer.”

In view of the previous Division Bench order in similar circumstances, the order impugned herein, which has refused to grant an ad interim stay, cannot be interfered with.

The order dated August 17, 2020, made at the interlocutory stage of the proceedings, recorded that the observations there were tentative. In view of such recording, all points can be urged by the present writ petitioner and others similarly placed in course of the final hearing of the writ petitions. At the interlocutory stage, at least in an appeal arising out of the refusal of an ad interim order upon noticing the order of August 17, 2020, there is little room to manoeuvre or provide any cheer to the appellant herein.

APO No.104 of 2020 along with interim application therein are disposed of with a request to the Single Bench to take up the hearing of the writ petition unfettered by the observations contained in the August 17, 2020 order, since

such order clarified that such observations were tentative and only for the purpose of the interlocutory appeals.

There will be no order as to costs.

The time to file the affidavits in opposition to the writ petition stands extended by a week from today; reply thereto, if any, may be filed within three days thereafter.

It is made clear that the appellant's joining the new post will be without prejudice to her rights and contentions in the writ petition and subject to the result thereof.

Urgent certified photostat copies of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

(ARIJIT BANERJEE, J.)

S. Kumar