

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Abhijit Gangopadhyay

**WPA 18647 of 2021
Tapan Kumar Patra
-versus-
The State of W. B. & Ors.**

For the petitioner

**: Mr. Shamim-ul Bari
Miss Molly Saha**

For the State

**: Mr. Anirban Ray
Mr. B. P. Vaisya
Mr. Supriyo Chattopadhyay
Mr. M. K. Biswas**

For W. B. B. S. E.

: Ms. Koyeli Bhattacharya

Heard On

**: 02.02.2022, 24.02.2022,
02.03.2022 & 09.03.2022**

Judgment On

: 10.03.2022

Abhijit Gangopadhyay, J.:

1. This is a case filed by the petitioner for transfer to some other school nearer to his residence.

2. In this matter a report of the Commissioner of School Education, W. B. has been filed wherein it has been stated that nearer to the residence of the

petitioner only one school, namely, Chuadanga High School is closest institution at present. The petitioner cannot be accommodated in Colonelgola Sri Narayan Vidyabhaban Boys's High School (HS) as there was no vacancy in the subject Mathematics (Hons.)P.G. in the said school since 21.09.2021.

3. The background of the case is that the petitioner prayed for transfer on medical ground for which the School Service Commission wanted to know the name of schools within the jurisdiction of the concerned District Inspector of Schools and the said District Inspector of Schools by his letter dated 12.11.2020 intimated the Commission that there was a vacancy in the subject in Colonelgola Sri Narayan Vidyabhaban Boys's High School (HS). The petitioner wanted his transfer to this school.

4. By such naming of the school, the petitioner has not been bestowed with any right in respect of the vacancy in the said school. No authority said that the petitioner would be transferred to Colonegola School. A mere communication between two authorities, when there is no positive act on the part of any of the authorities in favour of the petitioner that the petitioner would be transferred to the school named by one authority, cannot create any right in favour of the person seeking transfer. For creation of right in favour of a party a clear unequivocal positive act is to be done by one party in favour of the other. Here, in this case no such clear, unequivocal, positive act of any of the authorities is found in favour of the petitioner.

5. This writ application was filed on 7th October, 2021 when the system of Utsasree Portal was in vogue for transfer of teachers. Therefore, there cannot be any parallel system for transfer of teachers which will be run by this court

even if a school was named by the District Inspector of Schools to the School Service Commission.

6. As no right has been created in favour of the petitioner by naming of the said school by the concerned District Inspector of Schools and as the petitioner is not willing to get his transfer to Chuadanga High School as given in the report of the commissioner of the School Education after hearing the parties, I do not find any merit in this writ application for adjudication and the writ application is dismissed.

7. Mr. Chattopadhyay, learned advocate for the State has indicated that the vacancy in Colonelgola Sri Narayan Vidyabhaban Boys's High School (HS) was filled up even before filing of the writ application. The vacancy was filled up on 17th September, 2021 and the writ application was filed on 7th October, 2021.

However, the petitioner shall have the liberty for taking the benefit of Utsasree Portal.

No costs.

(Abhijit Gangopadhyay, J.)