

21.02.2022

Court : CJB-01
Item : 01
Matter : MAT
Status : DO
Transcriber: nandy

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT
JALPAIGURI**

**MAT 8 of 2022
with
CAN 1 of 2022**

Ziarul Rahaman
Vs.
The State of West Bengal & Ors.

**Mr. Saktipada Jana, Advocate
Mr. Subhajyoti Das, Advocate**

.....for the Appellant

**Mr. Hirak Barman, Advocate
Ms. Bedasruti Bose, Advocate**

.....for the Respondent No. 2

**Dr. Sutanu Kumar Patra, Advocate
Mr. Supriya Dubey, Advocate**

.....for the WBSSC

Ms. Koyeli Bhattacharya, Advocate

.....for the WBBSE

Sufficient time was given to the School Service Commission to disclose the details as to why the appellant was not provided the posting in the first preference uploaded at the time of making online application.

Dr. Patra, learned Advocate, appearing for the School Service Commission, submits that the online portal is managed and controlled by the Education Department and the data which was sent to the School Service Commission for recommendation, could not be saved nor kept with them. However, he prays for further time to collate the documents concerning the present disputes.

It a matter of concern that the Commission despite having conferred an authority and power to recommend the names of the teacher to be posted to a transferred post, has acted in a lackadaisical manner and a plea is sought to be made that they do not keep any documents with them. It is improbable and unbelievable that the School Service Commission after assimilating of the documents, sent to them, for the purpose of making recommendation has not kept the documents in their custody at least, after sufficient time having given in terms of the order dated February 4 2022, nothing has been disclosed today.

The Board says that they have no role to play prior to the stage of recommendation. The role is activated the moment the recommendation is made by the Commission and the order of appointment is issued by the Board.

In view of such stand taken before us, we decided to proceed with the matter. A dispute concerning the transfer has been unnecessarily lingered by passing the buck from one authority to another. During the pandemic, the Department of Education proceeded to launch an online portal for transfer of the teachers from one School to another. The applications are to be uploaded in compliance with the parameters having set forth in

the Rule and it is undeniable that preference is sought from the aspirants which, in fact, has been done in the instant case as well. The dispute arose when the appellant has been transferred to the second preferred School without disclosing or assigning any reason as to why he could not be placed in the first preferred School.

According to the petitioner, no other candidate applied for the said School as first preference to which the appellant opted, yet a lopsided decision has been taken by the Commission recommending the candidature of the appellant to the second preferred School. The manner in which the shelter is sought to be taken by the School Service Commission gives a strong sense in our mind that something is sought to be hidden and not to be made patent as it may have some ramifications. The moment the preference is sought from the aspirants, ordinarily the first preference shall be the first criteria unless somebody who is otherwise more eligible than the aspirants choosing the same School as his preference.

Nothing is forthcoming before us which may justify the action of the School Service Commission in recommending the appellant to the second preferred School in place and stead of the first preferred School and it may be a case of cherry

picking, nepotism and favouritism and such presumption cannot be ruled out in view of the stand of the Commission, taken before us.

The single Bench has dismissed the writ-petition solely on the ground that transfer is one of the basic ingredients of service and a person engaged in Government service may be transferred to any place as per the choice of his employer. To our mind, once a procedure for transfer has been provided in the Rule and online portal launched in this regard requires the preference to be given, such modalities cannot be said to be an idle exercise but creates right into an applicant to know the reason why he has not been chosen for first preference. Had it been a case that a routine or regular transfer by the nodal employee for better administration as well as larger interest of the students, the position would have been different. Such being not a case, as the transfer is regulated, guided and controlled by a statutory regulation/rule, the authorities cannot travel beyond the circumference of the said statutory domain and must act strictly within the precincts thereof. Inviting the preference from the aspiring candidates is intended to bring the entire decision in fair, transparent as opposed to arbitrary, capricious and favouritism.

We thus do not find any justification in the

conduct of the Commission in recommending the candidature of the appellant to a second preferred School when there was no difficulty in recommending the appellant to a first preferred School.

Accordingly, the order impugned is **set aside**.

The Commission is directed to issue a recommendation in favour of the appellant to the first preferred School within two weeks from date. Correspondingly, the Board is directed to issue a letter of appointment to the appellant within a week from the date of receipt of such recommendation.

In order to comply the directions made hereinabove, the Commission and the Board are directed to take immediate steps.

The appeal being **MAT 8 of 2022** is **disposed of**. The connected application being **CAN 1 of 2022** also stands **disposed of**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

