

**CALCUTTA HIGH COURT IN THE CIRCUIT BENCH
AT JALPAIGURI**

**2
12.05.2022
adeb**

WPA 1008 of 2022

**Smt. Smita Tarafder
Vs.
The State of West Bengal & Ors.**

**Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Ms. Suman Sehanabis (Mandal)
...for the petitioner**

**Mr. Amalesh Roy
....for the respondent nos. 8 to 10**

**Mr. Bikramaditya Ghosh
Mr. Pretom Das
...for the State**

**Mr. Kunaljit Bhattacharya
..for the Respondent no. 11**

Affidavit-of-service filed in Court today is kept
with the record.

This writ petition pertains to the order of the
appellate authority dated 20th April, 2022 passed on
the appeal preferred by the petitioner pursuant to
leave granted by the coordinate Bench in the writ
petition being WPA 7 of 2020 vide order dated 9th
March, 2022.

By the said order dated 9th March, 2022,
coordinate Bench disposed of the previous writ
petition being WPA 7 of 2020. The petitioner being
aggrieved by the order of the appellate authority
dated 20th April, 2022, has assailed the same by
presenting this writ petition.

The issue relates to transfer of the petitioner from one primary school having surplus teacher to another primary school which requires new teachers in the District of Cooch Behar. Transfer order was issued on 18th December, 2019 whereby petitioner was transferred from the present school, namely, Sishu Siksha Niketan Veksir Danga Primary School to Hemkumari Bajejama newly set up Primary School on administrative ground and in the interest of public service and primary education. Such order of transfer dated 18th December, 2019 was put under challenge in the previous writ petition being WPA 7 of 2020 and the coordinate Bench while allowing the previous writ petition, granted leave to the petitioner to prefer statutory appeal before the appellate authority in terms of the relevant provisions of the statute.

Pursuant to such order dated 9th March, 2022, appeal was preferred by the petitioner and the same stood disposed of vide order dated 20th April, 2022 by the appellate authority. The grievance of the petitioner is without giving adequate reasons in support of the conclusion arrived at by the said appellate authority, the appeal was disposed of.

It has further been submitted on behalf of the petitioner that no opportunity of hearing has been afforded to the petitioner before disposing of the said

appeal. On query of this Court it has been replied by the petitioner that till date the said order of transfer dated 18th December, 2019 has not been given effect to.

Mr. Bikramaditya Ghosh, learned advocate appears on behalf of the West Bengal Board of Primary Education and has defended the order of the said appellate authority dated 20th April, 2022. Mr. Ghosh has placed reliance on the relevant part of the order of the coordinate Bench dated 9th March, 2022 whereby it has been observed by the coordinate Bench that the order of transfer was not found to be mala fide or there was no arbitrariness in passing the order of transfer. According to the concerned respondent authorities in view of such observation as contained in the order of the coordinate Bench, the appeal was decided accordingly, against the petitioner.

This Court has heard the learned advocates representing the parties and perused the impugned order passed by the appellate authority dated 20th April, 2022.

On looking at the said impugned order of the appellate authority it appears that the order is cryptic which demonstrates non-application of mind. In terms of the previous order of the coordinate Bench notwithstanding the observation made

regarding mala fide and arbitrariness of the said order of transfer, the appellate authority was required to apply its mind independently on the anvil of relevant provision of the statute. When the coordinate Bench has relegated the issue of transfer to the appellate authority, it ought to be construed that appellate authority is required to apply its mind while deciding the appeal.

The purport of the order dated 9th March, 2022 of the coordinate Bench ought not to be construed in a manner which has restrained the appellate authority in deciding the appeal in accordance with law.

In view of above discussion, the order of the appellate authority dated 20th April, 2022 stands set aside and the said appellate authority is directed to rehear the appeal and dispose of the same within a period of 8 (eight) weeks from the date of communication of this order after granting an opportunity of hearing to the petitioner and other interested parties. If required, appellate authority for the sake of effective disposal of the appeal, may grant opportunity to the petitioner to file further pleadings before the said appellate authority in addition to the appeal which has already been filed.

The interim order passed previously on 13th January, 2020 on the writ petition being WPA 7 of

2020 which continued till disposal of the appeal on 20th April, 2022 stands extended till 1 (one) week after communication of the order of the appellate authority.

With the above direction, writ petition stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)