

Item No.3

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 22.02.2023

DELIVERED ON:22.02.2023

CORAM:

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 2601 of 2018

**Sri Ashok Kumar Roy.
Vs.**

The State of West Bengal & Ors.

Appearance:-

**Mr. Sakti Pada Jana,
Mr. Subhajyoti Das**

..... for the Petitioner.

**Mr. Rabindranath Pal,
Mr. Koustava Ratan Chatterjee**

..... for the Jalpaiguri District Primary School Council.

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. This writ petition is at the instance of an Assistant Teacher of Nekipara Primary School under Sadar West Circle praying for setting aside the transfer order issued vide Memo No.1135 dated October 1, 2015 along with Corrigendum issued vide

Memo No.1406-1(5) dated December 16, 2015 and to allow the petitioner to discharge his duty as head teacher at Lalbazar Para Special Cadre Primary School.

2. The case of the petitioner is that while he was performing his duties as the head teacher in Lalbazar Para Special Cadre Primary School, Jalpaiguri, he was transferred to Nekipara Primary School under Sadar West Circle with a direction to join at the transferred school as an Assistant Teacher of the said school.

3. Mr. Jana, learned Advocate appearing for the petitioner, submits that the petitioner cannot be posted as an Assistant Teacher with lower scale when he was discharging his duties as Head Teacher with higher scale of pay consequent upon an order of transfer being issued without initiating any disciplinary proceeding against him.

4. Learned Advocate representing the Jalpaiguri Primary School Council submits that the authorities have not initiated any disciplinary proceedings against the writ petitioner. Mr. Pal, however, submits that though no disciplinary proceeding has been initiated against the petitioner but a show cause notice was issued to the petitioner.

5. Heard the learned advocates for the parties and perused the materials placed.

6. It is not in dispute that the petitioner was performing his duties as Head Teacher in Lalbazar Para Special Cadre Primary School, Jalpaiguri with effect from August 30, 2011. However, the petitioner was transferred to Nekipara Primary School under Sadar West Circle by an order dated October 1, 2015 with a direction upon the writ petitioner to join as a Teacher at the said school within 15 days. A Corrigendum was issued on December 16, 2015 wherein the designation of the petitioner at Nekipara Primary School under Sadar West Circle was stated to be that of an Assistant Teacher. It was further stated therein that the petitioner will draw the pay scale of an Assistant Teacher. It is not in dispute that the petitioner joined Nekipara Primary School under Sadar West Circle on October 15, 2015. The petitioner submitted several representations before the respondent authorities raising his objection against the decision to transfer him to another school as an Assistant Teacher when he was performing the duties of a Head Teacher of Lalbazar Para Special Cadre Primary School, Jalpaiguri. Though several representations were submitted by the petitioner but the

respondent authorities did not even care to respond to any of such representations.

7. This writ petition was filed in the year 2018 and the parties were directed to exchange affidavits within a stipulated time. However, no affidavit-in-opposition has been filed by the respondents till date.

8. From the transfer order dated October 1, 2015 it appears that the petitioner was instructed to join as an Assistant Teacher at Nekipara Primary School since there were allegations against him that he is disturbing the normal school procedure.

9. If there were allegations against the petitioner the competent authority ought to have taken steps for initiating disciplinary proceedings against the petitioner which course has not been adopted in the instant case. On the contrary, the petitioner was transferred as an Assistant Teacher to another school. The effect of such transfer order is that the petitioner was deprived of his status, pay scale and other benefits which he was enjoying prior to the order of transfer.

10. The said transfer order itself amounts to inflicting punishment upon the petitioner without complying with the

principles of natural justice and therefore, is a *mala fide* one. Issuance of a show cause notice when the same was not carried further to its logical end does not also have any impact on the aforesaid observation of this Court.

11. Upon a query made by the Court, as to whether the post of Head Teacher in Lalbazar Para Special Cadre Primary School, Jalpaiguri is still lying vacant or not, Mr. Jana submits that the post of Head Teacher at Lalbazar Para Special Cadre Primary School, Jalpaiguri is still lying vacant.

12. For such reason, this Court is of the considered view that the transfer order dated October 1, 2015 and the Corrigendum issued on December 16, 2015 are liable to be set aside and quashed and a direction is to be passed upon the authority to pass consequential orders. The writ petition, accordingly, stands allowed. The transfer order issued vide Memo No.1135 dated October 1, 2015 and the Corrigendum issued vide Memo No.1406-1(5) dated December 16, 2015 are accordingly set aside and quashed. Consequently, the status of the petitioner as Head Teacher stands restored. The Chairman, District Primary School Council, Jalpaiguri is directed to issue an order pursuant to this judgment and order giving reasonable time to the petitioner to join Lalbazar Para Special Cadre Primary School, Jalpaiguri

as Head Teacher. However, such order is to be issued by the Chairman, District Primary School Council, Jalpaiguri as expeditiously as possible but positively within a period of one week from the date of communication of this judgment and order and the same shall be communicated to the authorities of Lalbazar Para Special Cadre Primary School. Immediately after the petitioner joins Lalbazar Para Special Cadre Primary School, Jalpaiguri as a Head Teacher of the said school, the Sub-Inspector of Schools, Sadar West Circle, Jalpaiguri being the respondent no.4 shall re-fix the salary of the petitioner by taking into consideration the fact that the transfer order dated October 1, 2015 has already been quashed by this Court and the petitioner shall be entitled to all pay, allowances, increments, emoluments, etc and all other consequential benefits by treating the petitioner as a Head Teacher of a primary school. Such fixation is to be made and all consequential steps be taken within a period of six weeks from the date of joining Lalbazar Para Special Cadre Primary School, Jalpaiguri as a Head Teacher. The petitioner shall be obliged to communicate this judgment and order along with the date of joining as a Head Teacher at Lalbazar Para Special Cadre Primary School, Jalpaiguri to the respondent no.4.

13. There shall be, however, no order as to costs.

14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)