

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction
Appellate Side**

WPA 664 of 2021

**Bijan Dey
-versus-
State of West Bengal and Ors.**

Mr. Jagriti Mishra
Mr. D.K. Agarwal
Mr. Subham Gupta
Mr. Debayan Goswami
Mr. Reshab Kumar
Mr. Rajkumar Mitra
Ms. Ananya Bhattacharya
Ms. Mrinmoyee Das

... for the petitioner.

Mr. Bikramaditya Ghosh
Mr. Momenur Rahman

... for the State.

Mr. Amalesh Roy

... for the respondent nos. 3 and 4.

The petitioner has filed the present writ application challenging the order of transfer dated 28th February, 2020 wherein the petitioner was transferred from Establishment Section (Central Despatch), Uttar Banga Krishi Viswavidyalaya, Pundibari, Cooch Behar to Regional Research Sub-Station Hill Zone (under Regional Research Station, Hill Zone), Pedong, Kalimpong.

Counsel for the petitioner submits that by an order dated 29th October, 2014, the petitioner was appointed as Junior Peon under category OBC-B. On

10th February, 2020 a memorandum was issued against the petitioner on the allegation that on 6th February, 2020 at about 2:00 p.m. the petitioner being the Junior Peon attached to Registrar's Section misbehaved with the Registrar resulting in insubordination. On receipt of the said memorandum, the petitioner has submitted his reply denying the allegation. On receipt of the reply, the respondents have not initiated any action against the petitioner, instead, the impugned order of transfer is passed.

Learned counsel for the petitioner submits that the impugned order of transfer is issued by way of punishment and also in violation of the provisions of Section 176 (1) (2) (3) of the Uttar Banga Krishi Viswavidyalaya Act, 2000. Counsel for the petitioner submits that without the approval of the Executive Council and without considering that the petitioner has not rendered five years consecutive service in the present place of posting, the impugned order of transfer is issued.

By referring the said provision, the counsel for the petitioner prays for setting aside the impugned order of transfer.

Per contra, learned counsel representing the respondent authorities submits that though a memorandum was issued and the petitioner has submitted his reply and no enquiry has been initiated

but the authorities do not want to continue the petitioner in the same place of posting against whom there is a complaint, it would only be a case of motive and the order cannot be said to be bad, it cannot be termed as punishment transfer. The counsel for the respondent authorities submits that the transfer is the incidents of service and the same cannot be challenged before the Court of law and in the appointment order under clause (d) the petitioner has accepted that he shall serve anywhere in West Bengal and accordingly, the petitioner has been transferred to Kalimpong.

Considered the rival submission of the respective parties. Perused the materials on record.

Admittedly there is no policy of transfer and the petitioner is governed under the Uttar Banga Krishi Viswavidyalaya Act, 2000. The respondent authorities have not produced any documents to prove that the order of transfer of the petitioner has been issued with the approval of the Executive Council. From the record it is also proved that the petitioner has not completed continuous service of five years in the present place of posting. Accordingly, this Court is of the view that the respondent authorities have issued the impugned order in violation of Section 176 (1) (2) (3) of the Uttar Banga Krishi Viswavidyalaya Act, 2000. Accordingly, the impugned

order dated 28th February, 2020 only with respect of the transfer of the petitioner is set aside.

WPA No. 664 of 2020 is thus disposed of.

(Krishna Rao, J.)