

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1217 of 2015

West Bengal Regional School Service Commission,
South Eastern Region & Anr.

Vs.
Susmita Sarkar & Ors.

Dr. Sutanu Kumar Patra
Ms. Surpiya Debey

... For the appellants

1. Despite service, there is no representation on behalf of the writ petitioner/respondent.

2. The instant appeal is at the behest of the School Service Commission assailing the order dated 17th December, 2013 by which the Single Bench directed the appellants to recommend the name of the writ petitioner in the vacancy available in Sodhpur, Barrackpur, Sinthi, Titagarh and Dum Dum, North 24-Parganas, within commutable distance from the residence in specified time. The writ petition was filed by the writ petitioner/respondent seeking a Mandamus upon the authorities to recommend and appoint her to the post of Assistant Teacher of English in any school within the aforesaid place.

2. Obviously, in a 12th Regional Level Selection Test (AT), 2011, the writ petitioner/respondent was declared as a successful candidate and her name was also included in

the panel. The appellant recommended her name to be appointed in Sreepally Priyanath High School situated in Barrackpore, North 24-Parganas, but instead of joining at the said post, the writ petition was filed on the ground that the said school is located at the far-flung place and, therefore, she should be appointed in a school which is in close proximity from her residence.

3. The instant appeal remains pending since 2014 and after a gap of such a long period of time, this Court directed the appellant to disclose in the form of an affidavit whether the writ petitioner/respondent has joined the said school as recommended and discharging her duties in such capacity or not.

4. The report filed today reveals that the writ petitioner never joined the said post nor there is any teacher in the name of the petitioner discharging duties as an Assistant Teacher in English subject in the said school.

5. It is beyond cavil of doubt that the Court without any justifiable reason should not ordinarily interfere with the decision of the authorities in placement and posting of the teachers in a particular school. The appellant is entrusted not only to conduct the selection test for filling up the vacancies in different schools within its region but also to recommend the posting and placement of the successful candidates in a school where the vacancy has arisen. Unless such decision is found to be tainted with malice and not in conformity with the powers conferred by

the statute, the Court should be slow and circumspect in interfering with such discretion exercised by the statutory authority. There is no provisions in the statute mandating the posting to be done near the residence as the authority is free to take a decision obviously in a reasonable manner to recommend the posting in a school where the expertise of the teacher can be effectively and efficiently utilized. The Court should not usurp the power of the recommending authority in issuing a Mandamus to post the teacher in a school situated in a particular area without any cogent reasons warranting such extreme orders to be passed in exercise of power of judicial review. Despite the recommendation having made, the writ petitioner did not join the school which inculcate in our mind that she is not interested in such appointment and, therefore, we feel that the order needs interference.

6. Apart from the above, after declaration of the result, the counselling process was activated. Each successful candidate has given a choice of school and in the instant case, her appointment was made to a school of her choice and, therefore, it is improbable that she would retract from her earlier stand and approach the writ Court for issuance of a Writ of Mandamus commanding the respondents to make a recommendation to a school near to her residence.

7. In view of the discussion above, the order dated 17th December, 2013 is hereby set aside.

8. The appeal stands allowed.
9. Connected application, if there be any, also stands disposed of.
10. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.
11. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of necessary formalities.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)