

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

Present:

The Hon'ble Justice Aniruddha Roy

WPA 21004 of 2018

Managing Committee of Kamala Girls High School & Ors.

Vs.

The State of West Bengal & Ors.

with

WPA 7948 of 2019

Madhumita Roy

Vs.

The State of West Bengal & Ors.

**For the Petitioner in:
WPA 21004 of 2018**

**Mr. Ekramul Bari, Adv.,
Mr. Siddhartha Sankar Mandal, Adv.,
Sk. Imtiaz Uddin, Adv.**

**For the Petitioner in:
WPA 7948 of 2019 &
Respondent no.12 in
WPA 21004 of 2018**

**Mr. Biswaroop Bhattacharyya, Adv.,
Mr. Victor Chatterjee, Adv.,
Mr. Saqib Siddiqui, Adv.**

**For the Respondent:
Nos.1 and 5/State in
WPA 21004 of 2018**

**Mr. Bhaskar Prasad Vaisya, Adv.,
Mr. Suman Dey, Adv.**

**For the State in:
WPA 7948 of 2019**

**Mr. Sirsanya Bandyopadhyay, Adv.,
Mr. Subhendu Sen Gupta, Adv.**

**For the Respondent:
Nos.4,8,9 &10/WBBSE**

Ms. Koyeli Bhattacharyya, Adv.

**For the Respondent:
No.11/WBCSSC in
both writ petitions**

Mr. Kanak Kiran Bandyopadhyay, Adv.

**For the Respondent:
No.13 in WPA 21004
of 2018 And For the
Respondent Nos. 20
to 22 in WPA 7948 of 2019**

**Mr. Jayanta Narayan Mahanti, Adv.,
Ms. Kakali Dutta, Adv.**

Reserved on: 11.03.2024

Judgment on: 23.04.2024

ANIRUDDHA ROY, J.:

1. Two writ petitions.
2. **WPA 21004 of 2018** (for short, **School's writ petition**) was filed by the Managing Committee of **Kamala Girls High School** (for short, Kamala Girls) challenging the recommendation for transfer of the respondent no.12 therein, namely, **Smt. Madhumita Roy** (for short, the **teacher**) dated **January 11, 2017** issued by the respondent no.11 (for short, the **School Service Commission**), **Annexure P-1 at page 51** to the school's writ petition and the order/direction dated **June 26, 2018** passed by the respondent no.8 (for short, the **Board**) directing to give effect the said transfer, **Annexure P-11 at page 116** to the school's writ petition and the impugned communication dated April 21, 2017.
3. **WPA 7948 of 2019** is the writ petition filed by the said **teacher** (for short, **teacher's writ petition**) for implementation of the said transfer order dated **June 26, 2018** whereunder the teacher was recommended for transfer and was transferred to Kamala Girls High School.

4. Since the issues both on facts and law are interconnected and the subject school is the same in both the said two writ petitions, the parties agreed to proceed principally in **WPA 21004 of 2018** and on the basis of the records therein. However, the parties have also referred to the records from **WPA 7948 of 2019** wherever it was necessary. The parties, therefore, have agreed that both these writ petitions can be taken up together for final consideration by a composite judgment.
5. Accordingly, this Court proceeds to dispose of both the said writ petitions through this composite judgment.

Facts:

6. The teacher was selected for the post of Headmistress under the relevant Regional Level Selection Test conducted by the School Service Commission in **2009**.
7. On **April 9, 2010** the teacher was recommended by the **West Bengal Regional School Service Commission** (for short, the **Regional School Service Commission**) for appointment as Headmistress at one **Sahachari Behari Vidyapith (Higher Secondary)** (for short, **Sahachari**). She joined the said school on **May 1, 2010** as Headmistress. Her employment was approved by the Jurisdictional District Inspector of Schools (for short, Jurisdictional D.I.) on **August 25, 2010**.
8. On April 5, 2013 the teacher while on her way to school alleged to have been physically assaulted by a group of people in order to spoil a Managing Committee meeting scheduled to be held on that day. On being so informed,

the local police authority rescued her and she was medically treated. On **April 4, 2013** the petitioner submitted an **application for transfer** before the Secretary, School Education Department as she had allegedly a life threat according to her. On **April 17, 2013** the Commissioner, School Education Department issued the direction upon the petitioner to attend the Office of the Jurisdictional D.I. temporarily and to record her appearance w.e.f. **April 18, 2013**. The concerned D.I. was directed to search out a suitable vacancy for her. On **June 18, 2013** a government order was issued allowing the **transfer** of the petitioner from **Sahachari** to one **Joka Brathachari Vdiyasram Girls' High School** (for short, **Joka Brathachari**) as Headmistress, with a direction that the period from April 05, 2013 till her date of joining at Joka Brathachari Vdiyasram Girls' High School may be considered as **On Duty**. On receiving report from the concerned D.I. on the basis of the government order, on **June 20, 2013** a transfer order was issued by the Commissioner of School Education to the Jurisdictional D.I. transferring the petitioner to Joka Brathachari Vdiyasram Girls' High School. To give effect to the said government order dated June 18, 2013, a communication dated June 25, 2013 was issued by the Jurisdictional D.I. to the Secretary of the Managing Committee of Joka Brathachari Vdiyasram Girls' High School to take necessary step for joining of the petitioner at the said school. On **June 26, 2013** the joining letter written by the petitioner was accepted by the Secretary of the Managing Committee of the said Joka Brathachari Vdiyasram Girls' High School. On July 2, 2013 a newspaper article was published which according to the teacher was a total

misrepresentation of facts. The teacher immediately by a letter dated July 4, 2013 submitted a representation before the Jurisdictional D.I. with a copy to the Secretary School Education Department, Commissioner of School Education Department and President West Bengal Board of Secondary Education complaining about the situation.

9. On **July 11, 2013** a letter was issued by the Secretary of the Managing Committee of the Joka Brathachari Vdiyasram Girls' High School to the teacher asking her not to attend Joka Brathachari Vdiyasram Girls' High School as she was allowed to join the school as her appointment/transfer was de horse the rules and regulations, **Annexure P-6 at page 83** to the teacher's writ petition. Challenging the said transfer Joka Brathachari Vdiyasram Girls' High School moved a writ petition being **WP No. 21936 (W) of 2013**, inter alia, praying for quashing of the said transfer order issued in favour of the teacher. On **July 30, 2013, Annexure P-7 at page 84** to the teacher's writ petition a coordinate bench upon prima facie satisfaction passed an interim order staying the said transfer of the petitioner to Joka Brathachari Vdiyasram Girls' High School. This Court is informed by the Learned Counsel appearing for the teacher that the said writ petition is still pending.
10. On **November 17, 2014** the Jurisdictional D.I. issued another order whereunder the teacher was released from attending the Office of the D.I. On and from **April 17, 2014** the teacher was directed to join **Kankhuli Girls' High School** (for short, **Kankhuli Girls'**) as Headmistress, **Annexure P-9 at page 109** to the teacher's writ petition. By a communication dated **November 17,**

2014 the Jurisdictional D.I. directed Kankhuli Girls' to take necessary steps to enable the teacher to join the school as Headmistress, **Annexure P-9 at page 110** to the teacher's writ petition. On **November 17, 2014** immediately Kankhuli Girls' issued the appointment letter in favour of the petitioner, **Annexure P-9 at page 111** to the teacher's writ petition. On **November 18, 2014** the teacher joined Kankhuli Girls' as Headmistress. On **December 31, 2014** necessary approval for appointment of the teacher as Headmistress at Kankhuli Girls' was issued by the Jurisdictional D.I. and the period of absence of the teacher between **April 5, 2013** and **November 17, 2014** was treated as **On Duty**.

11. On **August 20, 2015** a meeting of the Managing Committee of Kankhuli Girls' was scheduled. The teacher went to the meeting when an unruly mob being instigated by the some teaching and non teaching staff entered Office of the Headmistress, broke the furniture, torn out the telephone connection and uttered filthy language towards the teacher. The teacher contends that the police force from the Jurisdictional Police Station rescued the teacher. On August 24, 2015 the teacher submitted a complaint along with one member of Kankhuli Girls' before the Jurisdictional D.I., 24 parganas (South). On August 27, 2015 the teacher submitted another representation before the Jurisdictional D.I.
12. The teacher then on **January 5, 2016** submitted an application before the Principal Secretary, School Education Department praying for **transfer** from **Kankhuli Girls'** as Headmistress, since her security was at stake, **Annexure P-**

14 at page 159 to the teacher's writ petition. On and from November 01, 2016 the salary of the petitioner was stopped. On **December 14, 2016** on the basis of the said transfer application dated January 5, 2016, a letter was issued by the School Education Department whereunder the said transfer application submitted by the teacher was forwarded to the **West Bengal Central School Service Commission**, (for short, the **Central School Service Commission**) **Annexure P-15 at page 160** to the teacher's writ petition. On **June 9, 2017** the **transfer order** was issued by the Central School Service Commission directing the Jurisdictional Inspector of Schools (SE), Kolkata to take necessary steps for issuing the release order in favour of the petitioner from Kankhuli Girls' and to take step for issuance of appointment letter in favour of the petitioner at Kamala Girls'. Consequently, on **January 11, 2017** the Central School Service Commission issued the **recommendation for transfer** of the teacher for the post of Headmistress **from Kankhuli Girls' to Kamala Girls'**, **Annexure P-16 at page 161** to the teachers' writ petition. On **February 8, 2017** a communication was issued by the Commissioner of School Education, **Annexure P-17 at page 162** to the teacher's writ petition, directing the President of the Managing Committee of Kamala to give effect to the transfer of the teacher. On March 27, 2017 a further letter was issued from the Office of the Commissioner of School Education Department directing the Managing Committee of the Kamala Girl's to appoint the teacher as Headmistress of the School. On **April 20, 2017** the petitioner received a letter from Kankhuli Girls whereunder she was released from the school **w.e.f. March 15, 2017**. The

petitioner immediately on **April 21, 2017** sent a letter to Kamala Girls to issue appointment letter in her favour. The petitioner on May 17, 2017 submitted a representation before the Principal Secretary, School Education Department for taking necessary measures for issuance of appointment letter in her favour by Kamala Girls and for an interim arrangement for paying her salary.

13. On August 17, 2017 a hearing took place before the Joint Director, School Education Department to settle the issue. On April 25, 2018 an application was submitted by the petitioner before the Principal Secretary, State of West Bengal seeking remedy of the situation.
14. On June 18, 2018 a notice was issued regarding holding an **emergency meeting** of the **Ad Hoc committee** of the Board.
15. On **June 26, 2018** a decision was taken by the **Ad Hoc committee** in this said emergency meeting when the Managing Committee of Kamala Girls was directed to take immediate action for issuance of appointment letter in favour of the teacher as Headmistress within a period of 7 days and it was further mentioned that if the school fails, then the Board shall take necessary steps, **Annexure P-21 at page 205** to the teacher's writ petition.
16. The Ad Hoc committee further directed Kankhuli Girls to reinstate the teacher immediately and to regularize her salary considering the period of absence as **"spent on duty"**. Kankhuli Girls was further directed to release the teacher as and when she would pray for the same after getting appointment in her favour at Kamala Girls.

17. On **June 26, 2018** the teacher received a communication issued by the Deputy Secretary Administration, Government of West Bengal when the teacher was asked to immediately contact the Managing Committee of Kankhuli Girls for implementation of the said decision of the Ad Hoc committee. By a communication dated **June 28, 2018, Annexure P-22 at page 207** to the teachers writ petition, Kankhuli asked the petitioner to join the school as Headmistress as per the decision of the Ad Hoc committee dated June 26, 2018.
18. According to the teacher one Abu Saleh Mufti and one Prasanta Mondal members of the Managing Committee of the Kankhuli Girls on June 28, 2018 and June 30, 2018 informed the teacher that she might be physically assaulted, if she joins Kankhuli Girls' as Headmistress. On July 2, 2018 the teacher waited at the Office of the Jurisdictional D.I. to join Kankhuli Girls as Headmistress. On July 3, 2018 the petitioner made a representation before the President of the Board narrating the reasons for her not joining Kankhuli Girls, **Annexure P-23 at page 208** to the teacher's writ petition. On July 8, 2018 the teacher by a communication sought assistance before the jurisdictional police station to enable her to join Kankhuli Girls as Headmistress, **Annexure P-24 at page 211** to the teacher's writ petition.
19. In the above facts, the Managing Committee of the Kamala Girls filed the said **WPA 21004 of 2018** with the following reliefs:

"a. Leave be granted to your petitioners to move this application as ex-parte under Rule 26 of the Appellate Side Rules and the same may be dispensed with;

b. A Writ of or in the nature of Mandamus be issued by quashing and/or setting aside the impugned order passed by the West Bengal Board of Secondary Education on June 26, 2018, recommendation issued by the West Bengal Central School Service Commission 51 January 11, 2017, dated January communication dated April 21, 2017, memorandum no.178-GA dated February 08, 2017 and memorandum no. 1284-SE/S/1S-23/16(Pt-VIII) dated December 14, 2016 and not to give any effect and/or further effect of the same and further direct the concerned respondent authorities and their men/agents/Subordinates not to furtherance forthwith;

c. A Writ of and/or in the nature of prohibition be issued by restraining the respondent no.12 herein to join the Kamala Girls High School and to claim any further service benefits from the petitioner forthwith;

d. A Writ of and/or in the nature issued of mandamus by directing concerned respondent be the no.4,5,8,9,10,11 herein not to give effect to the transfer of the respondent no. 12 to the Kamala Girls High School and not to act in furtherance of the impugned order passed by the West Bengal Board of Secondary Education on June 26, 2018, recommendation issued by the West Bengal Central School Service Commission dated January 11, 2017, communication dated April 21, 2017, memorandum issued vide no. 257/Gen dated January 30, 2017, memorandum no. 178- GA dated February 08, 2017 and memorandum no. 1284- SE/S/1S-23/16(Pt-VIII) dated December 14, 2016 forthwith;

e. A Writ of and/or in the nature commanding respondent of Mandamus concerned authorities particularly respondents 4,5,8,9,10,11 herein to send and/or transfer any other suitable incumbent replacing the respondent no. 12 herein to the Kamala Girls High School forthwith;

f. A Writ of and/or in the of Mandamus concerned authorities nature commanding respondent particularly respondents no. 1, 2 and 3 herein to cause an investigation and conduct detailed enquiry upon a the the conduct and service records of the respondent no. 12 and take a decision and consequentially pass a reasoned order in presence of the necessary parties and take action in accordance with law forthwith;

g. A Writ of and/or in the nature of commanding the respondent Mandamus concerned authorities particularly respondents no.4,5,8,9,10,11 consider the herein representation and/or

communications and/or written submission made by the concerned school authorities time to time regarding the service and transfer of the respondent no. 12 and pursuant thereto pass reasoned order upon granting an opportunity of fair hearing to all the necessary parties concerned forthwith;

h. A Writ in the nature of Certiorari do issue calling upon the respondents and each of them to certify and transmit to this Court the original records of the case before This Hon'ble Court so that conscionable justice may be rendered to the petitioner; i. Rule NISI in terms of prayers (a) to (h) as above;

j. To pass an interim order of injunction by staying the operation of the impugned order dated June 26, 2018 and recommendation dated January 11, 2017 and not to give any effect and further effect to the same and further direct the concerned respondent authorities not to effect the transfer of the respondent no. 12 by July 03, 2018 and thereby not to take any adverse action whatsoever regarding the petitioner school till the disposal of the instant Writ Application forthwith;

k. Cost and other costs incidental thereto;

l. And pass such other further order or order as to your lordship may deem fit and proper”.

20. The teacher has filed the said **WPA 7948 of 2019** praying for implementation of the transfer order and appointment of the petitioner as Headmistress at kamala Girls' with the following prayers:

“(a) A Writ of and/or in the nature of Mandamus do issue commanding the respondents to take necessary steps for implementation of the order issued under memo being No. Admn/273(11) dated 26th June, 2018 by The West Bengal Board of Secondary Education.

(b) A Writ of and/or in the nature of Mandamus do issue commanding the Respondents specifically Respondent Nos. 1, 2, and 3 and the Managing Committee of Kamala Girls' High School to issue the letter of appointment in favour of the writ petitioner as Headmistress of the Kamala Girls High School with retrospective

effect as in the Memo No. Admn. 273(11) dated 26th June, 2018 of the West Bengal Board Of Secondary Education, being annexure "P/21" to the writ petition;

(c) A Writ of and/or in the nature of Mandamus do issue directing the Managing Committee of the Kankhuli Girls' High School to allow the writ petitioner to resume charge as Headmistress as directed by the West Bengal Board of Secondary Education in its memo being No. Admn/273(11) dated 26th June, 2018;

(d) A declaration be made to the effect that the writ petitioner is deemed to be in service on and from 21 August, 2015 till the date of her joining in Kamala Girls' High School;

(e) A Writ of and/or in the nature of Mandamus do issue directing the State respondents to release the salary along with all other allowances in accordance with law in favour of the writ petitioner with effect from November, 2016;

(f) A Writ of and/or in the nature of Mandamus do issue directing the State respondents to grant the continuity of service of the writ petitioner and regularize her leave in accordance with law.

(g) A Writ of and/or in the nature of Declaration do issue declaring that the acts and actions of the Managing Committee of Kamala Girls' High School ultra vires the Constitutional provisions, Recognized Management of Non-Government Institutions (Aided and Unaided) Rules, 1969 and West Bengal Board of Secondary Education Act;

(h) A writ in the nature Prohibition restraining of the respondents from taking any steps or further steps to fill up the post of Headmistress in Kamala Girls High School by any person other than the writ petitioner and also restraining the respondents particularly respondent nos. 13 to 16 from causing any hindrance and/or obstruction in joining of the Writ petitioner as Headmistress in the Kamala Girls High School;

(i) A Writ of and/or in the nature of Certiorari do issue directing the State respondents to produce the entire records of the case forming the basis of the decision, if any, not to release the salary of the petitioner with effect from November, 2016 and also the decision of the Managing Committee of Kamala Girls' High School not to act in accordance with Memo No. 101(2)/ 6693(XII)/ CSSC/ GT/2017, dated 11th January, 2017 issued by the West Bengal Central School Service Commission and Memo No. Admn/273(11)

dated 26th June, 2018 issued by the West Bengal Board of Secondary Education being Annexure "P/21" to this Writ Petition, so that on perusal thereof conscionable justice may be rendered by quashing the same ;

(j) Rule NISI in terms of prayers (a) to (h) above;

(k) An interim Order do issue restraining the respondents from taking any steps or further steps to fill up the post of Headmistress in Kamala Girls' High School by any person other than the writ petitioner and also restraining the respondents particularly respondent nos. 13 to 16 from causing any hindrance and/or obstruction in joining of the Writ petitioner as Headmistress in the Kamala Girls High School till disposal of this Writ Petition;

(l) Ad interim order in terms of prayers (a) to (k) above;

(m) To pass such other or further order or orders as to Your Lordships may deem fit and proper”.

21. In **WPA 21004 of 2018**, the writ petition filed by the school, the following pleadings were filed and exchanged by and between the parties:

- i) Affidavit-in-opposition was filed by respondent no. 1 and 5 therein (the state respondents).
- ii) Affidavit-in-opposition was filed by respondent nos. 4, 8, 9, and 10 therein (the Board).
- iii) Affidavit-in-opposition was filed by respondent no.11 therein (The Central School Service Commission).
- iv) Affidavit-in-opposition was filed by respondent no.12 therein (The teacher).
- v) The Managing Committee of Kamala Girls' filed its affidavit-in-reply.

22. In **WPA 7948 of 2019**, the writ petition filed by the teacher, the following pleadings were filed and exchanged by and between the parties:

- i) Affidavit-in-opposition was filed by respondent nos. 20, 21 and 22 therein (Kankhuli Girls).
- ii) The teacher being the petitioner filed her affidavit in reply.

Submissions on maintainability:

23. Mr. Ekramul Bari learned counsel appearing for the Managing Committee of Kamala Girls makes his composite submission for the writ petitioner in the writ petition filed by the school and on behalf of respondent nos. 13, 14, 15 and 16 in the writ petition filed by the teacher. At the threshold, on the commencement of hearing, this Court has raised the issue as regard the **Locus Standi of the Managing Committee of Kamala Girls to maintain its writ petition** to resist the transfer recommendation in favour of the teacher.
24. Mr. Bari learned counsel in reply to the issue raised by this Court as stated above submits that, the entire administration and affairs of the school which, inter alia, includes imparting of education at the society is supervised and managed primarily by the Managing Committee of the school. If any, irregularity or illegality takes place in running the administration or the affairs of the school in any manner, the primary responsibility vests upon the Managing Committee of the school. It is the responsibility of the Managing Committee of the school to look after and maintain the standard of education imparted by the school in the society at large and failing which, the Managing Committee shall be primarily responsible for not discharging its obligations under the relevant guidelines and rules framed by the State authorities and framed under the statute. The responsibility of the Managing Committee is,

therefore, to resist any act which goes contrary and prejudicial to the interest of the school. Demonstrating the facts from records learned counsel for the Managing Committee of the school submits that the chequered transferred history of the teacher would show that she has never taken any responsibility of the schools as the Headmistress where she was posted from time to time. If such a teacher is posted at Kamala Girls, the same shall cause irreparable prejudice to the interest of the students and the school itself. The managing committee of the school cannot shut its eyes when interest of the students at large is at stake. In such situation the Managing Committee definitely has a right to maintain a writ petition to challenge the recommendation for transfer issued in favour of the petitioner and the writ petition is maintainable.

25. Mr. Bari then referring to **Sub-Rule VIII to Rules 5 and 7 of the Management of Sponsored Institutions (Secondary) Rules, 1972** (for short, the Management Rules) submits that, the composition of Managing Committee of a school statutorily requires guardians' representative. Since guardians' representative is inducted in the Managing Committee of the school, the Managing Committee would definitely have a voice to raise when the interest of the students are likely to be prejudiced and the prestige, dignity and the reputation of the school is also at stake. It is the settled law that a guardian of a student was allowed to maintain a writ petition challenging the recommendation for appointment issued by the Service Commission for the post of Headmaster of a school who was lacking academic qualification for such an appointment. In support of his contention, learned counsel has relied

upon a decision of the Hon'ble Division Bench ***In the matter of: Bimal Barman & Ors. vs. State of West Bengal & Ors., reported at 2008 SCC OnLine Cal 755 = (2009) 2 CHN 442 (DB) = (2009) 2 Cal LT 245.***

26. Mr. Biswaroop Bhattacharyya learned counsel for the teacher submits that when a recommendation for transfer is issued by the appropriate State authority under the law, the school authority has no right to question the same. The ultimate authority before whom the Managing Committee of a school is answerable for managing and running the administration and affair of the school, is the Board. Under the law if the Board is of the opinion that the Managing Committee of a school has failed to discharge its statutory obligations, the Board can supersede the Managing Committee. He submits that Board stands on a higher hierarchy than the Managing Committee of the school. Thus, when the Board has affirmed a decision on the School Service Commission for transfer of teacher at Kamala Girls and the Ad Hoc committee of the Board has affirmed and appointment of the teacher in conformity thereof, the Managing Committee of the school has no legal right to question the same by filing a writ petition. Mr. Bhattacharyya further submits that, the transfer application was submitted by the petitioner before the Principal Secretary of the Education Department and the concerned minister-in-charge of the education department in exercise of his jurisdiction and authority in due process of law, allowed the transfer of the teacher and the minister-in-charge being at the highest hierarchy in the education system of the State, the Managing Committee of the school cannot question the same. The only legal

obligation of the Managing Committee of Kamala Girls is to give effect to the said transfer of the teacher by issuing necessary appointment letter in her favour. While dealing with the said judgment ***In the matter of: Bimal Barman (supra)***, Mr. Bhattacharyya submits that, the distinguishing feature in that case is that the appointment of the candidate for the post of Headmaster was not permitted in law there as the candidate lacked minimum academic qualification required for the appointment for the post of Headmaster and the candidate by practising fraud upon the Service Commission received the appointment. It is not the case here. In the instant case, the teacher had all academic qualification and she had already discharged the function of Headmistress in diverse schools and the transfer order issued in her favour was in conformity with the transfer rules and the law prevailing on the issue by the highest authority of the education department of the State. There is no allegation of fraud against the teacher. The transfer order in the instant case has not been vitiated by law. Therefore, it is the statutory obligation on the part of the Managing Committee of the school to give effect thereto and to issue the appointment letter in favour of the teacher. He submits that the ratio laid down ***In the matter of: Bimal Barman (supra)*** in the fact of this case has no application.

27. In the light of the above, Mr. Bhattacharyya submits the writ petition filed by the Managing Committee should be dismissed in limine, as the Managing Committee does not have the locus to maintain the same.

Decision on maintainability:

28. To decide the issue of maintainability of a legal proceeding, the elementary principle is to be borne in mind that, when a question of locus has arisen, it is required to be tested first whether the initiator of the proceeding can institute the proceeding. Then the question comes after initiation of the proceeding whether any relief can be granted in the proceeding. A proceeding can be maintained by the initiator but ultimately the same may fail on merit.
29. On a reading of **Rules 5 and 7** of the **Management Rules**, which deals with the composition of a Managing Committee of the school, it is clear that a Managing Committee of a school must consist of guardian representatives. Therefore, unless the guardian representatives are there in the composition of a Managing Committee, Managing Committee stands vitiated as the same would be de hors the statutory prescription. From the Power and Duties of the Managing Committee of a school as defined under the rules, this court is of the firm view that, it is the Managing Committee of a school who is primarily responsible for running the administration and affairs of the school including imparting of education to its students at large. Therefore, if there is any deficiency discovered in imparting education to the students of the school, it is the statutory obligation of the Managing Committee to take immediate steps to cure such deficiency and failing which the responsibility will be vested upon the Managing Committee and the Board is empowered to supersede the Managing Committee by appointing an administrator over the administration and affair of the school. The Managing Committee is, therefore, bound by its

statutory obligations to look after the proper administration and affair of the school including imparting education to its students at large. The Managing Committee, therefore, has a right to protect the interest of the school as its **legal right** and when the interest of the school is seen to be infringed by any act of the State authority, the Managing Committee can maintain a writ petition.

30. ***In the matter of: Bimal Barman (supra)*** by way of a writ petition the guardians of a school challenged the recommendation for appointment for the post of Headmaster of a school issued by the Service Commission on the ground that, the candidate was lacking necessary academic qualification and the appointment was obtained by practising fraud and suppressing material facts with regard to his service status. A coordinate bench held that prayers for writ of mandamus and certiorari were not maintainable by the guardians, as they were not parties aggrieved by the appointment irrespective of the fact of omission of fraud and thereby the writ application was dismissed. The Division Bench on appeal observed as under:

“30. Having regard to our aforesaid finding and observation, we are answering the point of locus standi in favour of the writ petitioners and we hold that writ petition was maintainable for adjudication”.

31. For the above reasons and discussions, this Court is of the firm and considered view that, the Managing Committee **has Locus Standi** to maintain its writ petition being **WPA 21004 of 2018**. However, the merit of the writ petition shall be considered hereinafter.

Submission on merit:

32. Mr. Ekramul Bari learned counsel referring to the application dated **January 5, 2016** submitted by the teacher, **Annexure P-14 at page 159** to the teacher's writ petition submits that, this was the only application seeking transfer was submitted by the teacher before the Principal Secretary, School Education Department and on the basis thereof under the recommendation of the concerned Minister-in-Charge, the transfer order dated January 11, 2017, **Annexure P-16 at page 161** to the teachers writ petition, was issued by the Central School Service Commission and on the basis thereof a communication was issued by the Commissioner of School Education Department dated February 8, 2017 directing the Managing Committee of Kamala Girls to issue the appointment letter in favour of the teacher. Mr. Bari then submits that subsequently to give effect to the said transfer order the Board passed its order dated **June 26, 2018, Annexure P-21 at page 205** to the teacher's writ petition, with two fold directions. *Firstly Kankhuli Girls was directed to reinstate the teacher at the post of Headmistress and to regularize her salary considering the period of absence as spent on duty. The teacher was directed to be released only after getting the appointment from Kamala Girls. The second direction was upon the Managing Committee of Kamala Girls to issue appointment letter in favour of the teacher as Headmistress of the school within seven days.*
33. Learned Counsel submits that save and except the alleged ransacking on August 20, 2015 at the Office of the Headmistress when the teacher was acting

as the Headmistress at Kankhuli Girls and she was allegedly rescued by the local police authority no other ground was mentioned seeking transfer from Kankhuli Girls. The said application submitted by the teacher did also not spell out about the preferred school. He submits that, the recommendation for transfer dated January 11, 2017 and the order of the Board dated June 26, 2018 are illegal, wrongful and not tenable in law.

34. Referring to the history of transfer of the teacher since her appointment as Headmistress at Sahachari Vidyapith in 2010 till the transfer as Headmistress at Kamala Girls, Mr. Bari submits that at no point of time the teacher acted or posted as Headmistress at any school for a period of five years of satisfactory service, which is a mandatory statutory requirement under **Rule 3 of The West Bengal School Service Commission (General Transfer, transfer on Special Grounds and Reallocation) Rules, 2015** (for short, the **Transfer Rules of 2015**). Referring to **Rule 4 (1c)(3)** of the said Transfer Rules of 2015, Mr. Bari submits that, the application for transfer was submitted by the teacher seeking transfer from Kankhuli Girls to Kamala Girls was on the **special ground** that the teacher was **Victim of Crime**. However, no particular of crime has been disclosed by the teacher in these proceedings neither any supportive material is there on record.
35. Mr. Bari learned counsel for the Kamala Girls submits that, the due process of law is that a teacher seeking transfer first submit his/her application before the Managing Committee of the relevant school, as in the instant case Kankhuli Girls, then it is the responsibility of the Managing Committee to send

the application for transfer with all relevant records before the appropriate State authority. Upon receiving such application from the Managing Committee of the relevant school the appropriate State authority shall examine the same and then the State authority if finds it to be tenable in law shall send the same before the Central School Service Commission for its recommendation for transfer. The Central School Service Commission then shall issue the recommendation for transfer and upon receiving such recommendation for transfer the relevant school at which the teacher is recommended for transfer, as Kamala Girls in the instant case, shall issue the appointment letter. In the instant case, the teacher directly applied before the Principal Secretary of the Education Department on January 5, 2016. The teacher did not mention her preference of school for transfer. The education department then under the decision of the concerned Minister-in-Charge issued the decision for transfer. Learned counsel submits that **Rules 3 and 4** of the said Transfer Rules of 2015 are required to be read conjointly and harmoniously. He submits that, to reach at the stage of **Rule 4** a teacher first satisfy the tests laid down under **Rule 3** of the said Transfer Rules of 2015. The conjoint reading of **Rules 3 and 4**, according to the learned counsel, would clearly show that the teacher did not work and completed five years of satisfactory service as Headmistress at Kankhuli Girls and before completion of five years at Kankhuli Girls, the teacher applied for her transfer on the special ground of **Victim of Crime**. The petitioner did not give her preference of school for transfer. The State authority on its own motion transferred the petitioner at Kamala Girls after ascertaining

the vacancy position from the jurisdictional DI. The entire process of transfer according to Mr. Bari suffers from gross illegality and in violation of **Rule 3 and 4** of the **Transfer Rules of 2015**. Hence, the recommendation for transfer and the consequential order of the Board are bad in law and liable to be set aside. In support, Mr. Bari learned counsel had relied upon two judgments of the Hon'ble Division Bench:

a) In the matter of: The Headmaster Bhotabari Sitanath High School & Ors. vs. Mapita Samaddar & Ors., reported at 2017 SCC OnLine Cal 7963: 2017 LabIC 3039: (2018) 3 CHN 193.

b) In the matter of: Himani Parya vs. State of West Bengal & Ors., dated July 31, 2018 rendered in FMA No. 1059 of 2017.

36. In the light of the ratios laid down by the Hon'ble Division Bench, Mr. Bari submits that a conjoint reading of **Rule 3, 4, 5, 6 and 7** of the said **Transfer Rules, 2015** results in manifestation of the scheme of transfer of teachers. Reading such rules one after the other, the division bench was of the opinion that while **Rule 3** provides for the basic conditions one seeking transfer is required to fulfil, certain special conditions are also carved out and incorporated in **Rule 4**. A teacher fulfilling the basic conditions, as of right, may apply for and claim consideration of his/her prayer for transfer in accordance with the transfer rules, but it is not quite the other way round. Fulfilment of the special conditions in a given case, without fulfilment of the basic conditions would not authorize issuance of a transfer even on a special

ground. The situation was clarified by **Rule 5**, which applies to all teachers seeking transfer including teachers seeking transfer on special ground.

37. Mr. Bari then submits that Kamala Girls is an age old and reputed school of Kolkata with a glorious heritage. The history of transfer of the teacher from one school to other, as already narrated above, would show that at every stage the teacher was transferred in violation of the relevant transfer rules and diverse allegations were there against the teacher and whenever the teacher confronted about her discharging duties as Headmistress in an illegal manner, she sought for transfer on special ground and got herself transferred from one school to other. The conduct of the teacher is such that if she is transferred to Kamala Girls and is allowed to join there as Headmistress, the same would prejudice and affect the morality and growing up of the students and shall be prejudicial to the administration of the school also. Referring to the Managing Committee resolution dated **June 28, 2017, Annexure P-7 at page 98** to the school's writ petition, Mr. Bari submits that as several illegal activities were discovered by Kamala Girls, the Managing Committee of the school decided not to issue any appointment letter in favour of the teacher. Referring to an interim order dated July 30, 2013 passed by a coordinate bench in a writ petition being WP 21936(W) of 2013 filed by Joka Bratachari Vidyashram, **Annexure P-7 at page 84** to the teacher's writ petition, Mr. Bari submits that the said Joka Bratachari Vidyashram, also challenged the transfer order issued in favour of the petitioner to assume charge as Headmistress at the said Joka Bratachari Vidyashram in which various illegalities were prima facie found out by the

coordinate bench and the transfer order was stayed. The said writ petition is pending.

38. In the light of the above submissions, Mr. Bari prays for setting and quashing of the recommendation for transfer issued in favour of the teacher to transfer at Kamala Girls dated January 11, 2017 issued by the Central School Service Commission and the consequential transfer order of the Board dated June 26, 2018.
39. Per contra Mr. Biswaroop Bhattacharyya learned counsel appearing for Smt. Madhumita Roy, the teacher concerned submits that, **Rule 3** of the Transfer Rule of 2015 only deals with primary condition of general transfer whereas **Rule 4** deals with general transfer on special ground. Referring to both the rules and upon reading thereof he submits that, the two rules are independent of each other and they operate in their respective independent fields. He then refers to **Rule 6** which deals with procedure for submission of application for general transfer under **Rule 3 and Rule 4(1)(c)** of the **Transfer Rule of 2015**. **Rule 7** deals with the procedure for general transfer on special ground under **Rule 4(1a) and 4(1b)**. He then refers to the application for transfer dated January 5, 2016 submitted before the Principal Secretary of the Education Department and submits that, the transfer was sought for under **Rule 4(1b)** as the teacher was **Victim of Crime**. He submits that when a teacher is Victim of Crime and the provision for transfer is statutorily prescribed for the same, no one can foresee whether the teacher would be victim of crime before completion of five years of satisfactory service at a particular school or thereafter.

Harmonious reading of **Rule 3 and 4** shows that when a teacher becomes Victim of Crime, immediately a right accrues in favour of the teacher for seeking transfer under **Rule 4(1b)** of the transfer rules and the authorities shall consider the same in accordance with law immediately after receiving application from the teacher. There is no requirement of compliance of time frame of five years of satisfactory service as embodied in **Rule 3** of the Transfer Rules. Therefore, to qualify the tests under **Rule 4** there is no requirement of qualifying the tests under **Rule 3** of the Transfer Rules. Similarly, while dealing with **Rule 6 and 7** of the Transfer Rules. Mr. Bhattacharyya submits that, the said two Rules deal with separate and independent provisions for transfer in the specific fields mentioned therein. The teacher in the instant case is governed under **Rule 7** as she had applied under **Rule 4(1b)** of the Transfer Rules being Victim of Crime. **Rule 7** of the Transfer Rules does not spell about the Managing Committee to receive the application for transfer from a teacher under Rule 4(1b) of the Rule at the first instance and then to send it before the State authorities. **Rule 7** only speaks of the Education Department to take a call on an application made by a teacher under **Rule 4(1b)** of the Transfer Rules. Referring to the said application for transfer dated January 5, 2016 Mr. Bhattacharyya submits that, the teacher concerned applied before the Principal Secretary of the Education Department and the said authority has power to receive such an application from the teacher under **Rule 4(1b)** of the Transfer Rules. He submits that, there is no illegality in submitting the application by the teacher before the Principal Secretary Education Department and the

teacher was not at all required to submit her application under **Rule 4(1b)** before the Managing Committee of the school at the first instance. He submits that, it is a fundamental principle of law that a natural person, as the teacher in the instant case, has the capacity to do all lawful things unless her capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a State authority, it is just the other way. The authority has no power to do anything unless conferred on it by the statute which creates it. In the facts of the case, since an application made under **Rule 4(1b)** is not required to be submitted expressly before the Managing Committee of the school, the application of the teacher made before the Principal Secretary of the Education Department was lawful. In support, learned counsel has relied upon a decision of a coordinate bench ***In the matter: Maniruddin Bepari vs. The Chairman of the Municipal Commissioners, Dacca, reported at 43 (Cal) ILR 295=40 CWN 17.***

40. Mr. Biswaroop Bhattacharyya then submits that on a harmonious reading of **Rule 3 and 4** of the **Transfer Rules, 2015** read with the subsequent notification on transfer dated February 10, 2023 there was no conflict between the two sets of Rules, that is, the Rules of 2015 and Rules of 2023. In support, he has relied upon a decision of this Court ***In the matter of: Paramita Chakraborty vs. State of West Bengal & Ors., (WPA 2488 of 2023) reported at 2023 SCC OnLine Cal 592.***
41. Referring to **Rule 3, 4, 6 and 7** of the **Transfer Rules, 2015**, Mr. Bhattacharyya submits while construing the said rules the Court must bear in

mind the principle of ***Ejusdem Generis***. He submits that, the statutory term used in those rules are recognized by associated words. In support, he relied upon a judgment of the Hon'ble Supreme Court ***In the matter of: Maharashtra University of Health Sciences & Ors. vs. Satchikitsa Prasarak Mandal, reported at (2010) 3 SCC 786.***

42. Mr. Bhattacharyya then submits that since it is not mentioned under **Rule 4 (1b) read with Rule 7 of the Transfer Rule, 2015** that an application seeking transfer by a teacher on the ground mentioned on **Rule 4(1b)** being **Victim of Crime** shall have to be made before the Managing Committee of the school, the Court cannot enlarge the scope of legislation or intention when the language of the rules are unambiguous. Hence the application submitted by the teacher before the Principal Secretary, Education Department is lawful. In support, learned counsel has relied upon the decision of the Hon'ble Supreme Court ***In the matter of: A.N. Roy, Commissioner of Police & Anr. Vs. Suresh Sham Singh, reported at (2006) 5 SCC 745.***
43. Referring to the averments made by the teacher, inter alia, in **paragraph 33** from her writ petition, Mr. Bhattacharyya learned counsel submits that immediately after receiving the letter dated June 28, 2018 **Annexure P-22** at **page 207** to the teacher's writ petition, the teacher was ready to resume her duty as Headmistress at Kankhuli Girls on July 2, 2018. The teacher was informed over mobile phone by one Abu Saleh Mukti, another members of the Managing Committee of Kankhuli Girls on June 28, 2018 and by one Prasanta Mondal on June 30, 2018 that the resolution of issuing letter dated June 28,

2018 was taken in the Managing Committee of Kankhuli Girls in the teeth of strong opposition of a group of teachers allegedly led by the teacher in charge Anjana Mondal of Kankhuli Girls. The teacher was further informed by Sri. Prasanta Mondal a member of the Governing Body of Kankhui Girls that the situation at the school was alarming and the teacher might be physically assaulted, if she resumes her charge as Headmistress of the school. On July 2, 2018. Considering the said situation the teacher was waiting at the Office of the Jurisdictional DI, South 24 Parganas as per the discussions held with the member of the Managing Committee and the concerned Sub-Inspector of School Smt. Indrani Bhattacharyya who was then working as President of the Managing Committee of the Kankhuli Girls. The teacher was assured that those members and the said Sub-Inspector of school would bring the attendance register of the school and the stamp of the President of the Managing Committee of the said school in the office of the jurisdictional DI to ensure the resumption of charge of the teacher as Headmistress of Kankhuli Girls. Ultimately this has not happened and the teacher did not join Kankhuli Girls to resume her duty. On July 3, 2018 the teacher submitted a representation before the President of the Board, Commissioner of School Education Department and the Personal Secretary and also Officer on Special Duty to the Concerned Minister-in-Charge, **Annexure P-23 at page 208** to the teacher's writ petition.

44. In light of the above, Mr. Biswaroop Bhattacharyya learned Counsel for the teacher concerned prays for implementation/execution of the order issued by

the Board dated **June 26, 2018, Annexure P-21 at page 205** to the teacher's writ petition and secondly, he prays for dismissal of the writ petition filed by the school.

45. Mr. Suman Dey learned State counsel led by Mr. Bhaskar Prasad Vaisya learned Additional Government Pleader, at the outset, adopted the submissions made by Mr. Biswaroop Bhattacharyya learned counsel and submits that the records show that the teacher applied before the Principal Secretary, Education Department seeking transfer in terms of **Rule 4 (1b) read with Rule 7 of the Transfer Rules 2015** as the teacher was **victim of crime**. The application of the teacher dated **January 5, 2016** clearly speaks of a situation where the teacher was a **victim of crime**. Learned State counsel submits that the moment the application had reached the Principal Secretary, Education Department, he referred the same before the appropriate State authority. The appropriate State authority including the concerned Minister-in-Charge had applied their mind on the application of the teacher and then after considering the same to be a fit case forwarded before the Central School Service Commission for issuance of recommendation for Transfer and the recommendation was issued. There was no procedural infirmity throughout. The recommendation for transfer was made after the same being considered by the concerned Minister-in-Charge strictly in accordance with law. Learned State Counsel then submits that in a fit and proper case even in absence of legislation on a particular subject, the High Court is not powerless to issue appropriate writ under Article 226 of the Constitution to do justice wherever

injustice is found and to mould the relief to meet the peculiar and complicated requirements of the country. He submits that where a statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived in justice, equity and good conscious. Learned State Counsel in this regard has placed reliance ***In the matter of: Ayesha Khatun vs. State of West Bengal & Ors., reported at 2012 1 CaLT 482.***

46. To justify the recommendation of transfer and the consequential steps thereunder taken by the Board, learned state counsel submits that since the teacher was victim of crime, as would be evident from her **application dated January 5, 2016**, it was impossible for her to resume her duty as Headmistress at Kankhuli Girls and after considering all the material before it the Minister-in-Charge and the State authority granted the prayer for transfer in favour of the petitioner and referred the matter before the Central School Service Commission for issuance of recommendation for transfer. Accordingly the recommendation was issued. Since Kamala Girls opposed the said transfer of the teacher, a hearing took place before the President of the Board and the Board passed its order dated June 26, 2018 directing Kamala Girls to issue appointment letter in favour of the teacher forthwith. Kankhuli Girls was directed to allow the teacher to resume her duty as Headmistress of the School till the time she receives the appointment letter for Kamala Girls and her absence was directed to be considered as **spent on duty** in view of the peculiar circumstance.

47. In the light of the above, Learned State Counsel Mr. Suman Dey submits that the recommendation for transfer issued by the Central School Service Commission and the consequential order of the Board dated June 26, 2018 shall be given an immediate effect by issuing appointment letter in favour of the teacher.
48. Mr. Subhendu Sengupta learned State Counsel led by Mr. Sirsanya Bandyopadhyay learned Junior Standing Counsel appearing for the State in the teacher's writ petition, has adopted the submissions of Mr. Suman Dey Learned State Counsel as stated above.
49. Ms. Koyeli Bhattacharyya learned counsel appearing for the West Bengal Board of Secondary Education has also adopted the submissions made by Mr. Biswaroop Bhattacharyya learned counsel appearing for the teacher concerned and the submissions made by Mr. Suman Dey Learned State Counsel.
50. Mr. Kanak Kiran Bandyopadhyay learned counsel appearing for the West Bengal Board of Secondary Education has also adopted the submissions made by Mr. Biswaroop Bhattacharyya learned counsel appearing for the teacher concerned and the submissions made by Mr. Suman Dey.

Decision:

51. After considering the rival contentions of the parties and upon perusing the materials on record, it appears to this Court that, the facts narrated above are admitted largely. The record shows on each occasion the teacher sought for transfer on special ground. Be that as it may, to consider the common issues

both on law and facts in these two writ petitions, the primary consideration shall be the transfer of the teacher from Kankhuli Girls to Kamala Girls.

52. Admittedly, save and except the document dated **January 5, 2016, Annexure P-1 at page 159** to the teacher's writ petition, there was no other application through which the teacher sought for transfer from **Kankhuli Girls to Kamala Girls**. The plea, on which transfer was sought for on **special ground** with the contention that, the teacher is **Victim of Crime** from the said document dated **January 5, 2016** is quoted below:

"3. But, on 20.08.2015 at around 1-30 p.m, a large number of outsiders gathered around my office chamber. They started hurling abusive language at me and pelting brickbats inside my Office chamber. Some of the outsiders ransacked the office chamber, broke the table glass, the window panes and disconnected the telephone connections. I immediately apprised the officer-in Charge Rabindranagar Police Station of the situation over personal mobile phone. The Deputy Superintendent of Police, and the Officer-in-Charge, Rabindranagar Police Station arrived with the police force and rescued me.

4. I have been on leave since then as the said unruly outsiders threatened me that they would again assault me if I attend the school.

5. In view of above, my earnest appeal is that I may kindly be transferred on special ground to another Higher Secondary School in Kolkata considering that in the present situation, I shall not be able to work in the Kankhuli Girls' High School (H.S) as my security will be at stake there".

53. From the plea on which the teacher sought for transfer on **special ground** as quoted above, it is evident that, save and except a bold statement having been made, no particulars has been disclosed in support of such plea. No contemporaneous written complaint lodged by the teacher before the local police authority has been disclosed. No FIR was registered, far to speak of initiation of any criminal case by the police authority before the Jurisdictional

Police Station. No accused was named, only a flimsy and vague statement was made in the said application dated January 5, 2016.

54. Upon the said application for transfer being submitted by the teacher before the Principal Secretary, of the Education Department, transfer order was issued with the intervention of the concerned minister-in-charge dated **December 14, 2016, Annexure P-15 at page 160** to the teacher's writ petition, inter alia, containing the name of the teacher against **Serial No.11** of the said transfer order and the same was transmitted before the Secretary of the Central School Service Commission for its necessary action for issuance of relevant communication, inter alia, in favour of the teacher. The Central School Service Commission then on **January 11, 2017, Annexure P-16 at page 161** to the teacher's writ petition, issued the **recommendation for transfer** for the teacher from Kankhuli Girls to Kamala Girls High School. It is significant to note from the said recommendation of transfer that though the teacher while applying for her transfer did not mention any preferred school but the Central School Service Commission after ascertaining the vacancy status from the Jurisdictional DI, issued the recommendation for transfer transferring the teacher from Kankhuli Girls to Kamala Girls. The Commissioner of school education immediately on **February 8, 2017, Annexure P-17 at page 162** to the teacher's writ petition, issued a communication to the President of the Managing Committee of Kamala Girls to issue the necessary appointment letter in favour of the teacher for the Post of Headmistress by February 9, 2017 so that she could join the school immediately. It was also mentioned that failure

to issue the appointment letter would be treated as disobedience of a government order against the Managing Committee of Kamala Girls. Kankhuli Girls through its communication dated **April 13, 2017, Annexure P-19 at page 202** to the teacher's writ petition, addressed the teacher, released her from the said institution and the post of Headmistress was decided to be considered as **vacant** w.e.f. **March 15, 2017**.

55. Kamala Girls then in a meeting of its Managing Committee held on **June 28, 2017, Annexure P-7 at page 98** to the school's writ petition adopted a resolution and decided not to issue any appointment letter in favour of the teacher.
56. Ultimately a hearing was held before the President of the Board. On June 26, 2018 at page 116 to the school's writ petition the President of the Board passed its order dated June 26, 2018 with the directions as quoted below:

"The following decisions are being taken today:

1. Kankhuly Girls High School shall reinstate Smt. Madhumita Roy immediately and regularise her salary considering the period of absence as spent on duty. She will be released only after incumbent prays for release order after getting appointment in her favour. As per Govt. Norms she shall be released with L.P.C.

*2. The Managing Committee, Kamala Girls High School shall take immediate necessary action to issuance of appointment letter to Smt. Madhumita Roy as Headmistress **within seven days** from **today i.e by 03.07.2018**, failing which this Board shall decide on further course of action deemed fit.*

Copy of this order may be served to all concerned for immediate necessary action".

57. On a conjoint reading of **Rules 3 and 4 of 2015 Rules**, as held by the Hon'ble Division Bench ***In the matter of: Mapita Samaddar (supra)*** that while Rule 3

provides that basic conditions while seeking transfer is required to be fulfilled. Certain special conditions are also carved out and incorporated in Rule 4. A teacher fulfilling the basic conditions, as of right, may apply for and claim consideration of his/her prayer for transfer in accordance with the transfer rules; but it is not quite the other way round. Fulfillment of the special conditions, in a given case without fulfillment of the basic conditions would not authorize issuance of a transfer **even on special ground**. The situation is clarified under Rule 5 of the 2015 Transfer Rules, which applies to all teachers seeking transfer including teachers seeking transfer on special grounds. This ratio and the principle of law laid down by the Hon'ble Division Bench was also followed by another subsequent Division Bench ***In the matter of: Himani Parya (supra)***. In the instant case, admittedly the teacher did not complete her five years of satisfactory service at Kankhuli Girls. Therefore, the basic conditions under Rule 3 were not fulfilled.

58. In addition to the above, this Court is also of the view that, when the recommendation for transfer was issued on **special ground** that the teacher was **Victim of Crime**, the sole document being the application dated **January 5, 2016** submitted by the teacher, primarily requires a deep and an avid consideration. The said application dated January 5, 2016 merely contains some bold statements as to ransacking of the office of the teacher while she was posted as Headmistress at Kankhuli Girls. As already noted above no particulars of criminal element was disclosed so that a conclusive finding could have been arrived at that the teacher was **Victim of Crime**. The incident,

according to the teacher led her to become Victim of Crime has been narrated and pleaded by her, inter alia, in **paragraph 17** to her writ petition. A plain and meaningful reading of the averments would show that the statements are general and bold in nature and no particulars have been disclosed. The statements would show that the teacher did not lodge any written complaint before the Jurisdictional Police Station neither any FIR was registered, far to speak of initiation of any police case by the police authority.

59. Kankhuli Girls through its affidavit-in-opposition filed in the teacher's writ petition has disclosed a representation submitted by its teacher-in-charge dated March 10, 2017 before the Deputy Director Education Department, State of West Bengal, **Annexure R-7 at page 33** to the affidavit-in-opposition filed by Kankhuli Girls. From the said representation it appears that, due to the alleged unwanted conduct on the part of the teacher, she had to face severe protest from the end of the Guardians of the students. Apart from that during her tenure how the school had suffered an alleged deadlock was also narrated in the said representation.
60. When a teacher is to be transferred on special ground that the teacher has been **Victim of Crime**, the primary duty of the authority considering the issue was to apply its mind meaningfully and then upon reaching to a reasonable conclusion that the teacher was Victim of Crime, the transfer order/recommendation for transfer ought to be issued.
61. From the application submitted by the teacher dated January 5, 2016 save and except some bold statements, no conclusion could be arrived at that there was

really any criminal incidence took place of which the teacher was the victim. The records show that while passing the order for transfer including the recommendation for transfer, the relevant state authorities did not record any satisfaction of their mind on the basis of the said application dated January 05, 2016 that the teacher was Victim of Crime. Even the order passed by the President of the Board dated June 26, 2018 in presence of all interested parties does not show any reasonable conclusion or finding and the application of mind by the President of the Board while confirming the recommendation for transfer and giving the consequential directions as mentioned therein.

62. To apply the provision under Rule 4(1b) of 2015 Transfer Rule for transfer on special ground, the record does not show while issuing the transfer order/recommendation for transfer or the confirmation of the transfer by the Board, there was any contemporaneous material before them so that these authorities could have reasonably applied their mind to reach to a satisfaction that the teacher was **Victim of Crime**. If on the basis of the said application for transfer dated January 5, 2016 as the same stands, a teacher is allowed to be transferred on special ground being victim of crime, the provision under Rule 4(1b) of the Transfer Rule of 2015 would be ornamentally applied de hors its statutory requirement and the object of engrafting the said provision in the transfer rules as framed by the rule framers. When a rule is framed by the rule framers it is deemed by fiction of law that such rule shall have to be applied in its strict spirit, form and with the object behind it. Just because the concerned minister-in-charge of the education department under whose supervision and

approval the transfer order was issued or a higher authority of the education department has allowed it, would not at all amount to satisfaction of the legal requirements or their application of mind to reach at the final conclusion for transfer on the basis of the statutory requirement under the rules.

63. Applying the said tests of law discussed above, this court is of the firm view that, simply on the basis of the said application dated January 5, 2016 no transfer order could have been and/or should have been issued in favour of the teacher on **special ground** that the teacher had been **Victim of Crime**. Thus, the said recommendation for transfer dated **January 11, 2017** cannot sustain in law and following the same all consequential steps are bad in law.
64. Following the decision for transfer and the order/direction passed by the President of the Board dated June 26, 2018, Kankhuli Girls by its communication dated June 28, 2018, **Annexure P-22 at page 207** to the teacher's writ petition allowed the teacher to join the school as Headmistress. Even then the teacher did not join Kankhuli Girls as Headmistress. To support her conduct for not joining Kankhuli Girls the teacher has made out a case in **paragraphs 32 and 33** of her writ petition already narrated above.
65. Save and except the averments made in **paragraphs 32 and 33** as discussed above, no supporting and corroborating material has been produced by the teacher in this proceeding. There has been no affidavit filed by any of the persons named by the teacher in **paragraph 33** of the writ petition to corroborate the contention of the teacher before this court. It is also significant to note that the relevant rules and the statutory provisions provided that all the

records which, inter alia, includes the attendance register of the school shall have to be maintained within the school premises. When the proposal was made that the attendance register and the seal of the President of the Managing Committee of the school are to be carried at the office of the jurisdictional DI, South 24 Parganas to enable the teacher to sign the register or to put the seal of the President of the Managing Committee of the school outside the school premises, this itself on the face of it was illegal, wrongful and contrary to the statutory provisions. Therefore, the teacher has not been able to demonstrate and establish any valid or bona fide cause, which had prevented the teacher from attending her office at the school premises to discharge her duty as Headmistress of Kankhuli Girls, despite the said communication of Kankhuli Girls dated June 28, 2018.

66. In view of the above, this court is also of the considered opinion that the absence of the teacher on and from **June 28, 2018** and thereafter at **Kankhuli Girls** is an **unauthorized absence**, without any sanction of law.
67. Since, the recommendation for transfer dated January 11, 2017 and all consequential steps taken following the same are bad and cannot sustain in law, the teacher has to be reverted back to Kankhuli Girls when her attendance shall have to be taken into consideration. It has already been declared by this Court that since June 28, 2018 her absence is unauthorized and without any sanction of law.
68. In view of the foregoing discussions and reasons this Court holds and decides as follows:

- a) The recommendation for transfer dated **January 11, 2017**, issued by the Chairman, West Bengal Central School Service Commission, **Annexure P-16 at page 161** to the teacher's writ petition, stands **set aside** and **quashed**.
 - b) The direction of the Board dated **June 26, 2018, Annexure P-21 at page 205** to the teacher's writ petition, directing the Managing Committee of **Kamala Girls** to issue appointment letter to the teacher, Smt. Madhumita Roy as Headmistress stands **set aside** and **quashed**.
 - c) The direction of the President of the Board dated June 26, 2018 to the extent directing **Kankhuli Girls** to regularize the salary considering the period of absence of the teacher, namely, Smt. Madhumita Roy as **"spent on duty"** stands **set aside** and **quashed**.
69. However, the teacher, namely, Smt. Madhumita Roy can resume her duty as Headmistress at Kankhuli Girls High School within a period of **seven working days** from date, as this Court is informed by the learned counsel for Kankhuli Girls that the post of Headmistress is still vacant. It is also clarified and made clear that her absence **on and from June 28, 2018** till she will join Kankhuli Girls as Headmistress shall be treated as an **unauthorized absence and without any sanction of law** and her all consequential benefits shall be calculated by taking into account the said period of her **unauthorized absence** strictly in accordance with law. Accordingly Kankhuli Girls and the relevant State authorities shall take all consequential and necessary steps strictly in accordance with law.

70. Resultantly, the teacher's writ petition **WPA 7948 of 2019** stands **dismissed** with **cost** assessed at **Rs. 50,000/-** to be paid by Smt. Madhumita Roy in favour of the **West Bengal Legal Services Authority** within **15 working days** from date.
71. The writ petition filed by the Kamala Girls High School **WPA 21004 of 2018** **stands allowed** in terms of the directions mentioned above.

(Aniruddha Roy, J.)

Later:

Mr. Biswaroop Bhattacharyya, learned counsel for the teacher Prays for stay of operation of this Judgment for a limited period.

Such prayer is considered and rejected.

(Aniruddha Roy, J.)