

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 16708 of 2025

Reserved on : 09.09.2025

Pronounced on: 16.09.2025

Chhandana Bhuiin

...Petitioner

-Vs-

State of West Bengal & Ors.

... Respondents

Present:-

Mr. Uday Sankar Chattopadhyay

Mr. Pronay Basak

Ms. Aishwarya Datta

Mr. Mahammed Reajul

...for the Petitioner

Mr. Biswaroop Chowdhury

Ms. Soma Chakraborty

... for the State

Mr. Subir Sanyal

Mr. Biswabrata Basu Mallick

Mr. Ratul Biswas

Mr. Aaman Arif Ansari

... for the DPSC, Hooghly

Rajarshi Bharadwaj, J:

1. In the present writ petition, the petitioner, has approached this Hon'ble Court against the action of the respondent authority, namely the Chairperson of the Hooghly District Primary School Council being the respondent no.5

herein, challenging her transfer order and demotion from the post of Head Teacher to Assistant Primary Teacher.

2. The facts of the case in a nutshell are that the petitioner joined public service as an Assistant Primary Teacher of Sonipur Primary School under Hooghly District Primary School Council, pursuant to a Memorandum of appointment dated 28.04.1993 issued by the Chairman, Ad-hoc Committee. She duly joined the said school on 30.04.1993 and her service was formally approved by the competent authority. On 04.11.2004, the petitioner was appointed as the Head Teacher of Samantakhanda Primary School (KP-46) under Kamarpukur Circle, Hooghly. Since then, she has been discharging her duties sincerely and diligently, earning recognition in the form of three awards, two from the State Government (Nirmal Vidyalaya Puraskar and Sishu Mitra Puraskar) and one from the Central Government (Sachh Vidyalaya Puraskar).

3. Presently at the age of 59 years, the petitioner is suffering from serious ailments, including severe cardiac issues. She underwent Cardioversion treatment last year and is scheduled for Ablation treatment within months. Despite such conditions, she continued to serve in her post. The petitioner received a memo bearing no. 960/DPSC, Hooghly from the Chairperson of the Hooghly District Primary School Council (DPSC) dated 11.07.2025, calling her to a hearing on 15.07.2025 regarding allegations of physical punishment of a student. She asserts that the allegations are false, malicious and intended to malign her reputation. Rather, according to the petitioner, she herself had been assaulted by a student's parent, in respect to which she lodged a complaint with the local police station. Mass petitions by her students also supported her innocence. At the said hearing, according to her, she was subjected to harassment, denied a copy of the complaint and not informed of the precise charges.

4. Subsequently, the Chairperson of Hooghly District Primary School Council issued an Order vide memo no. 1039/DPSC, Hooghly dated

21.07.2025 transferring her to Batanol Upendra S.N.S.N. Primary School, Arambagh East Circle, by stepping her down from the post of Head Teacher to Assistant Teacher, subject to clearance from the Chief Medical Officer of Health. This was followed the next day by a corrigendum order dated 22.07.2025. The petitioner highlights that such transfer was ordered just months before her superannuation in 2026, contrary to Rule 4 and Rule 5 of the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002. She underscores that the statute vests transfer powers exclusively with the District Primary School Council and not its chairperson individually. In the instant case, with no functional Council in place, the unilateral transfer order was issued without jurisdiction. In these circumstances, the petitioner asserts that the impugned order is arbitrary and violative of the statutory provisions as well as her rights. Therefore, the present petition has been preferred.

5. The Learned Counsel appearing for the petitioner submits that the petitioner has been compelled to approach this Hon'ble Court assailing the impugned order of transfer issued vide memo no. 1039/DPSC, Hooghly dated 21.07.2025 followed by corrigendum dated 22.07.2025, by which the respondent no. 5, namely the Chairperson of Hooghly District Primary School Council, has directed her transfer to Batanol Upendra S.N.S.N. Primary School, Arambagh East Circle, by stepping her down from the substantive post of Head Teacher to that of an Assistant Teacher. The petitioner submits that the aforesaid order is wholly without jurisdiction, arbitrary in nature, violative of principles of natural justice and contrary to relevant statutes and rules and therefore, is liable to be quashed by this Court.

6. The factual matrix of the case clearly establishes the petitioner's long and meritorious service. In recognition of her competence, she was promoted as Head Teacher of Samantakhanda Primary School in November 2004 and since then has discharged her duties with sincerity, earning recognition through various awards conferred by both State and Central Governments.

Presently she is aged about 59 years, suffering from acute cardiac ailments, having undergone cardioversion treatment and awaiting ablation procedure within months, yet she continues to perform her service responsibilities diligently despite health constraints. Her due date of superannuation is September 2026, and therefore she is at the final stage of her teaching career.

7. The genesis of the impugned order is an alleged complaint of corporal punishment said to have been inflicted upon a student. The petitioner categorically denies such allegation and contends that, rather, she was assaulted by the concerned student's guardian in respect whereof she lodged a complaint before the jurisdictional police station. Several students collectively submitted mass petitions vouching for her innocence. Notwithstanding such facts, the petitioner received a communication dated 11.07.2025 from the respondent Chairperson informing her about a purported hearing. The proceeding held on 15.07.2025, however, was in flagrant violation of principles of natural justice inasmuch as she was not served with a copy of the complaint, was not informed of the specific charges, instead was harassed throughout the process without being afforded any meaningful opportunity of defence. No report of any enquiry team was ever made available to her and the entire process culminated in the issuance of the impugned transfer order dated 21.07.2025, demoting her rank and shifting her workplace within days.

8. It is submitted that the impugned order is wholly without jurisdiction. The transfer of approved primary teachers, including Head Teachers, is governed by the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002. Rule 4 of the said Rules provides in categorical terms that the power of transfer lies only with the District Primary School Council and not with its chairperson individually. Admittedly, since 2011 no gazette notification has been issued under section 41 of the West Bengal Primary Education Act, 1973 constituting the Hooghly District Primary School Council with elected, nominated or appointed members. In

the absence of a duly constituted Council, the respondent no.5 has acted unilaterally, arrogating unto himself powers vested exclusively in the Council as a collective body. This persistent administrative inertia strikes at the very root of effective policy implementation and corrodes institutional accountability. In such circumstances, exercise of statutory power of transfer, without the benefit of deliberative functioning of the Council, only accentuates the arbitrariness of the action. This reveals systemic governance failure necessitating urgent corrective measures at both the executive as well as supervisory levels. Thus, such action is *ex facie ultra vires* the parent statute and rules, rendering the impugned transfer order null and void.

9. The statutory framework permits no ambiguity on this aspect. Rule 6(2) of the 2002 Rules prescribes that no teacher shall ordinarily be eligible for transfer after attaining the age of fifty-seven years. The petitioner, being nearly 60 years old and due to retire within one year, could not lawfully have been subjected to transfer. The impugned transfer order, therefore, stands in contravention of Rule 6(2). The Hon'ble Division Bench of the Calcutta High Court in ***Dipika Bala Biswas v. State of West Bengal & Ors.*** reported in **2022 SCC OnLine Cal 2327** has reiterated that powers of transfer are confined to the District Primary School Council and neither the Chairman nor the Secretary can exercise such powers singly. The law settled therein clearly governs the present lis and demonstrates that the impugned action of the respondent is devoid of legal sanction.

10. The impugned order is further vitiated by *mala fides*. The haste with which the transfer was ordered against a teacher of unblemished service, despite her precarious health condition and proximity to retirement, itself raises serious suspicion of extraneous considerations. The order is devoid of reasons and is a non-speaking order, contrary to settled jurisprudence. It has been held repeatedly that administrative orders affecting service rights must disclose reasons in order to be sustained in law. The order of the respondent Chairperson is manifest in stripping the petitioner of her senior post and

transferring her summarily, effectively humiliating and penalising her without any lawful justification.

11. The action impugned violates the guarantee of equality under Article 14, equal treatment in public employment under Article 16, and right to dignity and livelihood under Article 21. Arbitrary transfer order on the verge of retirement, stripping a Head Teacher of her position and status after decades of service, amounts to a clear constitutional infraction. For the reasons stated hereinabove, the learned counsel submits that the impugned order dated 21.07.2025 and corrigendum dated 22.07.2025 are wholly illegal, mala fide and without jurisdiction and thus liable to be set aside by this Hon'ble Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

12. Learned Counsel appearing for the State, at the outset, submits that the writ petition is not maintainable, having regard to the existence of a specific statutory remedy. Rule 10 of the West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002, as amended from time to time, provides for an appeal before the Appeal Committee of the West Bengal Board of Primary Education against any transfer order issued to a teacher or Head Teacher. Such appeal must be filed within thirty days of service of the order and the Board is empowered either to dismiss such appeal or to pass an order modifying or reversing the impugned decision, which is binding on the concerned District Primary School Council. The Rule also obligates the teacher to comply with the order of transfer before initiating an appeal. In view of availability of this efficacious, statutory mechanism, the present writ petition, filed without exhausting the appellate remedy, is not maintainable in law and is liable to be dismissed on this ground alone.

13. The State further contend that the impugned transfer order was lawfully issued and pursuant to a defined administrative process. The undisputed facts reveal that the Petitioner joined service as an Assistant Primary Teacher on 30.04.1993 under DPSC, Hooghly and was confirmed in

due course. Thereafter, she was promoted to the post of Head Teacher in Samantakhanda Primary School under Kamar Pukur Circle, Hooghly. Certain complaints, however, were received against her alleging infliction of corporal punishment upon a student, in clear violation of the Right of Children to Free and Compulsory Education Act, 2009. Since the RTE Act expressly prohibits any form of physical punishment to children, the complaints were treated with due seriousness. Accordingly, a hearing was convened by the Chairperson, DPSC, Hooghly on 15.07.2025 in the presence of the petitioner, the District Inspector of Schools (Primary Education), Hooghly, who also functions as Secretary of the Council, and other relevant stakeholders.

14. As a consequence of the said hearing, an enquiry committee comprising six senior officers of the District was duly constituted. The enquiry team submitted its report on 17.07.2025. Based on the said report and after taking note of the Petitioner's representations, the Chairperson, DPSC, issued an order dated 21.07.2025 (Memo No. 1039/DPSC, Hooghly), transferring the Petitioner to Batanol Upendra S.N.S.N. Primary School, Arambag East Circle by reverting her to the post of Assistant Teacher. The order required her to obtain a medical fitness certificate from the Chief Medical Officer of Health, Hooghly before joining her new post, such condition being imposed in the larger interest of public service. To remedy clerical errors, a corrigendum was thereafter issued under Memo No. 1042 dated 22.07.2025.

15. The State further disputes the legal challenge advanced by the petitioner to the competence of the Chairperson to pass the order. It is submitted that the District Primary School Council, Hooghly, stands duly constituted in terms of Section 37 of the West Bengal Primary Education Act, 1973, following nomination, appointment and election of members and the names of such members were published by Gazette Notification dated 04.02.2011 under Section 41 of the Act. By reason of Section 42(2) of the said Act, such members continue to hold office until the first meeting of the newly formed Council, thereby ensuring continuity of authority.

16. It is also pointed out that the present Chairperson of the District Primary School Council, Hooghly, was duly appointed by notification dated 16.09.2021 issued by the School Education Department under Section 37(2)(k) of the Act and has been functioning in that capacity from 20.09.2021 onwards. Thus, at the relevant time and contrary to the assertion of the petitioner, the DPSC was neither dissolved nor incompetent to act and the Chairperson was exercising statutory powers vested in her under Section 53 of the West Bengal Primary Education Act, 1973. The argument that the transfer order is non est for want of authority is therefore devoid of merit.

17. In light of the above facts, the State respondents contend that the action taken against the petitioner was within jurisdiction, based on materials brought on record and in compliance with statutory provisions. The provision contained in Rule 4 of the 2002 Rules regarding transfer is to be read with Section 53 of the 1973 Act, which recognizes the competence of the DPSC and its Chairperson. The ratio of the decision in ***Nadia District Primary School Council & Anr. v. Rupak Sengupta & Ors*** reported in ***(2014) 1 CHN (Cal) 365***, relied upon by the petitioner, is not applicable to the facts at hand, since in the present case the DPSC is duly constituted and functioning and the Chairperson acted within its statutory mandate after a full administrative process.

18. Thus, according to the State, when an alternative and efficacious remedy is available and when the order impugned was passed by a competent authority after due enquiry, this Court ought not to entertain the writ petition at the threshold. The proper course open to the petitioner is to prefer an appeal before the Appeal Committee of the West Bengal Board of Primary Education in terms of Rule 10 of the 2002 Rules. Unless and until the said appellate mechanism is exhausted and an adverse order is rendered by the statutory authority, invocation of writ jurisdiction is premature. Accordingly, the State respondents submit that the writ petition is liable to be dismissed

with costs as being not maintainable in law and barred by existence of a specific statutory appellate forum.

19. The Learned Counsel appearing for respondent no. 5 being the Chairperson of the Hooghly District Primary School Council, has contested that the allegations in the writ petition are misconceived, as the District Primary School Council is very much in existence by operation of law and the Chairperson has exercised powers duly vested under the West Bengal Primary Education Act, 1973. The respondent relies upon Section 37 of the Act for the constitution of the Council as well as upon Section 42(2), inserted by amendment in 2004, to argue that a reconstituted Council continues to hold office until a new Council assumes charge. It is contended that, therefore, the Hooghly DPSC constituted earlier continues in existence and the subsequent ratification of the Chairperson's decision at the meeting held on 08.08.2025 is valid and binding. On this basis, the respondent asserts that the petitioner's plea of non-existence of the Council is wholly untenable.

20. With regard to the transfer per se, the respondent submits that it was not an arbitrary action, but one compelled by serious circumstances in the interest of the students. Multiple complaints had been received, not merely from the guardian of a student but also from several teachers within the school, regarding the petitioner's misconduct and conduct detrimental to child welfare. One complaint pertained to infliction of corporal punishment, which is a serious violation of the Right to Education Act, 2009. The matter was grave enough that Child Line authorities and police officials had to be involved. In response to these complaints, a notice was issued to the petitioner on 11.07.2025 and she was summoned to a hearing on 15.07.2025, thereby ensuring observance of natural justice. On the basis of the ensuing inquiry and the report submitted, the decision was taken to transfer the petitioner out of the school in order to preserve a healthy educational environment for the children. It is emphasized that the transfer was not

punitive in intent or effect but was an administrative necessity to safeguard the best interests of the students.

21. The respondent further contends that the petitioner was not demoted as alleged, but simply transferred to a different institution with stipulation that her joining was subject to production of a medical fitness certificate, considering her health. The school to which she was transferred is said to be near her residence and was selected with due consideration to her medical condition. The condition relating to medical fitness was imposed not to harass her but to ensure that she was capable of discharging her duties effectively in the new place of posting. The corrigendum issued on 22.07.2025 was merely to correct clerical errors and did not affect the validity of the transfer order.

22. It is categorically denied by the respondent that the decision was motivated by grudge or mala fides. The respondent stresses that transfer is an incident of service and does not necessarily require consent of the teacher. The Chairperson acted within the jurisdiction conferred under Section 53(2) of the Act of 1973, which authorises the Council to transfer teachers in the interest of efficient administration and welfare of students. There was due application of mind and consideration of relevant facts before the impugned action was taken. The plea that the petitioner is at the verge of retirement and hence ought not to have been transferred is also denied, with the assertion that urgent intervention was required for safeguarding students' welfare, which will always override personal inconvenience of any staff member. As such, the respondent prays that the writ petition be dismissed as being devoid of merit.

23. In reply to the submissions made by the respondent, the Learned counsel for the petitioner submits that the Affidavit-in-Opposition filed on behalf of respondents no. 1 and 2 (the State) and respondent no. 5 merely denies the contentions and statements made in the writ petition without stating any basis or reason for such denial, which is impermissible.

24. The petitioner further submits that the State respondents have not complied with the mandatory provisions of the Right of Children to Free and Compulsory Education Act, 2009. The petitioner was not served with the report of the enquiry team and a one-sided hearing was conducted, thereby violating the principles of natural justice. The petitioner points out that the purported District Primary School Council for Hooghly, formed under Section 41 of the West Bengal Primary Education Act, 1973, has been defunct since 2011, with no fresh Gazette notification issued for reconstitution since then. The Council's composition described in the affidavit is outdated, with former members no longer holding office and political affiliations tied to erstwhile governments and only ex officio members are presently functioning, effectively leaving the Chairperson without a functioning council.

25. It is submitted that the Chairperson alone has no statutory power, under Rule 4 of the West Bengal Primary Education (Transfer of Teachers Including Head Teacher) Rules, 2002, to effect transfers, especially since transfers are prohibited under Rule 6 for teachers above the age of fifty-seven. The petitioner was transferred at the verge of retirement in a penal manner, without adherence to the procedural safeguards or the principles of natural justice, which renders the transfer unlawful and liable to be set aside.

26. Regarding the alternative remedy contention, the petitioner asserts that the writ petition is maintainable as the impugned orders involve jurisdictional errors and breaches of fundamental principles of fair hearing, which cannot be waived off by suggesting alternative remedies.

27. In this regard, the petitioner specifically submits that the attempt of the respondents to resist the writ petition on the ground of existence of an alternative remedy under Rule 10 of the 2002 Rules is misconceived. It has been submitted that the bar of alternate remedy is neither absolute nor inflexible. The Hon'ble Supreme Court in ***Maharashtra Chess Assn. v. Union of India*** reported in **(2020) 13 SCC 285** as well as in ***M/s Godrej Sara Lee Ltd. v. Excise and taxation Officer-cum-Assessing Authority and ors.***

reported in **AIR 2023 SC (Civil) 662** categorically held that availability of an alternative remedy does not oust the jurisdiction of the High Court under Article 226 of the Constitution, it being only a rule of discretion. Writ jurisdiction may be exercised notwithstanding the presence of appellate remedies, especially where violation of natural justice or lack of jurisdiction is alleged. In the present case, as the impugned order is without jurisdiction and violative of fundamental rights, direct invocation of Article 226 is fully maintainable.

28. In relation to the submissions of respondent no. 5, the petitioner denies the completeness and correctness of the affidavit filed. It is submitted that the Primary School Council was constituted in 2011 but ceased to function post the expiry of its term and the continuance provisions under Section 42(2) of the West Bengal Primary Education Act cannot be extended indefinitely, as held by this Hon'ble Court in **S.K. Mohmud Hossain & Ors. v. State of West Bengal & Ors.** reported in **AIR 2010 Cal 121**. Any decision purportedly taken by the Council after its dissolution is without legal sanctity.

29. The petitioner denies the legitimacy of the transfer order, release order and show cause notice issued by the Chairperson and the Sub-Inspector of Schools in July 2025, and submits that these were issued in violation of applicable laws and procedural fairness. The petitioner also challenges the allegations of misconduct and violation of the Right to Education Act, 2009, as no formal complaint or report was served or made available to her and the notice for a hearing was deficient in particulars, including failure to identify the student involved.

30. It is further submitted that the petitioner was not arbitrarily transferred but was subjected to a penal transfer without due process, at an age where the law prohibits transfers and was demoted from the post of Headmistress to Assistant Teacher without lawful justification. In light of the foregoing, the petitioner submits that the writ petition is maintainable and deserves to be

allowed, with the impugned transfer and allied orders being quashed and the prayers made in the writ petition granted in the interest of justice and adherence to the rule of law.

31. Having heard the learned counsel for the parties and upon perusal of the pleadings and materials on record, this Court is to decide whether the impugned order of transfer dated 21.07.2025 bears the imprimatur of lawful authority. The fulcrum of the petition lies in the proper construction of Sections 37, 40, 41, 42 and 53 of the West Bengal Primary Education Act, 1973, read conjointly with the West Bengal Primary Education (Transfer of Teacher) Rules, 2002 and the judicial precedents governing the scope of power of the District Primary School Councils vis-à-vis their functionaries.

32. Sections 37, 40 and 41 of the West Bengal Primary Education Act, 1973 mentions:

“37. District Primary School Councils.

(1) The State Government shall, by notification, establish for each district excluding, [the hill areas and] [Words inserted by W.B. Act 18 of 1988.] the areas included in Calcutta [* * *] [Words 'and specified municipality,' omitted by W.B. Act 47 of 1980.] with effect from such dates as may be specified in the notification, a District Primary School Council bearing the name of the district [and, for the sub-division for Siliguri, Siliguri Primary School Council:] [Words inserted by W.B. Act 13 of 1997.]*

[Provided that the State Government shall, by notification, establish for the sub-division of Siliguri (excluding such mauzas of the sub-division as are comprised in the hill areas), with effect from such date as may be specified in the notification, a Primary School Council bearing the name of the sub-division.] [Proviso inserted by W.B. Act 18 of 1988.]

(2) A District Primary School Council shall consist of the following members, namely :-

(1a) [the Chairman, who shall be appointed by the State Government;] [Clause (1a) inserted by W.B. Act 10 of 1999.]

(a) the District Inspector of Schools, in charge of primary education;

(b) the District Special Officer, Scheduled Castes and Tribes Welfare or where no such officer is posted, the District Tribal Welfare Officer;

(c) the District Social Education Officer;

(d) one member for each sub-division, elected in the prescribed manner by the members of [Panchayat Samitis within the sub-division from among themselves] [Words substituted for the words 'Anchal Panchayats within the sub-divisions' by W.B. Act 47 of 1980.]:

Provided that the number shall in no case be less than three;

(e) three members, elected in the prescribed manner by the [(Councilor of municipal areas) within the district from amongst themselves] [Words 'municipalities within the district from amongst themselves' first substituted for the words 'non-specified municipalities within the district' by W.B. Act 47 of 1980, then the words within first brackets substituted for the words 'Commissioners of municipalities' by W.B. Act 13 of 1997.];

[* * * * *] [[Proviso omitted by W.B. Act 10 1999, which was as under :-

'Provided that in the district of 24-Parganas, four members shall be elected by such municipalities;']

(f) three members, elected in the prescribed manner by the members of Zilla Parishad, [from amongst themselves] [Words inserted by W.B. Act 47 of 1980.];

(g) one teacher of a [Primary Teachers' Training Institute] [Words substituted for the words 'Junior Basic Training Institution' by W.B. Act 19 of 1994.] in the district, elected in the prescribed manner by the teachers of such institutions in the district;

(h) three teachers [* * * *] [Words 'of whom one shall be a woman' omitted by W.B. Act 47 of 1980.] elected in the prescribed manner by the teachers of primary schools in each sub-division from amongst themselves:

[* * * * *] [[Proviso omitted by W.B. Act 13 of 1997, which was as under :-

'Provided that the member shall in no case be less than six;'.]]

[Provided that the number shall in no case be less than six;] [Proviso inserted by W.B. Act 10 of 1999.]

(i) [not exceeding fifty per cent of the members of the West Bengal Legislative Assembly, subject to a maximum of six, not being ministers-, representing the constituencies comprised within the territorial jurisdiction of the district concerned, elected from amongst themselves in the manner prescribed; [[Clauses (i) and (ii) first substituted for original clause (i) by W.B. Act 47 of 1980, then proviso to clause (i) omitted by W.B. Act 18 of 1988, and finally, present clause (i) substituted by W.B. Act 13 of 1997. Previous clauses (i) and (ii) was as under :-

'(i) six members of the West Bengal Legislative Assembly, not being Ministers, elected in the prescribed manner by the members of the Legislative Assembly,

representing the constituencies comprised within the territorial jurisdiction of the district concerned, from amongst themselves;'.]]

(ii) one member from the staff of the Primary School Council elected in the prescribed manner by the members of the staff of the District Primary School Council from amongst themselves;]

(j) [six persons interested in education, nominated by the State Government of whom - [[Clause (j) substituted by W.B. Act 47 of 1980, which was earlier as under :-

'(j) three persons interested in education, nominated by the State Government'.]]

(i) one shall be a women;

(ii) one shall be a member of a Scheduled Caste;

(iii) one shall be a member of Scheduled Tribe;

(iv) one shall be a member of linguistic minority;

(v) one shall be a college teacher;

(vi) one shall be a secondary school teacher.]

(k) [the Chairman to be appointed by State Government.] [Clause (k) inserted by W.B. Act 19 of 1994.]

(2A) [The Siliguri Primary School Council for the sub-division of Siliguri shall consist of the following members, namely] [Sub-Section (2A) inserted by W.B. Act 13 of 1997.] :-

(1a) [the Chairman, who shall be appointed by the State Government;] [Clause (1a) inserted by W.B. Act 10 of 1999.]

(a) the District Inspector of Schools in charge of primary education;

(b) the Special Officer, Scheduled Castes and Tribes Welfare or, where no such officer is posted, the Tribal Welfare Officer-in-charge of the matters concerning the Scheduled Castes and the Scheduled Tribes of the sub-division;

(c) the District Social Education Officer;

(d) three members elected in the prescribed manner by the members of the Panchayat Samitis within the sub-division from amongst themselves;

(e) two members elected in the prescribed manner by the Councilors of the municipal areas within the sub-division from amongst themselves;

(f) two members elected in the prescribed manner by the members of the Mahakuma Parishad for the sub-division from amongst themselves;

(g) one teacher of a Primary Teachers' Training Institute in the subdivision elected in the prescribed manner by the teachers of such Institutes in the sub-division;

(h) three teachers elected in the prescribed manner by the teachers of primary schools in the sub-division from amongst themselves;

(i) two members of the West Bengal Legislative Assembly, not being Ministers, elected in the prescribed manner by the members of the Legislative Assembly, representing the constituencies comprised within the territorial jurisdiction of the sub-division, from amongst themselves;

(j) one member from the staff of this Primary School Council elected in the prescribed manner by the members of the staff of the Siliguri Primary School Council from amongst themselves;

(k) four persons interested in education nominated by the State Government, of whom -

(i) one shall be a woman,

(ii) one shall be a member of the Scheduled Caste or Scheduled Tribe,

(iii) one shall be a member of [linguistic minority community,] [Words substituted for the words 'linguistic minority,' by W.B. Act 10 of 1999.] and

(iv) one shall be a secondary school teacher.

(3) A District Primary School Council [or, as the case may be, Siliguri Primary School Council] [Words inserted by W.B. Act 13 of 1997.] shall be a body corporate with perpetual succession and a common seal, shall be entitled to acquire, hold and dispose of property, to enter into contracts and to do all other things necessary for the purpose of this Act, and shall by its corporate name sue and be sued.

40. Appointment in default of election.-

(1) If by such date, as may be fixed by the State Government in this behalf, any of the authorities fails to elect a member or members as provided in [section 37 or section 38], the State Government shall appoint member or members qualified for election by such authority.

(2) A person appointed under this section shall be deemed to be a member of the Primary School Council duly elected by the authority concerned.

41. Publication in the Official Gazette.

The name of every member [elected, nominated or appointed under section 37 or section 38] [* * *] or appointed under section 40 as a member of a Primary School Council shall be published by the State Government in the Official Gazette as soon as may be after his election, nomination or appointment, as the case may be.”

33. The records reveal that the District Primary School Council, Hooghly was last constituted pursuant to notification dated 04.02.2011. Its statutory tenure of four years expired in 2015, but no election or reconstitution of

members has taken place thereafter under Sections 40 and 41 of the West Bengal Primary Education Act, 1973. Consequently, since 2015, no legally functional Council exists in the district.

34. The principle that no person can be bound by a law not duly promulgated or published is a settled requirement under the principle of natural justice. Primary legislation carries inherent publicity through democratic debate, but delegated legislation or executive orders acquire binding character only upon due authentication and promulgation by recognised means such as publication in the Official Gazette. In ***Gulf Goans Hotels Co. Ltd. v. Union of India*** reported in **(2014) 10 SCC 673** the Supreme Court underscored that *“law must possess a certain form; contain a clear mandate/explicit command which may be prescriptive, permissive or penal and the law must also seek to achieve a clearly identifiable purpose. While the form itself or absence thereof will not be determinative and its impact has to be considered as a lending or supporting force, the disclosure of a clear mandate and purpose is indispensable”*. Applying this standard, the Court invalidated departmental directives enforced on the ground that they lacked due publication and could not bind citizens, reiterating that absent authentication under Article 77 of the Constitution of India, such directives are without legal force.

35. Equally, in ***State of M.P. v. Shri Ram Ragubir Prasad Agarwal*** reported in **(1979) 4 SCC 686**, the Court expounded the meaning of “publish” by observing that *“offering to public notice, or to make it accessible to public scrutiny; making known of something to people for a purpose”*. The Court rejected the argument that mere internal communication suffices, setting down the principle that accessibility to the public is the essence of publication.

36. This requirement of publication is not confined to delegated legislation. Section 41 of the West Bengal Primary Education Act, 1973 mandates that the State Government *“shall establish by notification in the Official Gazette a*

District Primary School Council for every district". The use of "shall" renders the issuance of a Gazette Notification a jurisdictional fact and the constitutive act that breathes life into the statutory corporation. Without such notification, any claim of lawful existence is untenable, as "*a legal fiction cannot operate in emptiness*". The Gazette Notification is thus not a procedural formality but the very source of corporate legal personality. The ratio that crystallises is therefore clear, enforceability of law and the existence of statutory corporations are conditioned equally on the fulfilment of the mandate of publication, for secret or unpublished laws and corporations without gazetted notification are, in the eyes of law, non est.

37. Section 37(3) declares that the District Primary School Council, once constituted, shall be deemed a body corporate with perpetual succession. However, fidelity to basic principles of corporate personality compels the conclusion that the conferment of perpetual succession attaches to the juridical entity only so long as such entity has its legal constitution grounded in a valid notification and composition of members. A legal corporation cannot be presumed to survive in vacuum when its basic composition mandated by law has lapsed and not been replenished in the manner prescribed under Sections 40 and 41. In this respect, the ***doctrine of lifting the corporate veil*** is most apt. While ordinarily incorporation creates a separate legal entity distinct from its members, this separate personality is always subject to compliance with statutory conditions. The veil may be pierced where the corporate form is used as a cloak to mask non-compliance or continued existence without lawful constitution. This principle has been repeatedly recognised in Indian jurisprudence, in cases like ***State of U.P. v. Renusagar Power Co.*** reported in **(1988) 4 SCC 59**:

"66. *It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties..."*

38. Thus, it must be examined whether the statutory mandate for valid reconstitution through Gazette notification and proper appointment of members has in fact been fulfilled. What the respondents seek to project as continuous functioning of a statutory corporation is, in substance, individuals without lawful authority assuming roles of Chairman and purporting to act on behalf of a non-existent collectivity. This Court is duty-bound to look behind the veil of fictitious corporate continuity to ascertain the legal reality and ensure that acts purportedly done in the name of the Council are not ultra vires and devoid of jurisdiction.

39. The argument on behalf of the respondents that Section 42(2) permits an indefinite continuance of the Council beyond the tenure of its members cannot be sustained. The provision, properly construed, operates only as a transitory arrangement to obviate an administrative vacuum until new members assume office. To read the provision as conferring perpetual life notwithstanding non-constitution would be to render Section 41 nugatory and to enable the State to indefinitely postpone democratic reconstitution of these local bodies. This Court, in **S.K. Mohmud Hossain (supra)** has already ruled that Section 42(2) cannot be interpreted to justify an eternal continuance of an expired body. Such an interpretation would be violative of the doctrine of *Ut res magis valeat quam pereat*, for it would defeat the very purpose of periodic elections and appointments envisaged in the said Act.

40. Turning first to the competence of the officer who issued the impugned order, the statutory scheme leaves no scope for ambiguity. The power to effect transfer of primary school teachers vests exclusively in the District Primary School Council as a duly constituted authority under the 2002 Rules. The Chairman, in his personal capacity, is not conferred such power. A delegate cannot further delegate, therefore, unless specifically empowered by statute, an individual member cannot assume substantive powers that are vested in the Council as a collective body.

41. The justification attempted under Section 53(2) relating to emergency powers of the Chairman cannot survive judicial scrutiny. Section 53(2) permits the Chairman, in any emergency, to discharge duties of the Council, provided, however, that he shall not act contrary to any decision of the Council and shall within one month report to the Council the action taken together with reasons therefore. In addition, Section 53(3) enumerates limited supervisory functions of the Chairman, such as general supervision of the Secretary and staff, sanction of travelling allowances and other administrative actions consistent with Council decisions. This statutory framework makes plain that normal transfer powers remain vested in the Council alone, emergency power is an exception, to be invoked sparingly and with transparency.

42. Long-standing authority reinforces this strict reading. In ***Sudipta Ghosh v. State of West Bengal*** reported in **(2013) 3 CLT 618**, the Calcutta High Court held that issuance of a transfer “*for the interest of education*” is not equivalent to exercising emergency powers, since emergencies under Section 53(2) must be clear and compelling. Likewise, in ***Nadia District Primary School Council (supra)***, the Court observed that where the Council stands unconstituted, the Chairman may act to meet an extraordinary situation to avoid standstill in the interest of education. But absent such exigency, the power cannot be invoked routinely. In ***Dipika Bala Biswas (supra)*** also, the proposition has been reiterated that transfer simpliciter, even if administratively inconvenient, does not amount to an emergency. In the present case, not only does the impugned order carry no reference to an “emergency” or reporting of reasons to the Council, but it was issued on a bald recital of “*interest of education*,” a ground explicitly rejected by precedent as insufficient to invoke Section 53(2). The use of emergency power must be expressly stated and justified. Its absence renders the order ultra vires at the threshold.

43. The facts here further reveal colourable exercise of power as such conduct demonstrates mala fides and an attempt to overreach a judicial pronouncement. The impugned order also fails to disclose reasons, thereby violating the cardinal principle of natural justice and strengthening the inference of lack of good faith. An order issued in want of jurisdiction, compounded by arbitrariness and absence of reasons, collapses on every count.

44. It is trite that administrative orders must be grounded in statutory competence, reason, and bona fides. An order issued by an officer lacking inherent jurisdiction, misconstruing provisions beyond their plain meaning, and manifesting mala fide intent is incurably void ab initio. The impugned transfer, in bypassing the statutory role of the Council and failing to satisfy the narrow contours of Section 53(2), suffers from precisely these fatal flaws. As a result, Articles 14, 19(1)(g) and 21 of the Constitution stand violated, since arbitrary State action operates to penalise an employee without lawful justification.

45. Therefore, the statutory command of Section 37 being mandatory, absence of valid Gazette reconstitution leaves the District Primary School Council without legal existence in Hooghly. The doctrine of lifting the corporate veil compels recognition that individuals describing themselves as functionaries cannot, in the teeth of law, bind a non-existent statutory corporation. The Chairperson was devoid of competence to issue the impugned transfer order. The reliance upon Section 42(2) and Section 53(2) is misconceived, judicial precedent foreclosing such interpretation. Therefore, the impugned order dated 21.07.2025 cannot be permitted to stand.

46. Accordingly, the writ petition is allowed. The impugned transfer order dated 21.07.2025, is hereby quashed and set aside. The respondents are directed to allow the petitioner to continue at Samantakhanda Primary School, Kamarpukur Circle, Hooghly, without prejudice to her service rights.

47. There shall be no order as to costs.

48. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance with all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Later:-

After pronouncement of this judgment, Mr. Biswabrata Basu Mallick, learned Advocate appearing for the District Primary School Council, Hooghly prays stay of operation of this judgment.

The prayer for stay is considered and rejected.

(RAJARSHI BHARADWAJ, J)

Kolkata

16.09.2025

PA (BS)