

Form No. J(2)
Item No. DL / 3
ARPAN – A.R.(CT)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(Appellate Side)

W.P.A. NO 19663 OF 2025

BIDHAN CHANDRA ROY

VS.

THE STATE OF WEST BENGAL & OTHERS

BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA

For the Petitioner	: Mr. Sakti Pada Jana, Adv. Mr. Subhajyoti Das, Adv. Mrs. Sudipta Pramanik, Adv.
For the State	: Mr. Supriyo Chattopadhyay, AGP. Ms. Sayantanee Bhattacharjee, Adv.
For the W.B.C.S.S.C.	: Dr. Sutanu Kumar Patra, Adv. Ms. Supriya Dubey, Adv.
For the W.B.B.S.E.	: Ms. Koyeli Bhattacharya, Adv.
Hearing Concluded On	: 28.08.2025
Judgment On	: 28.08.2025

SAUGATA BHATTACHARYYA, J.:

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.

2. In the writ petition recommendation issued by the Secretary of West Bengal Central School Service Commission (hereinafter referred to as '*Commission*') vide memo dated 12th August, 2025 is assailed whereby petitioner being an Assistant Teacher of Chetla Boys' High School, Kolkata was transferred to Sarsuna High School (H.S.), Kolkata.
3. During course of hearing a copy of the memo issued by the Secretary, West Bengal Board of Secondary Education (hereinafter referred to as '*Board*') dated 25th August, 2025 is placed before this Court whereby petitioner was requested to collect transfer order today, 28th August, 2025 at 12:00 noon. Copy of the memo dated 25th August, 2025 is taken on record.
4. Mr. Jana, learned advocate representing the petitioner submits that petitioner was appointed as an Assistant Teacher in Work Education and Physical Education group on 1st December, 1994 by the Managing Committee of the school following the recruitment rules prevalent at the material point of time. It is contended that the West Bengal School Service Commission Act, 1997 (hereinafter referred to as '*said Act of 1997*') pressed into service on and from 1st April, 1997 and petitioner was appointed prior to promulgation of the said Act of 1997. Subsequently, amendment was brought in connection with said Act of 1997 and one of such amendments is the West Bengal School Service Commission (Amendment) Act, 2017 incorporating Section 10C which provides in the interest of education and in the interest of public service for administrative reasons State Government may direct the Commission

through guidelines or general instructions to make recommendation for placing the service of any teacher including Assistant Headmaster or Assistant Headmistress or any non-teaching staff from one school to another school against any sanctioned post.

5. In this writ petition applying Section 10C of the West Bengal School Service Commission (Amendment) Act, 2017 petitioner was transferred from one school to another. According to the petitioner said Section 10C is not applicable to the petitioner as he was appointed prior to promulgation of said Act of 1997 that is, on 1st December, 1994. In support of such contention reliance is placed on the judgment of the Hon'ble Division Bench delivered on a batch of matters on 27th July, 2023, first one being **WPA 13628 of 2018 (Rabin Tudu vs. State of West Bengal & Ors.)**; specially observations made in paragraphs 80 and 86. Reliance is also placed on Sections 9 and 10 of said Act of 1997.
6. According to the petitioner taking note of the provisions of Sections 9 and 10 of said Act of 1997 and the interpretations attributed by the Hon'ble Division Bench in **Rabin Tudu** (*supra*), teachers who were appointed prior to promulgation of the said Act of 1997 are not coming under the purview of Section 10C which was incorporated *vide* West Bengal School Service Commission (Amendment) Act, 2017.
7. State respondents, West Bengal Central School Service Commission and West Bengal Board of Secondary Education are represented by learned advocates who have made submissions to defend the recommendation

made by the Secretary of the Commission dated 12th August, 2025 for transfer of the petitioner from one school to another applying Section 10C. It has been argued that Section 10C also applies to the teachers who were appointed prior to promulgation of the said Act of 1997 and the judgment of **Rabin Tudu** (*supra*) does not impede such transfer so far as teachers appointed prior to promulgation of the said Act of 1997 is concerned.

8. Having considered the submissions made on behalf of the parties and taking note of the steps taken by the Secretary of the Commission *vide* recommendation dated 12th August, 2025, this Court finds it apposite to quote Sections 9 and 10 of the said Act of 1997 below:

“9. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary, appointments to the posts of Teachers in a school shall be made by the managing committee, by whatever name called, or by the ad hoc committee, or by the administrator, if any (where there is no managing committee), of that school on the recommendation of the Regional Commission having jurisdiction.

(2) Any appointment of a Teacher made on or after the commencement of this Act in contravention of the provisions of this Act shall be invalid and shall have no effect and the Teacher so appointed shall not be a Teacher within the meaning of clause (p) of section 2.

10. Notwithstanding anything contained elsewhere in this Act, the terms and conditions of service of Teachers in the employment of a school immediately before the commencement of this Act shall not be varied to the

disadvantage of such Teachers in so far as such terms and conditions relate to the appointment of such Teachers to the posts held by them immediately before the commencement of this Act.”

(Emphasis supplied)

9. Section 9 of the said Act of 1997 provides that appointments made to the posts of teachers in a school shall be made by the school authority on the recommendation of the Regional Commission having jurisdiction and any appointment of a teacher made on or after commencement of the said Act of 1997 in contravention of the provisions shall be invalid and shall have no effect and the teacher appointed shall not be a teacher within the meaning of Clause (p) of Section 2. In order to adjudicate the issue involved in this writ petition provision as contained in Section 10 of said Act of 1997 is relevant wherein it is provided that terms and conditions of service of teachers in employment of a school immediately before commencement of the said Act of 1997 shall not be varied to the disadvantage of such teachers in so far as such terms and conditions relating to appointment of such teachers to the posts held by them immediately before the commencement of this Act.

10. Applicability of Section 10 needs to be considered on the anvil of paragraph 80 of **Rabin Tudu** (*supra*) wherein due interpretation has been subscribed by the Hon'ble Division Bench. Paragraph 80 of **Rabin Tudu** (*supra*) runs *infra*:

“In order to harmonise the Section 10, 10A, 10B and 10C of the said Act and its applicability in a specific sphere, Section

9 of the said Act may throw light thereupon relating to the appointments of the teachers in the aided educational institutions. The aforesaid Section starts with the *nonobstante* clause and creates an absolute embargo in appointment of the teachers and non-teaching staffs in the school by the managing committee after the promulgation of the said Act. The said section postulates that the appointment to the post of the teachers and non-teaching staffs in a school shall be made by the Board or the ad-hoc committee or the administrator of the Board on the recommendation of the Commission having jurisdiction and any appointment made after coming into force of the said Act shall be deemed to be an appointment in contravention to the provision of the said Act and shall not be given effect to. The conjoint reading of the aforesaid provision is exposit and conveys the definite intention of the legislatures that the appointments to the post of the teachers and non-teaching staffs in the aided school can only be made on the recommendation of the Commission in a case where such appointments are after the commencement of the said Act but the appointment made by the managing committee prior in time i.e. before the advent of the said Act, the protection was given with regard to the service condition which should not be varied to their disadvantages. Therefore, in our opinion, there is no consistency (sic) and/or incongruity in operation of Section 10, 10A, 10B and 10C concurrently as they do not override each other in the fields of its operation.”

(Emphasis supplied)

11. While harmonizing Sections 10, 10A, 10B and 10C of the West Bengal School Service Commission Act, 1997 it was discussed by the Hon’ble Division Bench that those provisions commence with *non-obstante* clause

and creates an absolute embargo in appointing teachers and non-teaching staffs in the school by the managing committee after promulgation of the said Act; appointments to the posts of teachers and non-teaching staffs in school require to be made by the Board or *ad-hoc* committee or the administrator of the Board on the recommendation of the Commission having jurisdiction and any appointment made otherwise after coming into force of the said Act shall be deemed to be an appointment in contravention to the provisions of the said Act and shall not be given effect to. But it was observed that appointment made by the managing committee prior in time that is, before advent of the said Act, the protection is given with regard to the service conditions which should not be varied to their disadvantages.

12. Observations made in paragraph 86 of ***Rabin Tudu*** (*supra*) makes the issue amply clear wherein it was enunciated that Section 10C cannot be operated retrospectively to the extent that it may impinge upon the terms and conditions of service of the teachers appointed prior to promulgation of the said Act of 1997. Paragraph 86 of ***Rabin Tudu*** (*supra*) runs *infra*:

“The law enacted by the competent authority is always presumed to operate prospectively unless expressly intended to operate retrospectively or by necessary implication. The concept of prospective operation is to avoid the things done in the past to be rendered undone. It is also based on the common notion that the law must always look forward and not back forward (sic) and the things which are settled in the past within the framework of legislative provision should not ordinarily be taken away or rendered illegal or unsettled

except on the competing circumstances. We are ad idem to the law enunciated in the above-noted decisions touching upon the principles relating to the applicability of the legislative provision prospectively or retrospectively. Though the aforesaid points was perceived to be of seminal importance yet, in view of the findings made in the preceding paragraphs, it loses its significance and becomes mere academic. The said point was argued for the reason that even if this Court finds that the condition of service of a teacher can be varied to their disadvantage such variation would operate after finding a birth in the said substantive Act and not otherwise. We have already held in the preceding paragraph that Section 10 of the said Act applies within the limited contour i.e. the condition of service of a teacher appointed prior to coming into force of the Act of 1997 and not in respect of the appointments made after coming into force of the said Act, the further reason can be supplied in support of the aforesaid discussion that every employment in a public service are contractual but such service conditions are governed by the statutory Act or the Rules framed in this regard and the concept of contractual service loses its existence. Obviously, Section 10C cannot be operated retrospectively to the extent that it cannot impinge upon the terms and conditions of the service of the teachers appointed prior to the promulgation of the School Service Commission Act.”

(Emphasis supplied)

13. It was also held in paragraph 86 that Section 10 of said Act of 1997 applies within the limited contour that is the condition of service of teachers appointed prior to coming into force of the said Act of 1997 and

not in respect of the appointments made after coming into force of the said Act.

14. It needs to be recorded herein that the judgment of ***Rabin Tudu*** (*supra*) was not interfered with by the Hon'ble Supreme Court and ***Civil Appeal Nos.937 to 961 of 2024 (Secondary Teachers and Employees Association (STEA) & Anr. ETC. vs. The State of West Bengal & Ors.)*** was dismissed *vide* order dated 26th September, 2024.
15. Therefore, Section 10 of the said Act of 1997 read with observations made by the Hon'ble Division Bench in paragraphs 80 and 86 of ***Rabin Tudu*** (*supra*) makes the issue amply clear that the petitioner being appointed prior to promulgation of the said Act of 1997 on 1st December, 1994 shall not come under the purview of Section 10C of the said Act of 1997.
16. Hence, the recommendation memo dated 12th August, 2025 issued by the Secretary of the Commission for transfer of the petitioner stands set aside and the intimation issued by the Board *vide* memo dated 25th August, 2025 shall not be given effect to.
17. Writ petition stands allowed and disposed of.
18. However, there shall be no order as to costs.
19. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)