

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT 1887 of 2024

With

CAN 1 of 2024

CAN 2 of 2024

The Managing Committee, Asannagar High School (HS)

-Versus-

Manojit Biswas & Ors.

For the Appellant : **Mr. Subir Sanyal,**
Mr. Arjun Samanta

For the Respondents/
Writ petitioner : **Mr. Jayanta Narayan Chatterjee, Sr. Adv.**
Mr. Supreem Naskar,
Ms. Pritha Sinha,
Ms. Chitrasali Vidyanipetan

For the WBBSE : **Ms. Koyeli Bhattacharyya,**
Mr. Bibek Dutta,
Ms. Keya Panja.

For the WBCSSC : **Mr. Dr. Sutanu Kumar Patra,**
Ms. Supriya Dubey.

Delivered on : **06.01.2025**

Prasenjit Biswas, J:-

1. The interim order passed by the learned Single Bench dated 18th September, 2024 in WPA 22903 of 2024 is assailed in this appeal.
2. By passing the impugned order the learned Single Bench stayed the operation of the order of transfer dated 20th August, 2024 until further order on the premise that the Headmaster appears to have been kept outside the purview of Section 10C of the West Bengal School Service Commission (Amendment) Act, 2017.
3. The writ petitioner joined in the recommended school as Headmaster and thereafter he was transferred to Asannagar High School. The petitioner joined as Headmaster in the said school on 09.11.2021. Thereafter, transfer order was issued on 20th August, 2024 by the Deputy Secretary to the Government of West Bengal, whereby the petitioner being the Headmaster of Asannagar High School (HS), District-Nadia has been transferred to the post of Headmaster in Chitrasali Vidyaniketan High School (HS), Nadia.
4. On 28.08.2024, the Commission has issued recommendation for transfer of this petitioner in the post of Headmaster. Against the said order of transfer petitioner made several requests but the authority did not pay any heed towards his grievances as ventilated by the petitioner in his representation. Finding no other way the writ petitioner filed a writ petition before this Court and in the said writ petition, the impugned interim order has been passed by the learned Single Bench.
5. The definition of a teacher was subsequently amended by virtue of the notification dated 1st January, 2009 and the amended definition of Teacher is quoted as under:

“Teacher” means an Assistant Teacher or any other person, holding a teaching post of a school and recognized as such by the Board or the Council, as the case may be, and includes the Headmaster or the Headmistress but shall not include the Assistant Headmaster or the Assistant Headmistress or the Teacher holding a post against short term vacancy caused by deputation, leave or lien”.

6. Thereafter, Section 10C of the Act was introduced by the West Bengal School Service Commission (Amendment) Act, 2017 which confers power upon the State Government to direct the Commission to make recommendation for placing the service of any teacher, if the said transfer is in the interest of education or interest of public service for administration against any sanctioned post. Section 10C is quoted herein below for better understanding of the matter in dispute.

“10C. Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the State Government in the interest of education or in the interest of public service for administrative reasons may direct the Commission through guidelines or general instructions to make recommendation for placing the service of any teacher including the Assistant Headmaster or the Assistant Headmistress or any non-teaching staff from one school to another school against any sanctioned post.”

“ So the expression any teacher appearing in Section 10C has to be assigned the meaning as ascribed to the teacher.”

7. In the impugned order, learned Single Bench held that the Headmaster has been kept outside the purview of Section 10C of the West Bengal School Service Commission Act, 1997. The learned Single Bench has committed error in law in overlooking the fact that Section 10C of the West Bengal Service Commission Act, 1997 covers “any teachers” that includes Headmaster as per the definition of the

‘teacher’ as provided under Section 2(p) of the West Bengal School Service Commission Act, 1997. So the finding of the learned Single Bench that the Headmaster appears to have been kept outside the purview of Section 10C of the West Bengal School Service Commission Act, 1997 is erroneous.

8. The writ petition was filed at the behest of the petitioner/private respondent, inter alia, challenging the order dated 20.08.2024 issued by the Deputy Secretary, Government of West Bengal for transfer of the petitioner from his present school to another school. But at the time of hearing, learned Advocate of the writ petitioner candidly submitted that the petitioner has already joined in the school where he has been transferred. It is further said by the learned Advocate that the present respondent joined at Chitrasali Vidyaniketan High School (HS), Nadia on 04.01.2025. Accordingly, the present appeal becomes infructuous but only grievance is that despite joining of this petitioner in the post in which he has been transferred his salaries for the month of November and December, 2024 have been withheld by the appellant. It is said that the salaries of this writ petitioner for the month of November and December may be released by the appellant.

9. Learned Advocate on behalf of the appellant has conceded the submission as advanced by the learned Advocate for the writ petitioner. As per his submission the released order has been issued in respect of the writ petitioner long back and, if any, salary is found due to the writ petitioner, he will take appropriate step for releasing the same.

10. As the writ petitioner/private respondent has already joined in the post in which he was transferred, so, the present appeal becomes infructuous. The learned Single Bench committed error in overlooking the fact that Section 10C of the West Bengal School Service Commission Act, 1997 covers “any teachers” including

Headmaster as per definition of teacher as provided in Section 2(p) of the West Bengal School Service Commission Act, 1997. So, the expression “any teacher” appearing in Section 10C of the Act has to be assigned the meaning as ascribed to the “teacher”. Accordingly the impugned order passed by the learned Single Bench dated September 18, 2024 is liable to be set aside.

11. In view of the above facts and circumstances and discussion made above the impugned interim order passed by the learned Single Bench dated September 18, 2024 in WPA No. 22903 of 2024 is hereby set aside.

12. The appellant/the School Managing Committee, Asannagar High School (HS) is hereby directed to release the salary due to this writ petitioner, if any , before his joining on 04.01.2025 in the post in which he has been transferred within four weeks from this date of this order.

13. Thus, the appeal is allowed. Consequently, all the connected applications filed in connection with the appeal are hereby disposed of.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)