

13.11.2025
Item No.02
Court No.11
Avijit Mitra

**MAT 1831 of 2025
with
IA No.CAN 1 of 2025**

**Alok Chaki
- Versus –
State of West Bengal & ors.**

Mr. Saktipada Jana
...for the appellant
Mr. Sirsanya Bandopadhyay, Sr. Standing Counsel
Mr. Dwarika Nath Mukherjee,
Mr. Manik Lal De
...for the State
Ms. Koyeli Bhattacharyya,
Mr. Bibek Dutta
...for the W.B.B.S.E.
Mr. Kanak Kiran Bandyopadhyay
...for the W.B.C.S.S.C.
Mr. Shankha Maity,
Mr. S. Singh
....for the respondent nos. 11 & 12

The present appeal has been preferred to question the legality of the order dated 14th October, 2025 passed by the learned single Judge in the writ petition being WPA 23816 of 2025. By that order, the learned single Judge refused to intervene at the nascent stage, inter alia, observing that the service of the appellant is a transferable one.

Before examining the issue arising for consideration in the present appeal, it would be apposite to refer to the essential facts leading to its presentation.

While serving as the Headmaster of Garden Reach K.C. Mills High School (H.S.), Kolkata (hereinafter referred to as “the Garden Reach High School”), the writ petitioner/appellant

(hereinafter referred to as “the appellant”) came to know from a communication dated 18th July, 2025, issued by the District Inspector of Schools to the Secretary, West Bengal Board of Secondary Education, that a proposal had been initiated to transfer him from Garden Reach High School (H.S.), Kolkata to Adarsha Madhyamik Vidyalaya, Kolkata (hereinafter referred to as “Adarsha Vidyalaya”).

Subsequent thereto, the appellant received a memorandum dated 29th July, 2025, issued by the Secretary, West Bengal Board of Secondary Education (hereinafter referred to as “the Board”), indicating that the District Inspector of Schools had recommended his transfer from Garden Reach High School (H.S.), Kolkata to Adarsha Vidyalaya, Kolkata. However, a further communication dated 16th September, 2025, issued by the Deputy Secretary, revealed that the appellant had in fact been transferred from Garden Reach High School (H.S.), Kolkata to another institution, namely, Sukchar Kedar Nath Podder High School, Barrackpore.

Faced with such a situation, the appellant challenged the transfer order by filing a writ petition being WPA 23816 of 2025. As the learned Single Judge declined to grant any interim order staying the operation of the transfer order, the present appeal has been preferred.

Mr. Jana, learned advocate appearing for the appellant, vehemently contends that the order of transfer is punitive in nature. In support of such contention, he submits that the Deputy Secretary had alleged that the appellant had retained a substantial amount of money from the school fund and had failed to take classes regularly, which had led to a dispute within the school.

He contends that from the conduct of the authorities as well as from their internal communications, it is evident that the transfer was not made on any administrative or academic ground. He further submits that the appellant was transferred solely because certain allegations had been levelled against him. According to him, therefore, such an order of transfer cannot be sustained in law.

Quite apart from that, he submits that if he is transferred to Adarsha Madhyamik Vidyalaya, Kolkata, he is ready and willing to accept such transfer.

He submits that the Deputy Secretary transferred the appellant to Sukchar Kedar Nath Podder High School, Barrackpore, by invoking the power conferred under Section 10c of the West Bengal School Service Commission (Amendment) Act, 2017 (hereinafter referred to as “the 2017 Act”). However, he contends that there existed no circumstance or situation justifying the invocation of Section 10c of the said Act by the Deputy Secretary. To lend support to his contention, he relied on a decision, reported in *(2009) 2 SCC 592 (Somesh Tiwari vs. Union of India & Ors.)*.

Mr. Jana submits that the appellant has not been allowed to rejoin his parent school since 25th October, 2025, as he has already been released therefrom in the meantime, and consequently, he is also not receiving his salary.

During the course of hearing, we directed the learned advocates appearing for the State respondents as well as for the Board to place written instructions on record, particularly disclosing the reason why, despite the recommendation for

transferring the appellant to Adarsha Madhyamik Vidyalaya, Kolkata, he was ultimately transferred to Sukchar Kedar Nath Podder High School, Barrackpore. In compliance, the District Inspector of Schools submitted his written instruction, and thereafter, the Deputy Secretary also placed a separate instruction on record. In addition thereto, Mr. Bandyopadhyay, learned Senior Standing Counsel appearing for the State respondents, submitted an e-note sheet. Let the documents produced on behalf of the State be kept on record.

Mr. Bandyopadhyay submits that the appellant was served with a show-cause notice on 1st September, 2025, to which he submitted his reply on 4th September, 2025. He further submits that the appellant suppressed these material facts and that a charge-sheet was subsequently issued to him on 12th November, 2025. It is contended that the exercise of power under Section 10c of the West Bengal School Service Commission (Amendment) Act, 2017 (the 2017 Act) was neither arbitrary nor mala fide. According to him, after due deliberation on the issue of pupil–teacher ratio of those three schools since July, 2025, it was ultimately decided to transfer the appellant to Sukchar Kedar Nath Podder High School, Barrackpore, in the academic interest of the students of that institution. He submits that the order of transfer, therefore, cannot be branded as punitive in nature.

Mrs. Bhattacharya, learned advocate appearing for the Board, has produced the charge-sheet and submits that the disciplinary proceeding initiated against the appellant is being continued in accordance with the relevant rules.

Heard the learned advocates appearing for the parties and perused the materials on record placed before us.

Indisputably, it is a well-settled proposition of law that an order of transfer is an administrative order, and transfer is an incident of service. There can be no doubt that the decision to transfer an employee to a particular post lies entirely within the domain of the employer, and an employee cannot claim a right to remain posted at any particular place for an indefinite period. It is also equally well settled that an order of transfer should not ordinarily be interfered with, except in cases where the same is, inter alia, vitiated by mala fides or is punitive in nature.

In the case at hand, the appellant has assailed the order of transfer on the ground that it is penal in nature. Ordinarily, a transfer order can be regarded as punitive when it is issued in lieu of taking disciplinary action against an employee. Admittedly, in the present case, following certain allegations made against the appellant, a chaotic situation arose in the school, and such an abnormal situation necessitated his transfer. In such circumstances, it would not have been appropriate to retain the appellant in his parent institution. We have also been informed that the appellant has already been released from Garden Reach K.C. Mills High School. Furthermore, a disciplinary proceeding has since been initiated against him. Therefore, it cannot be said that the respondents resorted to transferring the appellant in lieu of initiating disciplinary action, or that the order of transfer was intended to serve as a penalty for any alleged misconduct.

As mentioned earlier, the appellant has expressed his willingness to accept his transfer to Adarsha Madhyamik

Vidyalaya, Kolkata, and it is not in dispute that he had previously served in that school for about twelve years before being promoted as Headmaster of Garden Reach K.C. Mills High School.

From the e-note sheet, it appears that the pupil–teacher ratio in Adarsha Madhyamik Vidyalaya, Kolkata, is much better than that in Sukchar Kedar Nath Podder High School, Barrackpore. In Adarsha Madhyamik Vidyalaya, there are 21 teachers for 1,641 students, whereas in Sukchar Kedar Nath Podder High School there are only five Assistant Teachers for an enrolment of 1,152 students. The e-note sheet further indicates that the issue was deliberated upon at the administrative level since July, 2025. Therefore, it cannot be said that the exercise of power under Section 10c of the 2017 Act was arbitrary in nature.

There is no doubt regarding the acceptability of the binding precedent set in *Somesh Tiwari vs. Union of India & Ors.* (supra), relied upon on behalf of the appellant. However, the said decision is clearly distinguishable on facts.

Therefore, for the reasons discussed in the preceding paragraphs, we find no material to hold that the impugned order of transfer is punitive in nature. We also do not find any cogent reason to interfere with the present appeal.

However, as mentioned earlier, we have been informed that the appellant has not been permitted to join his parent school since 25th October, 2025 and has not been receiving any salary since then. In such circumstances, if the appellant joins Sukchar Kedar Nath Podder High School, Barrackpore within seven (7) days from the date of this order, the period commencing from 25th October, 2025 till the date of his joining shall be duly regularized,

and the salary for the said period shall be released in his favour in accordance with law.

In view of the discussions and observations made hereinabove, we are of the opinion that no further issue survives for adjudication in the writ petition and accordingly the same stands disposed of.

With these observation and order, the appeal and its connected application, are, thus disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)