

ADSL/1
18.09.2025
Court No. 11
rrc

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURISDICTION**

MAT 84 of 2025
with
IA No. CAN 1 of 2025
and
IA No. CAN 2 of 2025
(Jamiul Ali Vs. The State of West
Bengal & Ors.)

Md. Sarwar Jahan
Mr. Firoze Hassan
Mr. Debarshi Dhar
Ms. Tapati Sarkar

... For the appellant

Mr. Amitabrata Roy, Ld. GP
Mr. Sudipto Panda
Mr. Shibasish Banerjee

... For the State respondents

Mr. Sunit Kr. Roy

... For the SSC

Ms. Koyeli Bhattacharyya
Mr. Bibek Dutta

... For the WBBSE

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 30th July, 2025 passed by the learned single Judge in the writ petition, being WPA 1589 of 2025.

Upon hearing the learned advocates appearing for the respective parties and considering the materials on record, we are satisfied with the explanation given towards the delay in preferring the present appeal. Accordingly, such delay is condoned and the

application for condonation of delay being IA No. CAN 1 of 2025 is disposed of.

Records reveal that the appellant's claim for transfer was not considered since he was the single Assistant Teacher of Physical Science in Dhairjya Narayan High School (H.S.) (hereinafter referred to as the said school). Aggrieved thereby, the appellant preferred the writ petition. Upon contested, hearing the writ petition was dismissed observing *inter alia* as follows:

*'In this writ petition Government notification dated 3rd January, 2022 is not questioned. At the same time, academic interest of students in the school needs to be protected which was also considered by the Hon'ble Division Bench in **Shyama Prasad Roy** (supra).*

In aforesaid conspectus, no relief can be granted to the petitioner.

Writ petition stands dismissed.

However, respondent no. 9 is directed to make further endeavour to find out willing teacher from neighbouring school to fill up the resultant vacancy which would arise due to transfer of the petitioner and if such arrangement is made in terms of Government notification dated 3rd January, 2022, petitioner shall be transferred immediately thereafter.'

Mr. Jahan, learned advocate appearing for the appellant submits that the notification dated 3rd January, 2022 casts a duty upon the District Inspector of Schools (SE), Cooch Behar [hereinafter referred to as the DI(SE)] to take urgent step in a time-bound manner to search for a teacher on the same subject from nearby and make local arrangement so that the teacher of the other school attends the school wherefrom the teacher has applied for transfer on days of the week on a temporary basis till such time a permanent subject teacher joins.

He argues that it is a fundamental principle that a statutory authority can act only in the manner he is permitted by the statute. There is no provision in the notification dated 3rd January, 2022 to invite any option or choice of any other teacher to volunteer in rendering service to a school from which the appellant seeks transfer. Reliance has been placed upon a judgment *Gokul Chandra Mallick Vs. The State of West Bengal & Others* (MAT 1218 of 2024).

Mr. Jahan further submits that the appellant's initial application for transfer was submitted *offline* in the year 2018 and *online* in the year 2022 and the matter has been kept in abeyance unreasonably for an indefinite period of time.

Mr. Amitabrata Roy, learned Government Pleader assisted by Mr. Panda, learned advocate, appearing for the State/respondents submits that the learned single Judge has rightly dismissed the writ petition since no willing teacher could be found to fill up the resultant vacancy which would arise due to the transfer of the appellant and there is no infirmity in the order impugned.

Mr. Roy, learned advocate appearing for the Commission submits that no allegation has been levelled against the Commission in the writ petition.

Mr. Roy, learned advocate appearing for the Commission and Ms. Bhattacharyya, learned advocate appearing for the Board submit that no allegation has been levelled against the Commission and the Board in the writ petition.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

In the said notification dated 3rd January, 2022 there is no rider that the DI(SE) has to make any endeavour to find out any willing teacher of neighbouring school, who can man the post of the appellant temporarily till the regular incumbent joins the post. The term '*willing*' does not feature in the said notification.

The said notification states that it would be an obligation on the part of the DI(SE) to take urgent steps in a time-bound manner to search for a teacher on the same subject from nearby schools and make local arrangement so that the teacher of the other school attends the school wherefrom the single teacher concerned has applied for transfer. The appellant's claim for transfer cannot be kept in abeyance till a willing teacher is found.

In view thereof, the order impugned in the present appeal is set aside and the DI(SE) being the respondent no.9 herein is directed to act in strict consonance with the provisions of the said notification dated 3rd January, 2022 and the observations made in this order and take expeditious steps for filling up the resultant vacancy that may arise after the appellant is transferred. The entire exercise shall be completed by the said respondent preferably within a period of three months from the date of communication of this order.

With the above observations and directions, the appeal and the connected application are disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)