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Calcutta High Court

Case No: Writ Petition No. 17446 (W) of 2013

Sudipta Ghosh		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: June 26, 2013

Citation: (2013) 3 CALLT 618

Hon'ble Judges: B. Somadder, J

Bench: Single Bench

Advocate: Sayan De, for the Appellant;Biswajit De, Ms. Shabana Hasin for the State and Mr. Swapan Kumar Mazumdar for the Council, for the Respondent

Judgement

B. Somadder, J.
Affidavit of service filed in Court today be taken on record. The petitioner has approached this Court being aggrieved by an order of transfer issued by the Chairman, District Primary School Council, Nadia, as contained in memo bearing No. 852 dated 6th March, 2013.

2. According to the learned advocate for the petitioner, the order of transfer is without jurisdiction since the Chairman, District Primary School Council, Nadia, was not empowered to issue such an order of transfer, unless he was exercising emergency power u/s 53(2) of the West Bengal Primary Education Act, 1973.

3. On the other hand, the learned advocate representing the District Primary School Council, Nadia, submits that the Chairman, District Primary School Council, Nadia, had issued the order of transfer dated 6th March, 2013, in exercise of his emergency powers provided u/s 53(2) of the West Bengal Primary Education Act, 1973 and subsequent approval of the District Primary School Council was duly obtained within the statutory period of one month in terms of the said provision of law.

4. After considering the submissions made by the learned Advocates for the parties, it is necessary to quote the impugned order of transfer in its entirety, which reads as

follows:

The undersigned informs that Sudipta Ghosh, H.T., of Bipranagar Pry. School under Nabadwip circle is hereby transferred in terms of RTE Act 2009, as per circular of Principal Secretary, Education Department vide memo No. 484-SE(EE)/10-M-137/2012 dt. 30.08.2012 to Bhatgachhi Pry. School, P.O.: Ranabandh under Chapra circle. Release and joining to be confirmed by the concern Sub-Inspector of Schools within 3 days from the date of receipt.

This order is issued for the interest of education subject to the approval of Nadia District Primary School Council Committee. All concerned are being informed.

5. From a plain reading of the above order it appears that the same has been issued "for the interest of education." Nowhere in the impugned order of transfer it appears that the Chairman of the District Primary School Council, Nadia, was exercising his emergency powers in order to transfer the petitioner. That apart, and in any event, under sub-section (2) of section 53, there is no scope for obtaining any approval from the Council, once an order is issued by the Chairman. Section 53(2) of the West Bengal Primary Education Act, 1973 reads as follows:

(2) The Chairman may, in any emergency, discharge any of the duties of the Primary School Council, provided, however, that he shall not act contrary to any decision of the Primary School Council, and shall within one month report the Primary School Council the action taken by him together with reasons therefor.

6. The above provision of law makes it clear that the Chairman, only in an emergency situation, can discharge any of the duties of the Primary School Council. However, he cannot act contrary to the decision of the Primary School Council and shall within one month report to the Primary School Council, the action taken by him together with reasons therefor. Thus, the Chairman obtaining approval from the Council within one month from the date of issuance of the impugned order of transfer does not arise. Had the Chairman exercised his emergency powers, then the same ought to have been explicitly stated in the impugned order of transfer. As observed hereinbefore, the impugned order of transfer simply states that the same was issued "for the interest of education." The Chairman of the District Primary School Council, Nadia, could not have transferred the petitioner merely "for the interest of education" u/s 53(2) of the West Bengal Primary Education Act, 1973, which, as discussed earlier, is an emergency power reserved for the Chairman. Such emergency power, if exercised for the purpose of transferring a teacher/employee of the Council from one Circle to another has to be specifically spelt out in the order of transfer, which has not at all been done in the facts of the instant case.

7. For the purpose of transfer, the relevant provision is provided under Rule 4 of the West Bengal Primary Education (Transfer of Teacher including Head Teacher) Rules, 2002, which is set out hereinbelow:

4. Condition for transfer A Council may--

(a) on its own motion, or

(b) on an application from a teacher,

transfer an approved teacher within its jurisdiction from one primary school to another primary school on the condition that such approved teacher is confirmed and has completed minimum two years of continuous service both in case of mutual or single transfer:

Provided that the Council may, if it considers necessary for proper utilization of service of a primary teacher in the interest of education, transfer an approved teacher without maintaining any time limit of service:

Provided further that where there is a surplus teacher according to roll-strength as stated in rule 3, the Council may, on its own motion, transfer such approved teacher without maintaining any time limit of service by way of rational adjustment of teacher in a primary school having deficit teacher in the following order of preference:-

(i) a primary school without an approved teacher

(ii) a primary school having single teacher, and

(iii) other primary school having shortage of teacher.

8. It is evident from a plain reading of Rule 4 that the power of transfer has been specifically conferred upon the Council. It cannot be usurped by any other authority, including the Chairman. In this context, one may take notice of the observations made by a Division Bench of this Court in Sudipta Ghosh v. The State of West Bengal & Ors. in its judgment rendered on 17th October, 2012, in MAT 1108 of 2012 with CAN 6565 of 2012. Coincidentally, it was the present writ petitioner who got benefit of the order passed by the Division Bench. For reasons stated above, the impugned order of transfer dated 6th March, 2013, is liable to be set aside and quashed and is hereby set aside and quashed. In the event, the writ petitioner has already joined the school where he has been transferred, in terms of the impugned order of transfer, the Chairman, District Primary School Council, Nadia, is directed to issue a fresh order transferring the petitioner back to the school where he was last posted, prior to issuance of the impugned order of transfer dated 6th March, 2013. Such direction shall be issued immediately upon receipt of a photostat certified copy of this order by the Chairman.

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