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**(1987) 01 CAL CK 0004**  
**In the Calcutta High Court**  
**Case No : C.R. No. 10716 (W) of 1976**

Mahadeb Mahato

APPELLANT

Vs

District Inspector of Schools

RESPONDENT

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**Date of Decision :** 21-01-1987

**Acts Referred:**

**Citation :** 91 CWN 1099

**Hon'ble Judges :** Mohitosh Majumdar, J

**Bench :** Single Bench

**Advocate :** Balai Chandra Roy and N.N. Adhikary, for the Appellant;

**Final Decision :** Allowed

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## Judgement

Mohitosh Majumdar, J.—In this writ petition the petitioner challenges the order passed by the District Inspector of Schools, Primary Education, District School Board, Purulia and endorsed under a signature purporting to be for the said District Inspector of Schools on July 13, 1976 transferring the petitioner from Dighi Primary School under Manbazar Second Circle Purulia to Bhagidih Primary School under Bandwan II Circle. It appears that this writ petition was moved on August 16, 1976 when this Court issued a Rule and granted an inter in order of injunction in terms of prayer (d) of the writ petition. The petitioner was initially appointed as an Organizing teacher in Bhagidih Primary School. The village Bhagidih is 13 miles away from the village of the petitioner there is a river cutting across the path between those two places. There is no easy means of communication. After the petitioner had served in that school for sometimes he was transferred to Choate Pandra Primary School within Manbazar II Circle as a regular Assistant Primary Teacher. The said order of transfer was issued on September 20, 1974 and was endorsed to the petitioner under Memorandum NO. 3658(8). A copy of the said order is contained in Annexure "A" to the petition. In consideration of the difficult the petitioner was facing in caning out his duties at Bhagidih, and then to a lesser extent, at Chhota Pandra, the petitioner was transferred by order date 31st March, 1976 from Choate Pandra Primary School

to the village school of the petitioner at Dighi. A copy of the said order is contained in Annexure "B" to the writ petition. While serving at Dighi only for about three months and a half the petitioner was again transferred from Dighi Primary School to Bhagidih Primary School by an order being Memo No. 1197(8) dated 19th July 1976. The said order is contained in Annexure "C" to the petition. The petitioner thereafter made a representation to the District Inspector of Schools, Primary Education for allowing him to continue at his Village School at Dighi. The said representation was made to the District Inspector of Schools, Purulia through a deputation of the Purulia District Primary School Teacher" Association who met the said District Inspector of Schools and handed over the representation. The representation contrails the circumstances meriting the transfer of the petitioner from Bhagidih to Chhota Pandra and thereafter to his village school, namely, Dighi Primary School. It appears that the transfer of the petitioner, as would appear from paragraph 7 of the petition, was approved on the recommendation of the concerned Minister of Forest. The transfer teacher of the primary school can only be made, according to petitioner, by District School Board after considering the report of District Inspector of Schools. The Government of West Bengal, Education Directorate from time to time issued various circulars laying down the guidelines for transfer of teachers of Primary Schools. On July 24, 1969 under Memorandum no. 5507(15) SC/P (II) the Director of Public Instruction, West Bengal laid down a detailed guideline relating to subject of transfer of Primary School teachers from the District School Board. It was stated therein "normally no teacher should be transferred except on his own signature. It was further laid down that occasion might however arise when the School Board might feel the necessity of making transfer in special circumstances. The special circumstances were enumerated in that circular which reads thus : - "When adjustment of surplus teacher on the basis of prescribed teacher pupil ratio is found necessary, specially to meet the needs of under-staff Schools. (ii) When any single teacher School goes without teacher, the only teacher working in the school have not left, and (iii) When due to serious lapses on the part of a teacher whose transfer is considered essential as a measure of penalty." The last in the series of these circulars is the one bearing Memo no. 4026(16) SC/ F dated 2nd August 1974 issued by the Director of public Instructions, West Bengal to the District Inspector of Schools, Primary Education. In the said circular it has been stated that he is informed that as rules 3(2) of the Rules framed in terms of Notification dated 26.10.71 transfer of teachers serving under the District School Board from one school to another within the district is permissible for administrative reason and for better interest of education without any reference to the Director of public Instruction, West Bengal. It was further stated that, while considering the case of transfer the spirit of the rules as manifested by the manner in which the system of appointment of a teacher has been laid down should be kept in view and the reasons in each case of transfer should be recorded in writing. Relying on the circular the petitioner challenged the order of transfer by reason of the following factors: -

(a) The impugned order has been made in violation of Rule 3(2) of the Rules framed u/s 66 of the Bengal (Rural) Primary Education Act, 1930 on October 26, 1981 and published under Notification No. 975-Edn (P) /1OR-1/71 read with the Circular issued by the Director of Public Instructions West Bengal on August 2, 1974.

(b) The guide lines set out in the various circulars issued by the Government of West Bengal on July 24, 1969, September 17, 1969 and May 12, 1970 have not been followed in making the impugned order of transfer.

(c) The order of transfer has been made without obtaining a report from the District Inspector of School and without considering the same and as such the same has been issued in violation of Rule 7 of the Rules framed u/s 66 of the Bengal (Rural) Primary Education Act, 1930 and issued under Notification No. 1493 Edn. Dated July 25, 1940.

(d) The order having been issued at the instance of the Minister of Forest, West Bengal without any reason whatsoever the same is a mollified orders.

(e) The petitioner was appointed on or about October 3, 1974 and only after March 31, 1976 he was given a positing in his village Primary School which posting is in conformity with the rules framed u/s 66 of the Act and the circulars issued in this regard from time to time by the state of west Bengal and the Director of Public Instruction and as such the petitioner should not have been transferred form his present posting to a distant school which school the petitioner could not serve from his village home.

f) The order has not been made for administrative reasons and for better interest of education and reasons for transfer has not been recorded in writing.

2. It appears that there is no return to rule Nisi nor is their any denial of the averment made in the write petition. The order of transfer should not normally be passed without following the procedure or guidelines as contained in such circular detailed hereinbefore. It appears that he order off transfer is passed on the recommendation of the concerned Minister of Forest. Therefore, the order of transfer suffers from the doctrine of dictation.

3. The concerned Minister under the said Act and the Rules famed thereunder is not empowered to instruct or dictate the concerned District Inspector of Schools nor can he otherwise make any recommendation in respect of transfer of a teacher. The minister has no power to reckoned in respect of the case for transfer. The order of transfer having been affected at the instance of he concerned Minister of Forest Department; there is no proper and independent application of mind nor effective and independent discretion of power by the concerned District Inspector of Schools. The district Inspector of Schools by reason of the said recommendation was precluded from exercising his power and the order of transfer is thus vitiated by the said recommendation of the concerned minister. A situation of authority not exercising of the concerned

minister. A situation of authority not exercising discretion arises when the authority does not consider the matter itself but exercises its discretion under the dictation of superior authority. This, in law, constitutes not exercise of its power by the authority and will be bad. Although the authority purports to act itself yet in effect, it is not so as it does not take action in its independent judgment as is required by the Statute.

4. Commissioner of Police, Bombay Vs. Gordhandas Bhanji, highlights this point. Simons Motor Units Ltd. v. Minister of Labor (1946) 2 AER 201.

5. In State of Punjab Vs. Suraj Parkash Kapur etc., the Supreme Court held that the State Government could not give any instruction to the Consolidation Officer functionary under the East Punjab Holdings (Consolidation and prevention of Fragmentation) Act 1948 as there was no provision in the Act empowering the State Government to give any such directions or instruction to the Consolidation Officer.

6. Reference may be made to the decision in Ruttonjee and Company Vs. State of West Bengal and Others, ; Lovender and Son v. Minister of Housing, (1970) 3 AER 87 Slinger v. Minister of Housing (1970)1 WLR 1298; M. Bromley LBC v. GLC (1982) WLR 62.

7. The petitioner asserted that before passing the order of transfer reason should be recorded in writing when such challenge is thrown it is incumbent upon the respondent concerned to disclose the reasons before this court. The respondents as aforesaid, did not choose to disclose the reasons for the purpose of scrutiny thereof by this court. The order of transfer can be passed on administrative reason, but it is incumbent upon the respondents to place before court the relevant administrative grounds or reasons justifying the order of transfer. In the absence of administrative grounds or reasons, transfer orders cannot be passed on mere whim of the concerned minister or by reason of incurable infirmity crept in the order of transfer. It appears that the minister concerned prevailed upon the concerned District Inspector of Schools or the officers dealing with the case of the transfer of the petitioner who passed the said order of transfer. It appears that the minister concerned prevailed upon the concerned District Inspector of Schools or the officers dealing with the case of the transfer of the petitioner who passed the said order of transfer. It appears that the minister is also made a party to this proceeding, but he has not chosen to file any affidavit although he was served with a copy of the Rule and the writ petition. It is true that the transfer is not one of the conditions of service but an incident of service. Now-a-days the trend is that the order of transfer is passed to get rid of an inconvenient officer and transfer order sometimes is passed mainly on the personal whims and caprices of certain higher authority. In such situation, the order of transfer cannot but be called as per all order, vitiated by extenuating circumstances or extraneous matters. Reference may be made to the judgment of this court in the case of Birendra Chandra Ghosh v. State of West Bengal, 1984(2) CLJ 243 and also to the judgment of the Kerala High Court and Madras High Court in

Pusphakaran v. Chairman, Coir Board, 1979(1) SLR 309 and C. Ramnathan v. Acting Zonal Manager, FCI of India, 1980(1) SLR 309 on the issues of transfer involved. The principles laid down in the aforesaid issues are fully and squarely applicable in the facts and circumstances, I am constrained to hold that the order of transfer is infected with the dictation of the Minister concerned and thereby the said order is wholly arbitrary and malafide in character.

8. In view of the foregoing reasons, the order of transfer cannot be sustained. The writ petition is accordingly allowed and the Rule is made absolute, but without any order as to costs.