

(1994) 12 CAL CK 0005
In the Calcutta High Court
Case No : F.M.A.T. No. 2880 of 1991

Smt. Sikha De (Dutta)

APPELLANT

Vs

Smt. Kanika Das

RESPONDENT

Date of Decision : 21-12-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
West Bengal Primary Education Act, 1973 — Section 16(K)

Citation : 99 CWN 507 : (1996) 1 ILR (Cal) 523

Hon'ble Judges : Satyabrata Sinha, J; Basudeva Panigrahi, J

Bench : Division Bench

Advocate : Asoke De and Dipankar Dutta, for the Appellant; Santosh Chatterjee, for State and Arun Prokash Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal is directed against the judgment and order dated April 2, 1991 passed by Mahitosh Majumder, J. whereby and where under the said learned Court has set aside the order dated August 24, 1990 transferring Sm. Kanika Das, the writ Petitioner/Respondent No. 5 from E.C. Block Primary School, Salt Lake, South Dum Dum circle to Goalbati F.P. School, Sukantanagar as Head Teacher.

2. The fact of the matter lies in a very narrow compass. The writ Petitioner/Respondent No. 5 at the relevant time was working as Head teacher in the E.C. Block Primary School, Salt Lake (hereinafter referred to as the "said school"). The writ Petitioner was an approved teacher. In relation to an incident involving two teaching staff of the school which occurred in the School premises on June. 30, 1989, the district Inspector of Schools (P.E.) North 24-Parganas, directed the Assistant Inspector of Schools to make an enquiry who pursuant there to held an enquiry and submitted a report before the District Inspector of Schools (P.E.), North 24-Parganas on or about July 29, 1989 stating, inter alia, that one Smt. Subhra Mukherjee, Assistant Teacher, had physically assaulted the writ Petitioner

in the school hours. The District Inspector of Schools (P.E.) forwarded a copy of the said report in terms of his letter dated August 8, 1990 amongst others to the Private Secretary to the Minister-in-charge, Primary and Secondary Education, West Bengal, for information. It, however, appears that the District Inspector of Schools (P.E.), again directed the Asstt. Inspector of Schools (P.E.), North 24-Parganas, to submit a report and pursuant to the said direction he submitted a report dated August 4, 1990 upon holding inspection of the School. In the said report it was stated that an unauthorised Committee has been functioning in the premises of the school and interfering with the affairs of the school while there exists a valid advisory Committee therefore. The said Committee was allegedly formed by the guardians of the students of the School. He further arrived at a finding that a preprimary school namely, EC. Block Pre-Primary School has been running for about 3 years in the big hall of the approved Primary School without any permission of the competent authority, it was, however, stated that the writ Petitioner was also one of the members of the aforementioned unauthorised committee. In this situation he observed as follows:

It may be mentioned here that this unauthorised Committee has been functioning rather interfering into the affairs of the school while there exists a valid Advisory Committee for the school. And it is a funny thing to observe that a member of the advisory Committee and two approved teachers including the Head teacher of E.C. Block Primary School are in the said unauthorised Committee.

It further appears that the Director of School Education, West Bengal, also issued a Memo No. 2782-SC/ P dated September 28, 1989 and pursuant to the said Memo the Deputy Director of School Education, West Bengal, held an enquiry on October 4, 1989. He was assisted by one Tamal Behari Pal, Asstt. Inspector of Schools (Care), North 24-Parganas, in collecting and processing of dates in connection with the enquiry. In relation to the incident dated June 30, 1989 the said authority held as follows:

An objective analysis of the above incident reveals fairly clearly that both of them acted in a way that had set one of the worst examples of un-pedagogically and indecorum to the students of the school. On the one hand, the said teacher has proved beyond doubt her utter unworthiness to be the head of an educational institution and on the other hand, Smt. Mukherjee has equality obviously betrayed her lake of balance, composure and sense of decorum and proved her emotional incapability of becoming a teacher for the little children despite the fact that he has methodological competence in so far as class room interaction in the cognitive domain is concerned (but that is simply one of the many as facts of the whole concept of teaching).

The said authority also made an enquiry with regard to the .allegation of running another unauthorised school in the premises of the school in question. In the said report it was, inter alia, recommended as follows:

As regards the highly contemptible incident on 30.6.89 in the school corridor and its immediate and far reaching impact on the students in particular and the whole school in general I recommend that the responsibility may be equally fixed on both Smt. Konika Das, the H.T. and Smt. Subhra Mukherjee, an A.T. and disciplinary action may be taken against them. As a disciplinary measure, I recommend that Smt. Das and Smt. Mukherjee may not be allowed regular increments of pay for the next two years. Besides, on administrative ground Smt. Das and Smt. Mukherjee may not be allowed to work in E.G. Block Primary School, Salt Lake as their "teacher image" in the minds of the pupils in the school has been greatly tarnished and their presence in the school will adversely affect the "affective development" of the Children.

However, on humanitarian ground, arrangement may be made for their placement in two other schools.

Thereafter the impugned office Memo dated August 24, 1990 was issued whereby and whereunder the writ Petitioner was transferred as Head Teacher to Goalbati F.P. School, Sukantanagar, in place of the Appellant.

3. The writ Petitioner/Respondent No. 1 filed a writ application questioning the aforementioned order of transfer. The learned single Judge by reason of the impugned judgment quashed the aforementioned order of transfer holding the order of transfer is infected without legality and improper exercise of power.

It is true that the Court should not normally interfere with the order of transfer, but in a situation of the present nature the Court cannot shut its eyes. The decisions cited above have a great-persuasive value. The principles as laid down in a number of decisions of the High Courts and particularly in the case of *State of W.B. and Ors. v. Maharaja Dharmandar Prasad Singh* are clearly applicable in the facts and circumstances of the case. The contention of Mr. Swapan Kumar Banerjee, the learned Advocate for the Respondents appears to be very attractive in appearance but in fact lacks in substance inasmuch as in exceptional circumstances the Court is competent to interfere with the order of transfer, in a case where those principles which are stated hereinbefore are applicable.

4. Mr. Ashok Dey, the Learned Counsel, appearing on behalf of the Appellant, inter alia, submitted that it is a trite law that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not interfere with an order of transfer.

5. The Learned Counsel pointed out that in view of Section 16 (K) of the West Bengal Primary Education Act the District Inspector of School is the competent Authority to pass an order of transfer. He further submitted that from a perusal of the order impugned in the writ application, it would appear, the same was passed not only in the interest of the institution but also in the interest of education.

6. The Learned Counsel further pointed out that the writ Petitioner cannot be said

to have been prejudiced by reason of said order of transfer as she was transferred within the same circle and was not sent out of the District.

7. The Learned Counsel submitted that in view of the fact that the order of transfer has been passed in the administrative exigency, neither principles of natural justice was required to be complied with nor the copies of the enquiry reports were required to be furnished to the writ Petitioner.

8. It was contended that the other concerned teacher, namely, Sm. Subhra Mukherjee had not questioned the order of transfer passed against her. He further pointed out that no ground had been taken in the writ application regarding non-supply of a copy of the report.

9. Mr. Dey further submitted that in the facts and circumstances of this case it was not necessary for the concerned Respondents to comply with the principles of the natural justice.

10. The Learned Counsel in support of his aforementioned contention relied upon a decision of the Supreme Court of India in Union of India and another Vs. W.N. Chadha,

11. The Learned Counsel submitted that an order of transfer cannot be interfered by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India even if the said order was passed with a view to accommodate another teacher. Reliance in this connection has been placed upon Mrs. Shilpi Bose and others Vs. State of Bihar and others,

12. It was further submitted that even if it be assumed that the impugned order of transfer was passed by way of or in lieu of punishment, this Court may not exercise of its discretionary jurisdiction under Article 226 of the Constitution of India.

13. Reliance in this connection has been placed upon Smt. Raj Bala and another Vs. Dy. Director of Education and another etc.,

14. Mr. Dey further submitted that this Court should construe the pleadings of the Petitioner with regard to the question of mala fide very strictly.

15. It was also submitted that no representation was also filed by the writ Petitioner.

16. Reliance in this connection has been placed upon Bharat Singh and Others Vs. State of Haryana and Others, and Rajendra Roy Vs. Union of India (UOI) and Another,

16.1 It was further submitted that keeping in view the fact that the Petitioner had been transferred within the same circle, the same cannot be said to have prejudiced her in any manner whatsoever. Mr. De, for the aforementioned proposition has relied upon a decision of the Supreme Court in 1993 S.C.W. pag 3167.

17. It was further submitted that keeping in view of the fact that writ Petitioner did not join her transferred post for a long time, this Court should not exercise its discretionary jurisdiction in her favour. Reliance in this connection has been placed., upon Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani,

18. Mr. A.P. Chatterjee, the Learned Counsel, appearing on behalf of the writ Petitioner, Respondent No. 1, submitted that from perusal of the judgment of a learned trial Judge it would appear that the purported order of transfer has not only been passed at the instance of a Minister but also at the instance of a higher officer, namely, the Deputy Director of School Education. According to the Learned Counsel, therefore, the power of transfer must be held to have been exercised mala fide as against the Petitioner. It was further submitted that the learned Trial Judge from the records of the case placed before him by the learned Advocate for the State of West Bengal also come to a conclusion that the said order has been passed in order to accommodate the Appellant. The Learned Counsel in this connection has placed strong reliance upon the case Paramjit Sing Sandhu v. Ram Rakha Mal 1982 (2) S.L.R. 536; Ram Pratap v. State of Rajasthan 1982 (1) S.L.R. 278; Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others,

19. The Learned Counsel pointed out that the learned Trial Judge by an order dated April 2, 1981 directed that the writ Petitioner need not join the school but she would be paid her salary. It has been pointed out that thereafter by an order dated September 16, 1991, a division bench of this Court directed the parties to maintain status quo as on September 12, 1991. Mr. Chatterjee, further placed before us certain documents to show that in fact the writ Petitioner had submitted her joining report but the same had not been accepted. It was pointed out that from a perusal of the report of the Assistant Inspector of Schools it would appear that the writ Petitioner was the victim of assault at the hands of an Assistant teacher, Smt. Subhra Mukherjee, and in that view of the matter it cannot be said that she had been committed any misconduct. The Learned Counsel had further pointed out that from the records it would appear that the writ Petitioner had along been objecting to a primary school being run in the premises of the school in question. It was further submitted that it is incorrect to contend that the Petitioner was a member of the Managing Committee.

20. There cannot be any doubt whatsoever that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot ordinarily interfere with an order of transfer. It is also well known that an employee does not have any legal right to? continue to serve a particular school for a number of years. In administrative exigency, therefore, a teacher can be transferred from one school-to another. It is not disputed that in terms of Section 16(k) of the West Bengal Primary Education Act, 1973 a teacher can be transferred from one school to the other. However, an order of transfer, inter alia, can be questioned in

the event-ay The order of transfer is, mala fide;

b) any provision of law has been violated while passing an order of transfer;

c) such an order of transfer has been passed by way of or in lieu of punishment.

The order dated August 24, 1990 in terms whereof the writ Petitioner was transferred in no uncertain term states that said order of transfer has been passed in accordance with the reports, of enquiry submitted by the officers of the said district and in the interest of education and administration.

21. The aforementioned order, therefore", does not reveal that while passing such order, the District Inspector of Schools, Primary Education (North 24-Paraganas) took into consideration the report submitted by the Deputy Director of School Education,.

22. However, in para. 16 of the affidavit-in-opposition of the Respondent Nos. 1, 3 and 4 affirmed by Sri Bidyut Baran Mitra, Sub-Inspector of Schools, it has categorically been stated:

That with regard to the statement made in paragraph Nos. 10. 11 and 12 of the said writ petition is strongly denied by me. It will be crystal clear about the transfer of Smt. Kanika Das as per the statements made in paragraphs above. There was no scope of any influence or otherwise. Actually the transfer of the said writ Petitioner was done as per the report of the Assistant Inspector of Schools (P.E.) and the Deputy Director of School Education and as such the allegations made in these paragraphs are strongly denied by me.

Admittedly, therefore, the District Inspector of Schools Primary Education while passing the said order of transfer was influenced by the report of the Deputy Director of School Education who had submitted the same at the instance of the Director of School Education. It is true that the writ Petitioner did not raise any contention that the order of transfer is mala fide on that ground, However, it appears that the fact that the said order of transfer was passed by the District Inspector of Schools, Primary Education, having been influenced by the report of the Deputy Director of School Education was revealed for the first time in the affidavit-in-opposition filed by the Respondent Nos. 1, 3 and 4. The writ Petitioner thereafter took the aforementioned point in her affidavit-in-reply.

23. The counsel for the state of West Bengal produced the entire records before the learned trial Judge. However, the said records for reasons best known to the counsel for the State of West Bengal have not been produced before us.

24. The learned Judge found out from the said records that the order of transfer was passed at the behest of the Minister-in-Charge of Education.

25. Mr. Chatterjee has rightly" drawn over our attention to the fact that the copies of Inspection Report dated August 8, 1990 as contained in annexure "D" to the writ application but also the impugned order of transfer dated August 29, 1990 were forwarded to the Private Secretary to the Hon"ble Minister-in-charge

Education (P & S) for his information.

26. The learned Judge, however, found that the Appellant filed an application dated September 21, 1989 to the Respondent No. 3 in terms whereof she had prayed that she be transferred to any primary school in day shift, in Salt Lake area as a Head teacher. The said application was forwarded by the Sub-Inspector of Schools with a request that the Appellant be transferred to Goalbati F.P. School whereas the writ Petitioner may be transferred to E.C. Block Primary School, Salt Lake. The learned Trial Judge in his judgment took into consideration the following undisputed facts:

- a) The concerned Minister-in-Charge of Education desired the enquiry should be made and necessary steps should be taken against the Petitioner.
- b) The District Inspector of School (P.E.), 24-Parganas (North) after taking necessary steps duly transmitted the outcome of decision to the personal secretary to the concerned Minister of Education.
- c) The order of transfer was not passed by the D.I. but at the instance or on the dictation of the higher authorities namely the Director of Schools Education and the Deputy Director of School Education, West Bengal.
- d) The Deputy Director of School Education made recommendation against the Petitioner. The said recommendation being penal in nature operate to the prejudice of the Petitioner.
- e) The members of Mahila Samity lodged complaint against the Petitioner.
- f) The copies of the adverse reports/recommendations were not made available to the Petitioner.
- g) The transfer of the Petitioner was made on the basis of the report of Asstt. Inspector of Schools and the Deputy Director of School Education.

The order of transfer was passed on the basis of complaint received by the District Inspector of schools from the members of the Manila Samity.

27. The learned Trial Judge upon considering various decisions cited before him arrived at the following conclusion:

I have carefully considered the totality of the circumstances. I am of the view that disclosure of the adverse reports thus made makes, it clear that circumstances proceeding to and attendant upon the order of transfer render the order of transfer illegal inasmuch as the District Inspector of Schools had no occasion to exercise administrative discretion independently, but acted on the recommendation of the Deputy Director of Schools Education (P.E.). The inescapable conclusion that emerges that the order of transfer is infected without illegality and improper exercise of power. It is true that the Court should not normally interfere with the order of transfer, but in a situation of the present nature the Court cannot shut his eyes. The decisions cited above have a great

persuasive value. The principles as laid down in a number of decisions of the High Courts and particularly in the case of *State of U.P. and Ors. v. Maharaja Dharmandar Prosad Singh* are clearly applicable in the facts and circumstances of the case. The contention of Mr. Swapan Kumar Banerjee, the learned Advocate for the Respondents appears to be very attractive in appearance but in fact lacks in substance inasmuch as in exceptional circumstances the Court is competent to interfere with the order of transfer. In a case where those principles which are stated hereinbefore are applicable.

In view of the foregoing findings I set aside the order of transfer of the Petitioner and I direct that the Petitioner shall not be transferred from the post of Head Teacher of E.C. Block Primary School, Salt Lake, to any other school. Transfer of Respondent No. 5 to E.C. Block primary school is hereby set aside. This order shall not, however, prevent the Respondents from taking steps for holding enquiry into the allegations levelled against the Petitioner, but in that event the Petitioner shall be heard in person in accordance with law.

28. it is true as has been contended by Mr. De that the order of transfer does not ex facie show and that the same had been passed either at the instance of the Minister or Deputy Director of School Education, but the Learned Counsel did not and could not contend in view of the findings arrived at by the learned trial Judge as also the statement made in para. 16 of the Affidavit-in-opposition that the impugned order was passed upon taking into consideration of the report of the Deputy Director of Education. Such order of transfer, in my opinion, is vitiated in law on that ground alone.

29. In *Ashrafi Jha v. The State of Bihar and Ors.* 1994 B.B.C.J. 266, a division bench of the Patna High Court of which I was a member held as follows:

In the present case, it is writ large from the impugned order (Annexure 1) itself that the order of transfer has been passed by the Respondent Director under the Orders of some superior authority identified as "administration". We are not sure as to what the word "administration" in the present context means. But it is clear that the Respondent Director, who has been conferred with the statutory, authority for passing the order of transfer has acted under the dictates of some non statutory authorities. It is established rule of administrative law that where statute direct that certain acts shall be done by specified person, their performance by or under the dictates of any other person is completely prohibited. In the case of *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, where a statute vested the power of granting and cancelling a licence in the Commissioner of Police an order of cancellation issued by the Commissioner was held not to be in exercise of his statutory powers in that behalf because it was made in pursuance of instructions received from the Government. It was held by the Supreme Court that, "the Commissioner did not in fact exercise his discretion in this case and did not cancel the licence he granted. He merely forwarded to the Respondent an order of cancellation which another authority had purported to pass. It is evident that the Commissioner had before him

objections which called for the exercise of the discretion regarding cancellation specifically vested in him by Rule 250. He was, therefore bound to exercise it and bring to bear on the matter his own independent and unfettered judgment and decide for himself whether to cancel the licence or reject the objection.

30. Similarly in the case of *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, the purported order of the Cane Commissioner was quashed by the Supreme Court holding that, "the power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of any-one not even in favour of the State Government or the Chief Minister. "In this case what had happened was that the power of the Cane Commissioner was exercised by the Chief Minister, an authority not recognised under Clause 6 read with CI. 11 but the responsibility for making this order was asked to be taken by the Cane Commissioner".

31. In *Brahamchari Yashpal Vs. The State of Bihar and Others* a division bench of the Patna High Court while considering the validity of an order of transfer which was passed at the behest of a member of the Legislative Assembly relying upon a decision of the Supreme Court held:

It is equally well settled that when fair play is utterly denied by the administrative authorities, people will turn to Court complaining of such blatant cases of administrative excess and the Court cannot simply fold its hands on the ground that its interdiction may amount to intervention in administrative matters. Our apex Court has laid down that every Governmental action must be judged on the touchstone of reason and public interest *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, Later decision Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, has affirmed the ratio in *Kasturilal's* case and has made it very clear the wide sweep of Article 14 will undoubtedly take "within its fold" an unreasonable administrative action which is not in public interest.

It further observed:

When an appropriate authority exercises his discretion at the dictate of an extraneous agency, the resultant decision become vitiated and an ultra vims one; We may quote the relevant observations of H.W.R. Wade (*Wade Administrative law--5th Edition*) in this regard at page 329:

Closely akin to delegation, and scarcely distinguishable from it in some cases, is any arrangement by which a power conferred upon one authority is in substance exercised by another. The proper authority may share its power with some one else, or may allow some one else to dictate to it by declining to act without their consent or by submitting to their wishes or instructions. The effect then is that the discretion conferred by Parliament is exercised, at least in part, by the wrong authority, and the resulting decision is ultra vires and void. So strict are the

Courts in applying this principle that they condemn some administrative arrangements which must seem quite natural and proper to those who make them. In this class might be included the case of the cinema licensing authority which, by requiring films to be approved by the British Board of Film Censors, was held to have surrendered its power of control into unauthorised hands.

32. Yet again in *Krishna Mohan Choudhary Vs. The State of Bihar and Others* a Division Bench of the Patna High Court took the view that while passing an order of transfer, mandatory provisions of law must be followed. It was held:

Further in the case of *B. Varadha Rao v. State of Karnataka* 1986 S.C. 1955 (Pr.5) it has been held that- "It is no doubt true that if the power of transfer is abused ; the exercise of the power is vitiated". Therefore, the principle that emerges is that even in the matters of transfers and postings of Government servants, one may concede to a subjective element in the discretion vested with the Minister-in-Charge so as to empower him to make alteration in the recommendations of the Establishment Committee but the Minister must act reasonably and in good faith, and upon proper grounds in case of deviation from the recommendations of the Establishment Committee which must be discernible from the official records. If the action of the Minister is challenged on the grounds of mala fide, the issue becomes justifiable. In case of such challenges, it becomes incumbent upon the Minister concerned to justify his action by placing on record the reasons which prevailed upon him necessitating modification/alteration in the recommendations of the statutory Establishment Committee. It is then only that it can be adjudged whether such grounds were good and germane to the exercise of power keeping in view the requirement of fairness embodied under Articles 14 and 16 of the Constitution.

33. In *Sidheshwar Prasad v. The State of Bihar and Ors.* 1994 B.B.C.J. 464, yet again a division bench of the Patna High Court of which I was a member held that where the order of transfer had been passed on the basis of a decision taken by the State level Committee whereas such decisions were required to be taken by the District level Committee, such order of transfer is vitiated in law.

34. In *Halsbury's Laws of England Volume (I) Fourth Edition*, the law has been stated thus:

A body entrusted with a statutory discretion must address itself independently to the matter for consideration. It cannot lawfully accept instruction from, or mechanically adopt the view of, another body as to the manner of exercising its discretion in a particular case.

35. This aspect of the matter has been considered by me in *Bijoy Kumar Santhalia v. State of Bihar and Ors.* 1989 B.B.C.J. 35 in the following terms:

In view of the fact that the order as contained in Annexure 6 to the writ petition has been passed by the Land Acquisition Officer on the basis of the direction of the Commissioner as contained in Annexure 5 to the writ petition, the same also

cannot be sustained although the Land acquisition Officer is one of the Statutory functionaries under the Land Acquisition Act.

It is well settled that a statutory functionary also cannot pass an order on the basis of the recommendation and/or in consultation with an authority who has no role to play under the statute. Reference in this connection may be made to *Udayappan v. Government of Tamil Nadu*. 1993 (1) LLJ 170 In this view of the matter the impugned order cannot be sustained.

36. Similar view has been taken by a Division Bench of the Patna High Court in *Damodar Prasad Sing v. The State of Bihar and Ors.* 1993 (1) P.L.J.R. 194 wherein it was observed:

It is well settled that an authority exercising statutory functions must act in accordance with the provisions of the statute which vests in him, the power which he seeks to exercise. The statutory authority must seek guidance for his action from the provisions of the Act itself, and should not be guided by any consideration which can be said to be extraneous.

37. In *Secretary of State v. Tanaside* 1976 (3) All E.R. 665, it has been held that while taking a decision, the concerned authority is bound to ask itself correct question and take reasonable step to acquiescing itself with the relevant information to enable it to answer correctly.

38. If it is not done, the same would amount to misdirection in law.

39. Thus there cannot be any doubt whatsoever that where an administrative order has been passed on extraneous or irrelevant consideration or at the instance of an authority who has no statutory role to play in such matters the same would be vitiated in law.

An order of transfer cannot also be passed for unauthorised purpose.

40. The decision of the Supreme Court of India *Mrs. Silpi Bole v. State of Bihar* Supra upon which strong reliance has been placed by Mr. Dey has no application to the facts and circumstances of the case. In that case the said exercise bare jurisdiction or transfer on the request of the concerned teachers for such place where their husband have been residing. The Supreme Court held:

In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one "place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights". Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer orders

issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders.

41. In *State of U.P. and Ors. v. Maharaja Dharmender Prasad Sing and Ors.* 1939 (2) S.C.C. 505 the Supreme Court observed:

It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:

The relevant principles formulated by the Courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be stayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutual exclusive.

It was further observed:

However, judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision-making process. In *Chief Constable of the North Wales Police v. Evans* reported in 1982 (1) W.L.R. 1155 : 1982 (3) ALL E.R. H.L. 14, refers to the merits-legality distinction in judicial review. Lord Haversham said:

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion

which is correct in the eyes of the Court.

42. It is now well settled that Discretion means sound discretion guided by law. It must be governed by rule, not by humor. It must not be vague, arbitrary and fanciful. (See 1870(4) Burr 2528 at 2539 referred to in 1973 B.L.J.R. 187(203)).

43. Discretion thus must be exercised in a reasonable and proper manner. Mr. Dey is correct in his submission that the writ Petitioner has failed to make out any case of mala fide in fact in his pleadings. However, as noticed hereinbefore a case of malice in law has been made out from the records maintained by the State itself. When illegality and malice in law in the impugned order passed by the D.I. of schools has been found out by the learned Single Judge from the records maintained by the office, it would, in my opinion, be irrelevant to consider as to whether the Affidavit sworn in support of the writ petition is in terms of the rules framed by this High Court and/or whether the Petitioner has made out any case of mala fide on fact.

44. In this view of the matter it is not necessary for this Court to consider the aforementioned decisions referred to by Mr. Dey.

45. Mr. Dey also appears to be correct in his submission that as despite the recommendation made by the Deputy Director of School Education, the District Inspector of Schools has not passed any order of punishment and thus it was not necessary for him to serve copies of the enquiry reports upon the Petitioners. If the impugned order has not been passed by way of or in lieu of punishment, evidently the principles of natural justice were not required to be complied with. However, the decision in Union of India v. W.N. Chadha was rendered in different situation inasmuch as therein the Court was considered with the question as to whether principles of natural justice were required to be complied with in a case where a letter regulatory was issued by the Government of India.

46. So far as the impugned order of transfer is concerned the same, however, has to be viewed in the context of entire materials on records which have been found by the learned Trial Judge to be "revealing". It may be noted that the State has not preferred any appeal nor produced the records before us for our satisfactions that the findings arrived at by the learned Trial Judge are factually incorrect.

47. For the views I have taken, it is not necessary to consider other submissions of the Learned Counsel, as the aforementioned findings are sufficient to uphold of the judgment of the learned Trial Judge.

48. Before parting with this case, however, I may note that ordinarily the writ Petitioner might not have been entitled to remain in the school for a long time. She could have been transferred by the D.I. of Schools in ordinary course. She also could have been transferred on administrative exigencies. Had the order not been passed at the instance of Minister or at the instance of the higher authority, we might not have been inclined to exercise our discretionary

jurisdiction in favour of the writ Petitioner. Keeping in view of the totality of the circumstances, we, however, are of the view, that it would be proper if the D.I. of Schools (P.E.) applying his own view pass a suitable order, in accordance with law.

49. We, however, reject the contention of Mr. Chatterjee to the effect that the Appellant has no locus standi to prefer this appeal. The Appellant evidently is aggrieved by the order as a direction has been issued against her by the learned Trial Judge.

50. We have also not applied our mind as it was not necessary for us to do with regard to the question as to whether the writ Petitioner deliberately or intentionally did not join her transferred post. As the same only a disputed question it would only be for the appropriate authority to consider the said fact in the light of various interim orders passed by this Court from time to time. We also make it clear that we have not applied our mind with regard to the rival contentions raised before us by Mr. Dey and Mr. Chatterjee as to whether the Petitioner was guilty of being a member of unlawful committee or whether the Petitioner is a party to run a pre-primary section of the school. The same would fall for consideration of the competent authorities.

51. For the reasons aforementioned there is no merit in this appeal, and is accordingly dismissed. But in the facts and circumstances of this case the parties shall pay and bear their own respective costs.

Basudeva Panigrahi, J.

52. I agree.