
(1961) 08 CAL CK 0012
In the Calcutta High Court

Sudhir Kumar Sen

APPELLANT

Vs

District School Board of 24-Parganas and Others

RESPONDENT

Date of Decision : 01-08-1961

Acts Referred:

Bengal (Rural) Primary Education Act, 1930 — Section 18

Citation : 71 CWN 274 : (1968) 2 LLJ 45

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—This rule is disposed of on a short ground.

2. It is admitted that the petitioner, a teacher in Nakphul Free Primary School, was transferred to Gopalkata Free Primary Sahool, but in making the order of transfer the pro-visions of Rule 7 of the rules framed under 88 66(1) and 66(2) of toe Bengal (Rural) Primary Education Act, 1930, were not followed.

3. Rule 7 requires:

No appointment or transfer of teachers shall be made by the board except after considering a report of the district inspector of schools.

4. In the instant case, it appears from the affidavit-in-opposition, no report of the district inspector of schools was even made, far less that it was considered by the board. Then again, the order of transfer was not made by the board but was made by the president of the district school board. The order by a president of a school board is not order by the board itself. This is clear from Section 18 of the Bengal (Rural) Primary Education Act, which is to the following effect:

18. (1) All orders of the board shall be carried into effect by the president in whom the entire executive power of the board shall be vested and who shall be responsible forgiving effect to each orders.

(2) The president shall not excercise any power which by this Act is expressly declared to be exercisable by the board.

(3) The president may authorize the vice-president by an order in writing to exercise any of the powers conferred on him to perform any of the duties imposed on the president by this Act and thereupon the responsibility of the president in respect of such powers and duties shall devolve upon the vice-president during the continuance of such order.

(4) When the office of president is vacant, the vice-president shall exercise the functions of the president until a new president is appointed.

5. Sri Somendra Chandra Bose, learned advocate for respondent 3, did not argue that Rule 7 had been complied with in making the order of transfer of the petitioner. He, however, contended that Rule 7 was directory and not mandatory. I find no justification for upholding that contention. Power is vested in the board, under the law, to do certain things. It cannot be delegated to only an officer of the board. Then again, there is a procedure prescribed for making orders of transfer. It may not be best for all concerned to give to the members of the board liberty not to conform to the statutory procedure but to discover a procedure of their own.

6. In the circumstances, I hold that the order of transfer, which is annexure I to the petition, is an illegal order and made beyond the competence of the person making the order.

7. For the aforesaid reasons I make this rule absolute and command the respondent not to give effect to the order of transfer as made. Nothing contained in this Judgment, however, shall preclude the respondents from making an order of transfer of the petitioner according to law.

8. Let a writ of mandamus issue accordingly.

9. There will be no order as to costs in this rule.