

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And**

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 60 of 2023

**The State of West Bengal & Ors.
Vs.
Kanailal Dey**

With

WP.ST 62 of 2023

**The State of West Bengal & Ors.
Vs.
Sri Deb Narayan Seth**

For the State-petitioners : Mr. Tapan Kumar Mukherjee,
Ld. Sr. Advocate & Ld. AGP
Mr. Pinaki Dhole
Mr. Somnath Naskar

For the private respondents : Ms. Chaitali Bhattacharyya
Mr. Gourav Haldar
Mr. Biswarup Nandy

Heard on : September 5, 2023 & September 21, 2023

Judgment on : September 21, 2023

DEBANGSU BASAK, J.:-

1. Two writ petitions are taken up for analogous hearing as they involve the same issues. They were heard analogously previously also. The writ petitions are at the behest of the State.
2. The private respondents in the two writ petitions moved the West Bengal Administrative Tribunal, claiming that, the transfer order was bad since it was issued by the Commissioner of School Education who was delegated with the power by a delegatee of the Governor. A delegatee of the Governor cannot delegate his power.
3. The Tribunal upheld such contention of the private respondents and held that, the transfer order of the private respondents was set aside and quashed.
4. Learned Senior Advocate appearing for the State submits that, Commissioner of School Education by the impugned transfer orders, merely communicated the decision of the State taken to transfer the District Inspector of Schools to various postings. He refers to the file which he produced on

the previous date on September 5, 2023. Referring to such file, he submits that, the decision of transfer was taken by the Minister-in-Charge and the concerned Secretary as it appears from the endorsements in the file. Such decision was communicated by the impugned order of transfer. Therefore, the contention that, the transfer order was issued by the Commissioner of School Education without authority is unfounded.

5. Learned Advocate appearing for the private respondents submits that, by the impugned order, essentially, the private respondents were being demoted. She refers to the fact that, the private respondents were District Inspector of Schools. By the impugned order of transfer, they were sought to be posted as the Additional District Inspector of Schools. She relies upon *(2000) 1 Supreme Court Cases 644 (Sub-Inspector Rooplal and Another vs. Lt. Governor through Chief Secretary, Delhi and Others)* and submits that, four conditions noted in such judgment were not fulfilled. In effect, the private respondents were being demoted from the

post of District Inspector of Schools to Additional District Inspector of Schools by the order of transfer.

6. Learned Advocate appearing for the private respondents refers to the affidavit-in-opposition and submits that, the materials available in the *website* of the State Government in relation to Education Department demonstrates that, Additional District Inspector of Schools were placed under the supervision of the District Inspector of Schools. In this regard, she relies upon an order dated January 4, 2022. In addition thereto, she refers to the materials of the State Government with regard to educational administration at the district level and at the sub-district level.
7. Relying upon **(2000) 7 Supreme Court Cases 675 (Rhone-Poulenc (India) Ltd. Vs. State of U.P. and Others)**, learned Advocate appearing for the private respondents submits that, since the Commissioner of School Education was not authorized to issue the transfer order, the same should be quashed.
8. In reply, learned Senior Advocate appearing for the State submits that, there was no reduction in rank of the private

- respondents. They were being given the same pay as they were entitled to draw in their earlier postings. He submits that, there was no question of the order of transfer being issued without jurisdiction in view of the notings in the file.
9. An order of transfer was issued as against the private respondents dated July 26, 2021 which was assailed before the Tribunal. Such order of transfer was issued by the Commissioner of School Education. In the order of transfer, 37 personnel were involved. Apparently, two of them, that is, the private respondents approached the Tribunal. The Tribunal by the impugned orders, set aside the order of transfer in respect of the individual private respondents on the ground that Commissioner of School Education was without authority to issue the transfer order.
 10. *Rhone-Poulenc (India) Ltd. (supra)* considers a disciplinary proceedings. It considers issuance of a transfer order. It finds no material was placed before the Labour Court to prove the authority and competence of the Regional Sales Manager to issue the order of transfer. In such circumstances, the order of transfer was found to be vitiated.

11. In the facts of the present case, the Tribunal found Commissioner of School Education not to be duly authorized to issue the order of transfer.
12. In the two writ petitions, the file concerning the transfer of the private respondents was produced. It was produced on September 5, 2023. Inspection of the file was granted to the learned Advocate appearing for the private respondents in Court. Private respondents were allowed an opportunity to file affidavit dealing with the contents of such file.
13. The file produced on September 5, 2023, is also produced today. It appears from such file that, the decision to transfer the candidates noted in the order of transfer dated July 26, 2021 including the private respondents was taken by the Minister-in-Charge and by the concerned Secretary in view of the Governor delegating his power of transfer to the concerned Secretary. Concerned Secretary exercised his authority to transfer the private respondents in the facts of the present case. Concerned Secretary took his decision of transfer in consultation with the Minister-in-Charge and

such decision was communicated by the Commissioner of School Education.

14. We find no material irregularity in the issuance of the order of transfer. Commissioner of School Education merely communicated the decision of the State taken in accordance with law to transfer the incumbents including the private respondents.
15. There is the issue of the private respondents being demoted as contended on behalf of the private respondents which required consideration.
16. In *Sub-Inspector Rooplal and Another (supra)*, the Supreme Court was concerned with the view as to whether the two posts of Sub-Inspectors of Border Security Force (BSF) and Sub-Inspectors (Executive) in the Delhi Police Force were equivalent or not merely on the ground that the two posts did not carry the same pay-scale. On appraisal of the facts of that case, the Supreme Court rendered a finding that, it was not so. In arriving at such finding, the Supreme Court held as follows:

“17.

Equivalency of two posts is not judged by the sole fact of equal pay. While determining the equation of two posts many factors other than “pay” will have to be taken into consideration, like the nature of duties, responsibilities, minimum qualification etc. It is so held by this Court as far back as in the year 1968 in the case of Union of India v. P.K. Roy. In the said judgment, this Court accepted the factors laid down by the Committee of Chief Secretaries which was constituted for settling the disputes regarding equation of posts arising out of the States Reorganisation Act, 1956. These four factors are: (i) the nature and duties of a post; (ii) the responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. It is seen that the salary of a post for the purpose of finding out the equivalency of posts is the last of the criteria. If the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different would not in any way make the post “Not equivalent”.

.....”

17. In the facts of the present case, we are required to consider the four factors enumerated in *Sub-Inspector Rooplal and Another (supra)*. The first factor is the nature and duties of the post here. The private respondents are being transferred from District Inspector of Schools (Primary Education) to a post as Additional District Inspector of Schools (Secondary Education). The nature of work and duties of Additional

District Inspector of Schools is same as that of the District Inspector of Schools. The responsibilities and powers exercised by the Additional District Inspector of Schools (Secondary Education) cannot be said to be lower than that of the District Inspector of Schools (Primary Education). At least, nothing is placed from record to that effect. Minimum qualification in the two posts are also the same. The pay so far as the two posts concerned are also the same. None of the private respondents are being reduced in rank nor are they suffering any reduction of pay when they are being posted as Additional District Inspector of Schools (Secondary Education).

18. The order dated January 4, 2022 issued by the School Education Department is in relation to the permission for leaving the head quarters by the District Inspector of Schools. Such order is of the view that, when a District Inspector of Schools is leaving station, he is required to take permission from the District Magistrate. Equally, an Additional District Inspector of Schools was also being required to take permission from the District Magistrate for

- leaving the station. Therefore, an Additional District Inspector of Schools cannot be said to be placed at a disadvantage *vis-à-vis* the order dated January 4, 2022.
19. The literature which was annexed to the affidavit-in-opposition of the private respondents and which the private respondents claimed that they downloaded from the *website* of the Education Department, demonstrates that, at the district level office for primary level education, the district Inspector of Schools will act as the Head of office and will be assisted by the Additional District Inspector of Schools.
 20. The main activities of the District Inspector of Schools are also delineated. We are informed that the State Government allots independent charges for administrative conveniences to Additional District Inspector of Schools at certain districts.
 21. In such circumstances, we are of the view that, the private respondents are not being demoted by the impugned order of transfer as they are claiming.
 22. The impugned order of the Tribunal cannot be sustained in view of the materials made available on record, that is, the

file of the State Government which was considered on September 5, 2023 and today also. That apart, the contention of the demotion is without any basis.

23. In view of the discussions above, **WP.ST 60 of 2023** and **WP.ST 62 of 2023** are allowed. The impugned orders of the Tribunal in both the writ petitions are set aside.

(Debangsu Basak,J.)

24. I Agree.

(Md. Shabbar Rashidi, J.)