

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.944 of 2020

ORDER

This writ petition is filed seeking the following relief:

“.....To declare the action of the respondents in not considering the case of the petitioner in the transfer counselling held in the year 2018 under preferential category on the ground that the petitioner underwent a surgery for implantation of 'Dual Chamber ICD' machine instead of open heart surgery which is not listed in the Rule 8 (d) of G.O. Ms.No.16, School Education (Ser.II) Department, dated 06/06/2018 even though respondents are well aware of requirement of constant medical assistance and observation by heart specialist for survival of the petitioner is nothing but non application of mind and illegal, arbitrary unconstitutional; (b) and to declare that the petitioner is entitled to be consider under preferential category as per Rule 8 (d) of G.O.Ms.No.16, School Education (Ser-II) Department, dated 06.06.2018 by treating her implantation of 'Dual Chamber ICD' machine as alternative remedy for open heart surgery by setting aside the impugned rejection order Rc.No.1848/Trans/Ser IV-2/2015/Appeals-2 issued by the 2nd respondent;(c) to declare the action of the respondents in not including the other chronic/rare diseases where constant medical assistance is required for survival under preferential category has no reasonable nexus with the object sought to be achieved by the Rule 8(d) of G.O.Ms. No.16, School Education (Ser-II) Department dated 06.06.2018 and the same is to be declared as is illegal, arbitrary, unconstitutional; and (d) consequently declare that the petitioner is entitled to be considered under preferential category as she is suffering from a rare disease of Hypertrophic Obstructive Cardiomyopathy where constant

medical assistance is required for the survival of the petitioner by directing the respondents to transfer the petitioner where medical facilities are available without reference to the proceedings of ban on general transfers and also direct the respondents to do necessary amendments to the transfer rules for inclusion of the other chronic/rare diseases more particularly Hypertrophic Obstructive Cardiomyopathy where constant medical assistance is required for survival; and (e) to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri A.V.V.S.Bhujanga Rao, learned counsel for the petitioner and learned Government Pleader for Services-II appearing for the respondents.

It is the case of the petitioner that she is working as Secondary Grade Teacher in U.P.S.Ramu Thanda, K.Sundaram Mandal, Mahaboobabad District. She is suffering from Hypertrophic Obstructive Cardiomyopathy. She has participated in the transfer counselling held in the month of July, 2018, but her case was not considered under preferential quota. Aggrieved by the same, the petitioner has preferred an appeal before the appellate authority in terms of Rule 16 of G.O.Ms.No.16, dated 6.6.2018. But, the appellate authority had mechanically rejected her case on the ground that her request cannot be considered in terms of Rule 14 (3) of G.O.Ms.No.16, dated 6.6.2018.

Learned counsel appearing for the petitioner contended that the State Government had issued the Telangana Teachers (Regulation of Transfers) Rules, 2018, for effecting transfers *vide* G.O.Ms.No.16, dated 06.06.2018. It is further contended that the very same Rules provide for an appeal. Rule 16 of the said Rules makes it clear that the appellate authority has got every power to pass orders on the merit. But, the appellate authority, instead of considering the appeal in terms of Rule 16, had mechanically rejected the case of the petitioner. It is prayed that appropriate orders be passed in the writ petition by setting aside the impugned order dated 7.8.2018 and directing the appellate authority to consider the case of the petitioner afresh.

Learned Government Pleader appearing for the respondents contended that the appellate authority will re-consider the case of the petitioner and pass speaking orders.

Having considered the rival submissions made by the learned counsel on either side, and since the appellate authority had mechanically rejected the case of the petitioner, this Court is of the view that the writ petition can be disposed of by setting aside the impugned order dated 7.8.2018.

Accordingly, the Writ Petition is disposed of by setting aside the impugned order dated 7.8.2018. The appellate authority is directed to consider the case of the petitioner on merits in terms of Rule 16 of the Telangana Teachers (Regulation of Transfers) Rules, 2018, re-examine her case, and pass orders afresh after affording an opportunity to her within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date: 10.01.2020
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