

01.08.2022
Court No.13
Item Nos.23 to 25
AP

WPA 1195 of 2022
Sudeshna Bera
Vs.
The State of West Bengal and Ors.

With
WPA 1175 of 2022
Hamida Khatun
Vs.
The State of West Bengal and Ors.

With
WPA 1174 of 2022
Mafuja Khatun
Vs.
The State of West Bengal and Ors.

Mr. Firdous Samim
Ms. Gopa Biswas

... For the Petitioners.

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey

... For the WBCSSC.

Mr. Supriya Chattopadhyay
Mr. Pinaki Bhattacharyya
Mr. Suman Dey
Mr. Biswajit De
Ms. Rajlakshmi Ghatak

... For the State.

The petitioners are aggrieved that their application for transfer has been rejected on the ground that they have not completed five years of service in the posted school.

Records indicate that the petitioners' application for transfer were on medical grounds (severe gynaecological disorders) and the same was forwarded by the head of the institution to the BMOH.

The said BMOH is stated to have endorsed that the petitioners are suffering from very serious

gynaecological disorders. Under normal circumstances, in terms of 2015 Rules, the HOI ought to have forwarded the application along with the record of the BMOH to concerned District Inspector of Schools.

The District Inspector of Schools ought to have referred the matter to the CMOH of the area for reassessing the medical condition of the petitioner.

Counsel for the State by placing reliance upon two decisions of the Division Bench of this Court has argued that the petitioners were not eligible to apply for transfer.

Firstly, the judgement dated 22nd June 2017 in the case of ***The Headmaster, Bhotabari Sitanath High School and Ors. Vs. Mapita Samaddar and Ors.*** in ***MAT 1466 of 2016*** and secondly, the judgement dated 31st July 2018 in the case of ***Himani Parya Vs. The State of West Bengal and Ors.*** in ***FMA 1059 of 2017***.

In both the aforesaid judgements, it has been held that notwithstanding the medical condition of an applicant the five-year Rule is mandatory. In other words a teacher notwithstanding any medical condition cannot apply for transfer unless he or she completes five years in the posted school.

In or about August 2021 the State has issued guidelines in terms of Rule 10B of the West Bengal School Service Commission Act, 1997. The guidelines have been amended from time to time and lastly on 3rd January 2022.

It is submitted by counsel for the petitioner that the said guidelines read with Section 19 of the 1997 Act have the force of law and are binding on the HOI, the School Service Commission and the District Inspector of Schools.

It is, therefore, submitted that the aforesaid two judgements in the case of ***The Headmaster, Bhotebari Sitanath High School and Ors. (supra)*** and ***Himani Parya (supra)*** would not apply coming into force of the said guidelines.

Counsel for the petitioner also relies upon a decision of a Coordinate Bench in the case of ***Snigdha Datta (Basu) Vs. The State of West Bengal and Ors.*** in ***WPA 16680 of 2021*** dated 27th April 2022 which has taken a view similar to that of this Court.

It is now well settled that while guidelines per se do not have the force of law but those issued under authority of statute become enforceable Rules.

The aforesaid guidelines permit any teaching and non-teaching staff with the severe medical condition, mournfully described under Rule 3 and 4, permit to apply for transfer even before expiry of the period of five years in the school of posting.

The objection of the State in this regard and the impugned orders, therefore, are not sustainable and are quashed and set aside.

In view of the above, the matter is remanded for consideration afresh by the District Inspector of Schools in terms of 2015 Rules. The District Inspector of Schools shall refer the medical condition of the petitioner along with all papers to the office of the CMOH, Malda.

Based on the opinion received from the CMOH, Malda further steps shall be taken in terms of the 2015 Rules within a period of six weeks thereafter by all the authorities including the Schools Service Commission and the Board as may be applicable.

With the aforesaid observations, the writ petitions are disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)