

01.08.2022
Court No.13
Item No.26
AP

WPA 2842 of 2022

Kanika Malik
Vs.
The State of West Bengal and Ors.

Mr. Ujjal Ray
... For the petitioner.

Mr. Santanu Maitra
Mr. Kapil Guha
... For the State.

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
... For the WBCSSC.

Mr. Madan Mohan Roy
Mr. Haripada Nayak
... For the Respondent Nos.7 & 8.

The petitioner is aggrieved that her application for transfer has been rejected on the ground has not completed five years of service in the posted school.

Records indicate that the petitioner's application for transfer was 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 petitioner is suffering from a very serious gynaecological disorder. Under normal circumstances, in terms of 2015 Rules, the HOI ought to have forwarded the application along with the record of the BMOH to the 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 petitioner was not eligible to apply for transfer.

Firstly, the judgement dated 22nd June 2017 in the case of ***The Headmaster, Bhotebari 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.

On 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 and 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 to the 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 sever medical condition, mournfully described under Rule 3 and 4, 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 and given the fact that the CMOH and the concerned District Inspector of Schools have already confirmed the petitioner's application, the

matter shall be considered afresh by the School Service Commission for recommending the transfer in terms of 2015 Rules.

Let the process be completed by the School Service Commission and suitable orders for recommendation be passed within a period of three weeks from date. After receipt of an appropriate recommendation from the School Service Commission the Board shall issue the necessary order of transfer.

With the aforesaid observations, the writ petition is 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.)