

DL-29 wt30
01.08.2023
Court No.8
(AD)

**MAT 85 of 2021
CAN 1 of 2021**

**Nasreen Shazda
Vs.
State of West Bengal & Ors.**

**With
MAT 86 of 2021
CAN 1 of 2021**

**Nasreen Shazda
Vs.
State of West Bengal & Ors.**

*Mr. Ekramul Bari
Sk. Imtiaj Uddin
... for the appellant.*

*Mr. Tapan Kumar Mukherjee, Ld. AGP
Mr. Somnath Naskar
... for the State-respondents.*

*Mr. Prasenjit Mukherjee
Ms. Madhurima Sarkar
... for the Madrasah Service Commission.*

*Mr. Nadeem Sulaiman
... for the Madrasah Board.*

*Mr. Atarup Banerjee
Mr. Abu Sohel
Mr. Rajdeep Pramanik
Ms. Sanwyabi Nandi
... for the respondent nos.7, 8 and 9.*

1. By consent of the parties both the appeals and the applications are heard together and disposed of by this order.
2. We have informed by the learned Counsel for the School that the entire matter has been forwarded to the Madrasah Board for consideration. It includes all the applications filed by the writ

petitioner with regard to child card leave and also prayer for transfer.

3. Mr. Prosenjit Mukherjee, learned Advocate appears for the Madrasah Commission and produces before us a copy of an order passed in MAT 1264 of 2021 (The Headmaster/Superintendent, Shamsia High Madrasah (HS) vs. Tarannum Parveen & Ors.) decided on 25th January, 2022 in which an interpretation of Rule 33 of the West Bengal Madrasah Service Commission Recruitment (selection and recommendation of persons for appointment and transfer to the posts of teacher and non-teacher) Rules, 2010 (hereinafter referred as Rule of 2010), has been made by the Coordinate Bench:

“We have been taken to various sub-rules of Rule 33 providing a mechanism and the mode of considering the prayer for transfer by way of counseling. Obviously, the Madrasah Service Commission shall take care of any vacancy that may arise on transfer having accepted in a concerned Madrasah and the right, which is accrued upon the teaching or the non-teaching staff, cannot be whittled-down or brushed-away on unreasonable withholding of the ‘No Objection Certificate’.”

4. In view of the fact that the Board is in *seisin* over

the matter.

5. With regard to the child care leave of the writ petitioner, we direct the Secretary, West Bengal Board of Madrasah Education to take a final decision with regard to child care leave upon consideration of the facts and circumstances stated by the writ petitioner and on consideration of the relevant Rules in this regard.
6. The school and the writ petitioner are directed to produce all relevant records before the Secretary in order to enable to take an appropriate decision in this regard.
7. The entire exercise shall be completed within a period of eight weeks from the date of communication of this order by either of the parties.
8. We direct the Secretary of the West Bengal Madrasah Service Commission to take a decision with regard to the transfer after giving reasonable opportunity of hearing to the parties including the school within eight weeks from the date of communication of this order.
9. It is needless to mention that the Secretary of the Commission shall take into consideration of the decision of the Coordinate Bench in the matter of Tarannum Parveen & Ors. (supra) at the time of consideration of the said representation.

10. We placed on record that an application for transfer has already been filed by the writ petitioner without no objection.
11. In view of the aforesaid discussions and the fact that there is a requirement to have a fresh look and re-look at the matter, the judgment and order is set aside.
12. Affidavits are kept with the record.
13. Both the appeals being MAT 85 of 2021 and MAT 86 of 2021 along with all connected applications are disposed of accordingly.

(Uday Kumar, J.)

(Soumen Sen, J.)

