

Item-
147. 03-08-2023

sg Ct. 8

MAT 506 of 2023
CAN 1 of 2023

Piu Patra
Versus
The State of West Bengal & Ors.

Mr. Saktipada Jana, Adv.
Mr. Subhajyoti Dhar, Adv.
...for the appellant
Ms. Koyeli Bhattacharyya, Adv.
...for the W.B.B.S.E.
Dr. Sutanu Kumar Patra, Adv.
Mr. Sourav Mitra, Adv.
...for the WBCSSC
Mr. Suprito Chattopadhyay, Adv.
Mr. Suman Dey, Adv.
...for the State

1. The appeal is arising of an order dated 4th January, 2023 in a writ petition filed by the appellant for non-consideration of her application for transfer to a nearby school.
2. The appellant is an Assistant Teacher in a junior high school. She had prayed for transfer from the present school to another school due to medical ground and distance. The initial application was on the ground of distance, which was rejected. Thereafter, she filed another application for transfer on the medical ground on 6th February, 2022, based on certain medical documents, some of which were obtained after 28th January, 2022. The initial application for transfer was made on the ground of distance prior to 28th January, 2022. The second application was processed on medical ground. But ultimately, the petitioner was not transferred to one of the three schools in respect of which she had given her option in her application for transfer.
3. The learned Single Judge called for a report. It appears from

the report filed on behalf of the West Bengal Central School Service Commission in the form of an affidavit that in respect of three schools where the petitioner sought transfer three other candidates namely, Sangita De, Tripti Mondal and Tapan Show were transferred since they ranked above the petitioner in the list which was prepared for transfer. It has been specifically stated in the report that petitioner ranked much below the candidates who got recommendation on medical ground in her first and second preferred schools therefore she could not be recommended for transfer to the schools as sought for.

4. The report impugned on which this appeal is arguing by Mr. Saktipada Jana, learned Counsel for the appellant is that the application for transfer of the appellant can be considered under Rule 6(4)(d) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 as amended on 8th September, 2021. Mr. Jana has placed reliance upon an order passed by the learned Single Judge in similar matter in *W.P.A. 492 of 2023* dated 5th July, 2023, where on consideration of the aforesaid Rule, the Commission was directed to reconsider the matter. The observation, relied upon by Mr. Jana in this regard is mentioned below:

“It is further directed that if it is found that petitioner is not coming within the zone of consideration on merit for transfer to the aforesaid two schools his candidature is to be considered in view of the contemplation made under amended Rule 6(4)(d) as amended vide notification dated 8th September, 2021, if it is found by the Secretary of the Commission that the benefit of amended Rule 6(4)(d) can

be applied in case of application of the petitioner the Secretary of the Commission shall made an endeavour to find out suitable vacancy in other schools nearby to the opted schools. In order to facilitate such exercise, if required, the District Inspector of School (S.E.), Siliguri is directed to forward vacancies as per requirement of the Commission.

After completing such exercise the Secretary of the Commission is directed to pass a reasoned order and same shall be communicated to the petitioner within one week thereafter.”

5. Mr. Jana in all fairness has not referred the issue with regard to the merits as argued before the learned Single Judge relying upon the Memo dated 19th September, 2022.
6. We have heard the learned Counsel for the respondents. It has been fairly submitted that the case of the writ petitioner can be considered under Rule 6(4)(d) of the said Rule subject to the availability of any vacancy and without insisting on the ground of distance.
7. We are of the view that the application is required to be considered due to medical reasons as it appears that the application of the petitioner for transfer on medical ground have not been accepted earlier. The authority concerned shall consider the said application on medical ground and decide the matter in accordance with law in exercise of its power under Rule 6(4)(d) of the said Rule.
8. The order under appeal is set aside. The appeal succeeds.
9. The Secretary of the Commission is directed to reconsider the application for transfer on medical ground by extending the benefit of amended Rule 6(4)(d) of the said Rule within

three weeks from date of communication of this order.

10. The learned Counsel for the appellant shall communicate this order to the authority concerned.

11. The appeal and the application are, accordingly, disposed of. However, there shall be no order as to costs.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)