

23
22.12.2023
Court No. 35
I.Tudu
(p.a)

WPA 20063 of 2022

Sk. Owaior Rahaman

Vs.

The State of West Bengal & Ors.

Mr. Ujjal Ray,
Mr. Arpa Chakraborty,
Sk. Abdur Rahim.

... for the Petitioner.

Mr. Ray has appeared for the writ petitioner.

No one is representing the respondents. Record has also revealed that in spite of there being a direction upon the respondents to file affidavit-in-opposition vide Court's order dated April 26, 2023, no such affidavit-in-opposition has yet been filed.

Accordingly it is found proper that the writ petition be taken up ex-parte for hearing and disposal.

The writ petitioner is aggrieved of the inaction of the respondent school authorities to comply with the process as enumerated in the relevant rules, with respect to his application to seek transfer on the ground of physical illness of his spouse. The writ petitioner is the Assistant Teacher of Dhanyaghor High School at Khanakul, Hooghly. He is designated as 'Assistant

Teacher in Philosophy (HONS/PG)'. Petitioner's first application for general transfer on medical grounds of his spouse has been rejected by the school. The petitioner has made a fresh application on the same ground on February 5, 2022. The same is now pending.

The petitioner, obtaining low scoring points, has been recorded, as the ground of rejection of his first application.

The writ petitioner is aggrieved firstly with the rejection of his first application and secondly due to unnecessary withholding of his subsequent application by the school authority, without processing the same in terms of the existing rules.

According to Mr. Ray, the West Bengal School Service Commission (General Transfer, Transfer on special Grounds and Reallocation) Rules, 2015, as amended vide notification dated September 8, 2001, would dispense with any embargo or a qualifying criteria for a transfer application made on medical grounds. For this, Mr. Ray has relied on the relevant rules.

Therefore, he says, that the respondent authority firstly, has erred in rejecting his application of transfer made on medical ground for whatever reason it may be. Secondly, he says, that the fresh application as made by the writ petitioner on April 26, 2023, on the same ground is being arbitrarily

withheld by the school authority without processing the same by way of sending it to Block Medical Officer of Health, for his expert opinion as regards the seriousness of the ailments of his spouse. Thus, according to Mr. Ray the vital statutory rights of the writ petitioner is being unreasonably, unjustifiably and illegally jeopardised by the inaction of the respondent school authority. He seeks remedy for his client by way of an order, allowing the present writ petition.

The relevant rule governing the transfer of a teacher in West Bengal is the West Bengal School Service Commission (General Transfer, Transfer on special Grounds and Reallocation) Rules, 2015. The same has been amended with effect from 2021 vide notification dated September 8, 2021. The relevant portion maybe extracted as herein below:-

“4. Grounds for transfer. – *An incumbent may apply online in the designated portal for transfer on following grounds:*

(a) Any incumbent or his/her son/daughter/spouse suffering from malignant disease/severe heart disease/renal failure/thalassemia, replacement of organ/serious gynecological disorder causing serious problem in attending the school;

(2) Upon submission of application, the authority of SMC shall –

(e) dispensed with the provision of clause (c) and (d) of this sub-rule for applications made on grounds mentioned in rule 4 (a) to (d):

(f) cause to examine the applicant by the doctor of the SMC in case of transfer application made on

medical grounds mentioned in clause (a) of rule 4 and must indicate the disease of the applicant, which caused serious problem in attending the school.”

Therefore, so far as the petitioner’s ground to seek transfer is concerned, i.e., ‘serious gynaecological disorder’ of his wife, causing problem for the petitioner to attend the school, is a ground available to him, to seek transfer.

Rule 4(2)(e) has specifically provided that an application of transfer on medical ground as enumerated in Rule 4(a) shall be dispensed with the requirements for the verification of the said application in terms of Rule 4(2)(a) to (d). This has made an application for transfer on medical ground virtually to be unqualified with any condition whatsoever. This Court thus, concurs with the submissions made on behalf of the petitioner that so far as an application for transfer made on medical grounds, is concerned, the same should not be burdened with any qualifying conditions, excepting assessment of seriousness of disease.

The Rule has provided for a mechanism for verification and assessment of the seriousness of the disease, as is claimed to have been preventing the writ petitioner to attend his duties. According to Rule 4(2)(f), the school authority, upon receipt of an application of transfer on medical ground, first is to send the same to the Block Medical

Officer of Health to examine the same. There are also other follow up actions provided in the rules, to be complied with the school authorities after receipt of report from the Block Medical Officer of Health, that however is not very relevant at this juncture.

Petitioner's first grievance is that his earlier application has been unjustly rejected which is in contravention with the provision of Rules, too. On the basis of the discussions as made above the said submission is found to be appropriately made and right.

Be that as it may, the petitioner has made a further application, on February 5, 2022, on the same ground, that is, of his wife's seriousness.

Let this writ petition be disposed of with a direction to the school authority, respondent no. 7 and 8 to immediately take step with respect to the writ petitioner's application as above dated February 5, 2022, in terms of the provision under Rule 4(2)(f) of notification dated September 8, 2021, by sending the same to the Block Medical Officer of Health.

The respondent no. 7 and 8 must comply with this order within seven days from receipt of copy of this order.

Writ petition no. WPA 20063 of 2022 is dispose of.

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

(Rai Chattopadhyay, J.)