

18.12.2023
SI No.13
Court No.8
(gc)

MAT 2053 of 2023
CAN 1 of 2023
CAN 2 of 2023

Babita Khatun
Vs.
The State of West Bengal & Anr.

Mr. Supriyo Chattopadhyay,
Mr. Samaresh Chandra Dhara,
...for the Appellant.

Mr. Supriyo Chattopadhyay, Ld. A.G.P.,
Ms. Tuli Sinha,
...for the State.

Dr. Sutanu Kr. Patra,
Ms. Supriya Dubey,
...for the W.B.C.S.S.C.

Re: CAN 2 of 2023

1. There is a delay of 14 days in filing the instant appeal. Sufficient cause being shown for not being able to prefer the appeal within the period of limitation.
2. The delay of 14 days is hereby condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

Re: MAT 2053 of 2023
CAN 1 of 2023

4. We have heard the learned Counsel for the parties. It appears that the learned Single Judge has not appreciated that the writ

petitioner has applied for general transfer on special grounds which permits the petitioner to apply within a period of five years. This we have considered in MAT 782 of 2023 with I.A. No.CAN 1 of 2023 dated 24th August, 2023. The relevant paragraphs are reproduced below:-

“2. The learned Single Judge has dismissed the writ application on the ground that the appellant is not entitled to pray for general transfer on special ground as he has not completed five years’ of service. The learned Single Judge has held that the period of five years mentioned in Rule 3 would be applicable even in the case of general transfer on special ground.

3. We are unable to accept the said reasoning on the ground that a special right has been conferred in favour of a teacher to apply for general transfer on special ground provided all or any of the conditions mentioned in Rule 4 are/is satisfied. In the event it is contended and held that period of five years is mandatory then it would make Rule 4 nugatory as the immediate purpose for transfer would be defeated as the circumstances for general transfer of special ground required immediate intervention. To illustrate a teacher or his spouse or

his sons suffering from thalassemia or of any of the diseases under Rule 4 would be entitled to pray for transfer and if it is denied on the ground that a teacher has to wait for five years it would be fatal and a fate accomplished for the teacher or his spouse or the children as the case may be and the very purpose of the said Rule would be defeated.

4. The Rule 4 is a stand alone provision unconnected with the mandatory requirement of Five Years' of satisfactory service contemplated under Rule 3 of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015."

5. In view thereof, we direct the respondent No.2, namely, the Commissioner of School Education to consider the representation of the petitioner/appellant for transfer on medical ground within four weeks from date, if required, after giving an opportunity of hearing to the appellant. The respondent No.2 shall decide the matter in accordance with Rule 4 of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015. The respondent No.2 in deciding the

application may call for a report from the CMOH as to the seriousness of the ailment.

6. The entire process of transfer shall be completed within a period of six months from date.
7. We are giving an outer limit considering that there may be an impediment if immediately she is transferred before the Board exam. Her service may be retained till the Board exam, if she is otherwise eligible for transfer.
8. This order shall be immediately communicated to the respondent No.2 by either of the parties for compliance.
9. With the aforesaid direction, the appeal and the application are disposed of.
10. The impugned order is set aside.
11. However, there shall be no order as to costs.
12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)