

18.12.2023
SI No.18
Court No.8
(gc)

**MAT 2304 of 2023
CAN 1 of 2023
CAN 2 of 2023**

**Bandana Mochary
Vs.
The State of West Bengal & Ors & Ors.**

Mr. Shuvro Prokash Lahiri,
Ms. Tithi Mazumder,
Mr. Rajesh Naskar,

.....For the Appellant
Dr. Sutanu Kumar Patra,
Ms. Supriya Dubey,

.....For the WBCSSC

Ms. Parna Roy Choudhury,

.....For the State

Re: CAN 1 of 2023

1. There is a delay of 590 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 590 days is hereby condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed off.

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CAN 2 of 2023**

4. The affidavit of service filed on behalf of the appellant is kept with the record.

5. The appeal and the application are taken up together and disposed of by this common order.
6. The appellant filed an application for transfer on medical ground of Thalassemia and the same was forwarded by the concerned DI of Schools (SE) acknowledging issuance of medical certificate by the CMOH and No Objection by the School as appears from the online transfer status. However, the said application was returned by the concerned School Service Commission on the ground of below five years of service at the present posting.
7. That the Learned Single Judge had dismissed the writ application on the ground of non completion of five years of service for making transfer application either on general or special ground.
8. That the ground for transfer of the appellant is covered under Rule 4(a) of the transfer rules under general transfer on special grounds and we have already observed in **MAT 782 of 2023 (Suvadip Ghorai versus State of West Bengal and Ors.)** 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 contented 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 on 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 the teacher has to wait for five years it would be fatal and a fait accompli 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.

9. In view thereof, we direct the concerned School Service Commission to allow transfer in favour of the appellant strictly in accordance with law if the appellant is otherwise eligible for transfer under the law. If the transfer application of the appellant is considered favourably, options for schools be given to the appellant and

consequential steps be taken in accordance with law.

10. That the whole exercise shall be completed within eight weeks from date of communication of this order.

11. Accordingly, the appeal and the connected application are disposed of.

12. However, there shall be no order as to costs.

13. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)