

MAT 359 of 2024
with
IA No. CAN 1 of 2024
**(Baishakhi Mukhopadhyay Vs. The State of
West Bengal & Ors.)**

Mr. Sudip Ghosh Chowdhury
..... **For the appellant**

Mr. Manoj Kr. Mondal
..... **For the State**

Mr. Sumit Roy
..... **West Bengal Central
School Service Commission**

Affidavit-of-service filed by the appellant be kept on record.

The present appeal has been preferred challenging an order dated 6th February, 2024 passed by the learned single Judge in the writ petition being WPA 92 of 2024.

Mr. Ghosh Chowdhury, learned advocate appearing for the appellant submits that the learned single Judge erroneously dismissed the writ petition on a purported ground of suspension of *Utshasree Portal*. However, facts would reveal that the appellant challenged in the writ petition an order dated 2nd June, 2023 passed by the Secretary of the West Bengal Central School Service Commission (hereinafter referred to as the said Commission) by which the appellant's prayer for transfer on medical ground was rejected as there was no vacancy in the school preferred by the appellant, namely, Uttarpara Girls' High School.

Drawing our attention to amended Rule 6 (4) (d) of the West Bengal School Service Commission (General

Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as the 2015 Rules), he submits that in the event the option exercised by the appellant was not found suitable, the Commission was under an obligation to consider her prayer for transfer to a school (having requirement of the subject teacher) nearby to opted school.

Mr. Roy, learned advocate appearing on behalf of the Commission submits that as in the school which was opted by the appellant for transfer, there was no vacancy, question of any further consideration of the appellant's claim does not arise.

Mr. Mondal, learned advocate enters appearance on behalf of the State.

The amended Rule 6 (4) (d) of the 2015 Rules runs as follows:-

'In case the application for transfer in the category of rule 4(a) to (d) by a teacher of a particular subject to a school which is already having sufficient or excess teacher in that subject, Central Commission shall not consider the application for transfer to opted school. In the event when all options exercised are not found suitable, the incumbent may be considered for transfer to a school (having requirement of that subject teacher) nearby to opted school(s).'

The clause *'in the event when all options exercised are not found suitable, the incumbent may be considered for transfer to a school (having requirement of that subject teacher) nearby to opted school'* as referred to in Rule 6 (4) (d) is an independent clause and in our opinion, when option exercised by the appellant is not found suitable,

the Commission is under an obligation to consider the appellant's prayer for transfer to a school (having requirement of that subject teacher) nearby to opted school. In the said conspectus, the order impugned in the present appeal is set aside.

We have been informed that the *Utshasree Portal* is still under suspension. In view thereof, we direct the respondent no. 3 to consider the appellant's prayer for transfer in terms of the second clause of Rule 6 (4) (d), as quoted above, upon granting an opportunity of hearing to the appellant and to pass a reasoned order.

Needless to observe, as the operation of the *online* portal has been temporarily suspended, the appellant's prayer for transfer shall be considered through *offline* mode and the respondent no. 3 shall communicate the final decision to the appellant.

The above exercise shall be completed within a period of 6 (six) weeks from date of communication of this order along with a copy of the writ petition.

With the above observations and directions, the appeal and the connected application are disposed of.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)