

ML20
05.08.2024
Ct. No. 18
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W.P.A. 11599 of 2022

**Sukhen Mandal
Vs.
The State of West Bengal & Ors.**

Mr. Ujjal Ray
Mr. Arpa Chakraborty
Mr. Sk. Abdur Rahim
...for the petitioner

Mr. Sourav Mitra
...for the WBCSSC

Ms. Sanghamitra Nandy
Mr. Rajaram Banerjee
Mr. K.M. Hossain
...for the State

Mr. Ziaul Haque
...for the respondent no. 7

Affidavit of service filed on behalf of the petitioner is taken on record.

Matter relates to transfer application of the petitioner being an assistant teacher in a Government aided secondary school dated 8th February, 2022. It has been submitted by the learned advocate representing the petitioner on drawing attention of this Court to a document which is at page 27 of the writ petition that the school authority on receiving transfer application refused to forward the same on compliance of formalities to the District Inspector of Schools (SE), Murshidabad since according to the school authority

distance in between the present school and school where petitioner is seeking transfer is less than 25 kilometers and in terms of Rule 3(2) of the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 the transfer application of the petitioner need not be allowed. According to the petitioner since application was made due to ailment of petitioner's wife in terms of Rule 4(1)(a) of the aforesaid Transfer Rules of 2015 distance criteria which has been provided under Rule 3(2) may not be applicable. Petitioner prays for direction upon the concerned respondent authorities for taking decision on his transfer application dated 8th February, 2022.

School authority, State-respondents and the Commission are represented by learned advocates.

It has been submitted on behalf of the school authority where petitioner is presently serving that apart from the wife of the petitioner since petitioner is also suffering from ailments at present, school authority has no objection if transfer application of the petitioner is considered by the authority otherwise alternative submission is made on behalf of the school authority that fresh transfer application can be made by the petitioner on the ground of his ailment for taking decision.

State-respondents and Commission are represented by learned advocates who have submitted jointly that since the transfer application of the petitioner was not forwarded by the school authority decision could not be taken by the District Inspector of Schools as well as the Commission.

Having considered the submissions made on behalf of the parties and taking note of the facts of the present case it appears that petitioner applied for transfer on medical ground since his wife was suffering from ailments.

This Court finds substance in the submission made on behalf of the petitioner that since this is an application on medical ground distance criteria as provided under Rule 3(2) of the Transfer Rules of 2015 does not create bar in taking decision on such transfer application. It is also the stand of the Commission that while considering the transfer application made under Rule 4(1)(a) restriction under Rule 3(2) relating to distance is not applicable.

Accordingly, the school authority being respondent nos. 7 and 8 are directed to forward the transfer application of the petitioner dated 8th February, 2022 to the concerned District Inspector of Schools (SE), Murshidabad by fortnight from the date of communication of the order on compliance of necessary formalities.

School authority is free to obtain report from the BMOH on medical verification of the petitioner's wife. If the report of BMOH justifies transfer of the petitioner the transfer application of the petitioner shall be forwarded within the aforesaid time to the respondent no.5 and respondent no. 5 shall also obtain report of the CMOH on medical verification of the petitioner's wife and if report comes in favour of transfer of the petitioner in that event on completing formalities the respondent no. 5 shall forward the transfer application to the Commission by 4 (four) weeks from the date of receiving transfer application from the school authority. If the transfer application reaches the office of the Commission the commission shall take steps in accordance with law on the transfer application of the petitioner.

It is made clear that suspension of Utsashree Portal shall not be a ground for rejecting the transfer application of the petitioner.

Accordingly, the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)