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24.06.2024
Ct. No. 18
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W.P.A. 15773 of 2024

**Arindam Dey
Vs.
The State of West Bengal & Ors.**

Mr. Shuvra P. Lahiri
Mr. Rajesh Naskar
Mr. Akash Saha

...for the petitioner
Mr. Vimal Kumar Shahi
Ms. Pratiti Das
...for the State

Mr. Sunit Kumar Roy
...for the SSC

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

Matter relates to transfer on medical ground of a teacher working in Bujung B.N.A. Sikshapith (H.S.), District-Birbhum (for short “said school”) since the petitioner is suffering from cancer as certified by the concerned physician on 27th March, 2024 of the Department of Clinical Haematology and Cellular Therapies, TATA Medical Center, Kolkata.

During course of hearing, Mr. S.P. Lahiri, learned advocate representing the petitioner as well as Mr. Sunit Kumar Roy, learned advocate representing the West Bengal

Central School Service Commission have drawn attention of this Court to the notification dated 29th September, 2022 by which the West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 was amended. Rule 2A was inserted after Rule 3(2) wherein a proviso is added which

contemplates that in case of transfer application made on medical ground and other grounds referred to in Clause-(a) to Clause-(d) of Rule 4 may be considered without any restriction. However, the provision as contained in the added sub-Rule 2A after Rule 3(2) needs to be read along with the amendment brought in by notification dated 8th September, 2021 wherein substituted Rule 6(2) contains Clause-(f) which provides that the concerned Managing Committee of the School is required to have the applicant examined by the doctor in case of transfer application made on medical ground mentioned in Clause-(a) of Rule 4 and must indicate the disease of the applicant, which caused serious problem in attending the school. Placing reliance upon such amended provision as contained in Rule 6(2)(f) as provided in the notification dated 8th September, 2021 it is submitted on behalf of the State-respondents as well as the Commission that the application of the petitioner seeking transfer on medical ground needs to be routed through the Managing Committee of the concerned school.

Having considered the submissions made on behalf of the petitioner, State-respondents and the Commission it appears that the petitioner needs to make an application first before the school authority seeking transfer on medical ground in terms of amended Rule 6(2)(f) as contained in the notification dated 8th September, 2021 which has not been done in the present case. Petitioner has made application to the School Service Commission and the State authorities.

Accordingly, leave is granted to the petitioner to make an application for transfer on medical ground along with necessary medical documents before the said school authority by 7 (seven) days from date.

On receipt of such application from the petitioner the said school authority is directed to find out the nature of ailment of the petitioner upon following the procedure as

contained in the amended Rule 6(2)(f) as provided in the notification dated 8th September, 2021 by fortnight thereafter and if it is found that the petitioner is suffering from cancer in that event without wasting any further time forward the transfer application of the petitioner to the concerned District Inspector of Schools for taking necessary steps notwithstanding suspension of Utsashree Portal.

If the application of the petitioner is received by the concerned District Inspector of Schools (SE), Birbhum in that event the said District Inspector of Schools is directed to forward the transfer application of the petitioner within 7(seven) days thereafter after complying with the formalities to the Chairman, West Bengal Central School Service Commission who in his turn shall take decision within 7 (seven) days thereafter, after granting opportunity of hearing to the petitioner or his representative.

The Chairman shall take decision within the aforesaid time and the said decision to be forwarded to the concerned school authority as well as the petitioner provided the Chairman receives application from the concerned District Inspector of Schools.

It is recorded herein that suspension of Utsashree Portal shall not operate as fetter in considering the transfer application of the petitioner.

With the aforesaid observations and directions, the writ petition stands disposed of.

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.)