

29.07.2024
Court No. 18
Item No. 06
(Suvendu)

WPA 18210 of 2024

Tripura Sankar Mahanta
-Versus-
The State of West Bengal & Ors.

Mr. Sudip Ghosh Chowdhury
Ms. Shreyeta Mitra
Mr. Shibjit Mitra
.....for the petitioner

Ms. Koyeli Bhattacharyya
Mr. Bibek Dutta
.....for the WBBSE

Mr. Sunit Kumar Ray
.....for the WBCSSC

Mr. Gazi Faruque Hossain
Ms. Varsha Roy
...for the respondent nos.5 & 6

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

The writ petition is heard in presence of
the learned advocates representing the petitioner
and respondent authorities.

The grievance of the petitioner is non-
consideration of off line application seeking
transfer on the ground of distance which is at
page 26 of the writ petition and the same does
not bear any date. However, it has been

submitted that the same was sent to the respondent authorities by speed post on 21st June, 2024. Therefore, respondent authorities are under obligation to take decision on such undated transfer application.

According to the petitioner, even if the petitioner does not apply on Utshrasree portal that may not act as fetter in considering the transfer application of the petitioner and in this regard reliance has been placed on the judgment of the Hon'ble Division Bench dated 4th July, 2024 passed on an intra-court appeal being **FMA 523 of 2024 (Prantik Gayen Vs. The State of West Bengal & Ors.)**.

Respondent authorities have jointly opposed the prayer of the petitioner for consideration of transfer application which is at page 26 of the writ petition.

Furthermore, it has been submitted on behalf of the respondents that undated transfer application is on the ground of distance seeking general transfer and not on special ground due to ailments of the concerned teacher or the member of his family. It is also contended on behalf of the respondents that petitioner did not apply on designated portal for his transfer.

According to the respondent authorities, judgment of the Hon'ble Division Bench dated 4th July, 2024 was passed on a different context and the ratio of **Prantik Gayen** (supra) may not apply in the present case.

Having considered the submissions made on behalf of the parties and perusing the document at page 26 of the writ petition, it cannot be ascertained as to when petitioner applied for his transfer. However, according to the petitioner, the said transfer application was sent by Speed Post to different respondent authorities on 21st June, 2024. Postal receipts are annexed to the writ petition but when the authorities have received the said undated transfer application cannot be discerned from the writ petition.

On perusal of the judgment of the Hon'ble Division Bench in **Prantik Gayen** (supra), it appears that the appellant applied for transfer on medical ground and such application was made initially on the designated portal. Subsequently, the portal got suspended and that being the reason the respondent authorities refused to decide the transfer application of the appellant/petitioner. In the context of these

particular facts, the Hon'ble Division Bench has held that suspension of Utshasree portal cannot act as fetter in exercise of the statutory right of the teachers which has been protected under the Transfer Rules of 2015 and amendment made thereunder.

In contradistinction to the facts enumerated in **Prantik Gayen** (supra), in the present case petitioner is seeking mandamus upon respondent authorities for acting on the basis of an undated transfer application which has been submitted off line and when this transfer application reached respondent authorities is not discernable from the writ petition.

It is not a transfer on medical ground where medical verification at two stages, first by the concerned BMOH and subsequently by the concerned CMOH, is required in order to ascertain whether transfer on medical ground is justifiable or not.

In **Prantik Gayen** (Supra) the appellant applied on designated portal and subsequently the same was suspended whereas in the present case there is no application made by the petitioner on the designated portal when the

said portal was alive and why the application was not made on the designated portal that has not been explained in this writ petition. Therefore, merely on an undated application seeking transfer on the ground of distance direction upon the respondent authorities to take steps accordingly as prayed for on behalf of the petitioner is not countenanced since the ratio decided by the Hon'ble Division Bench in **Prantik Gayen** (supra) was on separate set of facts.

In view of aforesaid discussions, the writ petition stand dismissed.

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

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

(Saugata Bhattacharyya, J.)