

15.07.2024
Court No. 18
Item No. 163 (ML)
(Suvendu)

WPA 18882 of 2022

Himani Shit
-Versus-

The State of West Bengal & Ors.

Mr. Biswarup Biswas
Mr. Gora Chand Samanta
.....for the petitioner

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
.....for the WBCSSC

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

Petitioner being an Assistant Teacher in a
Government aided High School has prayed for
general transfer on the ground of distance.

Mr. Biswas, learned advocate representing
the petitioner has drawn attention of this Court
to page 54 of this writ petition wherefrom it
appears that the concerned respondent
authority returned transfer application of
petitioner upon referring to a decision taken by
the School Education Department, Government
of West Bengal on 26th August, 2021 wherein it
was decided by the School Education

department that in case of single teacher in a subject in a particular school transfer application cannot be entertained.

Today, argument has been advanced on behalf of the petitioner that in view of notification dated 3rd January, 2022 issued by the Additional Secretary to the Government of West Bengal, School Education Department the concerned District Inspector of Schools may be directed to make local arrangement in order to facilitate transfer of the petitioner and if necessary petitioner is willing to make offline application for reconsideration of her application seeking general transfer on the ground of distance.

Learned advocate representing the Commission has opposed the prayer of the petitioner for reconsideration of same application or making fresh application on offline mode in view of suspension of *Utsashree* portal with effect from 29th September, 2022. According to the Commission, it is not an exceptional case where petitioner is seeking transfer on health ground as petitioner is suffering from terminal decease, rather it is a

case of general transfer on the ground of distance.

Having considered the submissions made on behalf of the parties and taking note of the materials available on record, it appears that the decision was taken by the concerned authority of the Commission on 30th August, 2021 refusing to transfer the petitioner on referring to a decision of the School Education department, Government of West Bengal dated 26th August, 2021 since petitioner was found to be a single teacher in the subject in the concerned school.

It needs to be taken into consideration that on 30th August, 2021 the notification dated 3rd January, 2022 was not existing whereby concerned District Inspector of Schools has been empowered to make local arrangement in case of transfer of single teacher by authorizing an willing teacher of nearby school to take classes of the petitioner's school till regular incumbent joins the post.

Therefore, this Court does not find anomaly in the decision taken by the Commission on 30th August, 2021 by not entertaining application of the petitioner on referring to the Government Order dated 26th

August, 2021 in absence of subsequent notification dated 3rd January, 2022.

It is apt to rely upon the ratio decided by the Hon'ble Division Bench in **MAT 160 of 2024 (Partha Ghosh Vs. The State of West Bengal & Ors.)**, wherein in interpreting the notification dated 3rd January, 2022 the Hon'ble Division Bench has held that in a "fit case" the authorities should take a pragmatic and reasonable decision and having done so, the scope of judicial review becomes limited and such case does not deserve to be interfered with under Article 226 of the Constitution of India.

In the event Court proceeds in view of the submission made on behalf of the petitioner that petitioner may be permitted to make offline application for getting benefit of notification dated 3rd January, 2022, same appears to be impermissible in view of interpretation ascribed by the Hon'ble Division Bench in **Partha Ghosh** (supra). This is not an exceptional case where Court should permit the petitioner to make offline application for taking steps by the concerned District Inspector of Schools in the light of the notification dated 3rd January, 2022.

Accordingly, the writ petition stands dismissed.

However, there shall be 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.)