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19.09.2024
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Ct. 18

W.P.A. 23254 of 2024

Dipika Mandal
-vs-
The State of West Bengal & Ors.

Mr. Shuvro Prakash Lahiri
Mr. Rajesh Naskar
Mr. Ankan Mondal

....for the petitioner.

Mr. Santanu Kumar Mitra
Ms. Kakali Pal

....for the State.

Mr. Sunit Kumar Roy

....for the SSC.

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

Matter relates to transfer of the petitioner since the petitioner is suffering from gynecological disorder. Petitioner made an application for transfer on Utsashree portal but the West Bengal Central School Service Commission on receipt of such transfer application refused to allow the same on the ground that the service tenure of the petitioner is less than five years. Such decision was taken on the portal by the Commission on November 19, 2021 as a result whereof the transfer application of the petitioner was sent back to her through the concerned District Inspector of School (S.E.) and the school authority where the petitioner is presently serving. It is contended on behalf of

the petitioner that the reason assigned for refusing the transfer of the petitioner is untenable since the condition of having five years experience as 'Assistant Teacher' is applicable in case of general transfer as contemplated under Rule 3 of the West Bengal School Service Commission (General Transfer, Transfer on Special Ground and Reallocation) Rules, 2015 (hereinafter referred to as 'Transfer Rules of 2015'). In the present case, petitioner made transfer application under Rule 4(a) of the said Transfer Rules of 2015, which contemplates transfer on medical ground. In support of such submission, reliance is placed on an order of the Hon'ble Division Bench dated 24th August, 2023 passed on an intra Court appeal being **MAT 782 of 2023 (Suvadip Ghorai Vs. State of West Bengal & Ors.)**.

Learned advocates representing the State respondents and the West Bengal Central School Service Commission submits that the legal position regarding entertaining transfer application on medical ground has been changed in a case where the applicant teacher has not put in five years service in view of the amended provisions as contained in notification dated 21st December, 2021 wherein Rule 3(1) of the Transfer Rules of 2015 has undergone changes. Amended Rule 3(1)

prescribes that in case of transfer on medical ground the applicant teacher must have five years service which the said applicant teacher may have rendered in more than one school. According to the respondents, since in the present school, the total service period of the petitioner is less than five years she is not entitled to get the benefit of transfer on medical ground at this stage due to amended Rule 3(1) as contained in the notification dated 21st December, 2021.

Having heard the learned advocates representing the parties, this Court finds that the amendment was made to Rule 3(1) of the Transfer Rules of 2015 vide notification dated 21st December, 2021 on and from the date of notification dated 21st December, 2021 whereas the decision was taken by the Commission as it appears from a document at page 80 of the writ petition on 19th November, 2021 which is prior to the amendment made to said Rule 3(1). It also needs to be recorded that petitioner applied for transfer on 19th August, 2021 when amended Rule 3(1) was not in vogue and on the date of taking decision by the Commission on 19th November, 2021 situation remained unaltered. Therefore, the Commission was required to take the decision based on the statutory provisions, which were

existing on 19th November, 2021 considering the date of transfer application of the petitioner dated 19th August, 2021.

The provisions relating to transfer on special ground as well as general transfer as contemplated under Rule 4 and Rule 3 of the Transfer Rules of 2015 remained unamended at the time of considering the transfer application of the petitioner, as such this Court finds no impediment in following the ratio as decided by the Hon'ble Division Bench in **Suvadip Ghorai (supra)**. It has been decided by the Hon'ble Division Bench in **Suvadip Ghorai (supra)** that Rule 4 is stand alone provision unconnected with the mandatory requirement of five years statutory service contemplated under Rule 3 of the West Bengal School Service Commission (General Transfer, Transfer on Special Ground and Reallocation) Rules, 2015.

In aforesaid conspectus, the decision taken by the Commission as it emanates from a document at page 80 of the writ petition on 19th November, 2021 stands set aside. The District Inspector of School (S.E.), Paschim Bardhaman is directed to forward all relevant documents including medical report furnished by the concerned Chief Medical Officer of Health to the

West Bengal Central School Service Commission by two weeks from the date of communication of this order. On receipt of documents from the concerned District Inspector of Schools (S.E.), the Chairman, West Bengal Central School Service Commission is directed to take decision on the transfer application of the petitioner by eight weeks thereafter. The Chairman shall pass a reasoned order and the same shall be communicated to the petitioner by one week thereafter.

However, it is made clear that transfer application of the petitioner shall not be rejected on the ground that petitioner has less than five years teaching experience on the date of making application for transfer and also the transfer application shall not be rejected due to suspension of Utsashree portal.

Leave is granted to the advocate-on-record of for the petitioner to amend the cause title and add District Inspector of Schools (S.E.), Paschim Bardhaman and Chairman, West Bengal Central School Service Commission as additional respondents by 23rd September, 2024. However, service of notice upon the additional respondents stands dispensed with since the State respondents and the West Bengal Central School Service Commission are represented by learned advocates.

With the above direction, 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.)