

14
18.11.2024
RBHAR
Court No. 8

**In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**MAT 2052 OF 2024
with
CAN 1 OF 2024**

**Poulomi Mukhopadhyay
Versus
State of West Bengal & Ors.**

**Mr. Sudip Chowdhury, Advocate
Ms. Shreyeta Mitra, Advocate
... for the Appellant**

**Mr. Md. Ahsanuzzaman, Advocate
Mr. Dhananjoy Banerjee, Advocate
... for the State**

**Ms. Koyeli Bhattacharyya, Advocate
Mr. Bibek Dutta, Advocate
... for the WBBSE**

**Mr. Sunit Kr. Roy, Advocate
... for the WBCSSC**

1. The instant appeal was permitted to be filed upon granting leave to file without accompanying the certified copy of the impugned order. The certified copy was applied on the self-same day but taking into account, the gamut of the disputes and the determination to be made by this Court, we proceed to dispose of the instant appeal. However, the counsel for the appellant is directed to obtain the certified copy, so

applied for, and shall file the same in the department.

2. The appeal arise from an order dated 5th November, 2024 passed by the Single Bench in WPA 20888 of 2024 by which the writ petition filed by the appellant alleging inaction on the part of the authority to take decision on an offline transfer application.
3. The application for transfer was founded upon a medical ground. It is the specific stand taken by the appellant that he has been suffering from cardiac problems and the medical report would corroborate the same.
4. In course of the hearing of the writ petition, leave was granted to the appellant to file supplementary affidavit containing the further medical documents, which infact was filed. The learned Single Judge, after perusal of the medical documents, arrived at the conclusion that such documents do not percolate any sense of the cardiac problems allegedly suffered by the appellant. At the very outset, this Court records that the Judge should not shoulder the responsibility of a medical expert who has expertise in his domain/subject but have to proceed on the basis of the opinion so expressed by the medical expert. The medical documents, more particularly the Echocardiography Report, indicate certain

factors either above the normal range or below the same. The impact thereof cannot be ascertained unless the expert in the relevant field opined that the same does not affect the cardiac health of the appellant. Ordinarily, the Court should not substitute itself into the arm chair of the medical expert nor should surreptitiously jump to the conclusion that the report does not suggest any major cardiac problems but should safely rely upon the opinion so expressed in a summary of assessment made by the expert on the basis of such report.

5. We had an occasion to peruse the summary of assessment based upon the Echocardiography Report where the expert has opined certain deficiency and/or the impact on the health of heart and therefore, it would be proper that the authority should consider the prayer for transfer, taking into account the above medical documents, while taking a final decision on the application for transfer.
6. In view of the discussion made hereinabove, the order impugned is set aside.
7. The concerned authority is directed to consider the application of transfer filed by the appellant on the basis of the medical documents and entire exercise shall be

completed within four (04) weeks from date, in accordance with law.

8. The authority shall not be swayed by the observations made hereinabove and it is open to the said authority to take an independent decision as permissible in law.
9. The appeal being **MAT 2052 of 2024** and connected application being **CAN 1 of 2024** are **disposed of**.

(HARISH TANDON, J)

(PRASENJIT BISWAS, J)