

17.12.2024
Court No. 03
Item No.08
(**Suvendu**)

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI*

W.P.A. 2614 of 2024

Purnima Garai

-vs-

The State of West Bengal & Ors.

Mr. Sudip Ghosh Chaudhury

Mr. Soumyajit Laskar

....for the petitioner

Ms. Pratusha Dutta Choudhury

....for the State

Mr. Bikramaditya Ghosh

.....for the respondent no. 2

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

Matter relates to transfer of the petitioner based on off-line application made on 12th September, 2023 which is at pages 20 and 21 of the writ petition addressed to the concerned authority of West Bengal Board of Primary Education.

Learned advocate representing the petitioner submits that main ground of seeking transfer is petitioner's ailment. It is submitted that petitioner is suffering from gynecological disorder. It is further submitted that though prayer is

made for transfer based on off-line application dated 12th September, 2023 but the case of the petitioner is fortified by the order of a Coordinate Bench dated 8th July, 2024 passed on a writ petition being WPA 17183 of 2023 (Tamanna Begum Vs. The State of West Bengal & Ors.).

In support of prayer for transfer of the petitioner, amended Rule 5(3) as contained in the notification dated 13th September, 2021 whereby amendment was carried out to West Bengal Primary Education (Transfer of Teachers including Head Teacher) Rules, 2002 is relied upon which confers right upon a primary teacher to make transfer application on special ground.

Mr. Ghosh, learned advocate representing West Bengal Board of Primary Education submits that transfer application made under Rule 5(3)(a), as contained in notification dated 13th September, 2021, needs to be considered based on provisions as contemplated under amended Rule 4(b) of the same notification wherein an embargo has been imposed to the extent that a teacher is not eligible to apply for transfer for a period of five years from the date of appointment. According to the Board, since five years is not complete from

the date of initial appointment petitioner is not eligible to be transferred.

Having considered respective submissions made on behalf of the parties and taking note of the relevant provisions relating to transfer, this Court finds that bar as contemplated under amended Rule 4(b) of the aforesaid notification is not applicable in the present case since it is an application which needs to be processed in terms of amended Rule 5(3)(a). This is not a case of general transfer but transfer on special ground as delineated in amended Rule 5(3)(a) to 5(3)(e). Since a case has been made out based on transfer application that petitioner is suffering from gynecological disorder, Court directs the Secretary, West Bengal Board of Primary Education being respondent no. 2 to decide transfer application of the petitioner dated 12th September, 2023 by eight weeks from the date of communication of this order and the decision to be taken by respondent no. 2 shall be communicated to the petitioner by one week thereafter. Respondent no. 2 shall be at liberty to obtain medical report on medical verification of the petitioner from medical officer through

concerned District Primary School Council,
Cooch Behar.

While taking decision, respondent no. 2 shall follow the decision of the Coordinate Bench passed in Tamanna Begum (supra).

Off-line application of the petitioner is directed to be considered by the respondent no. 2 under special circumstances since a case has been made out that petitioner is suffering from ailments.

With the aforesaid directions, writ petition stands disposed of.

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 undertaking.

(Saugata Bhattacharyya, J.)