

**CALCUTTA HIGH COURT IN THE CIRCUIT BENCH
AT JALPAIGURI**

**44
23.12.2024
(Suvendu)**

WPA 2636 of 2024

**Nayan Kumar Ray
Vs.
The State of West Bengal & Ors.**

**Mr. Sunit Kumar Ray
Mr. Santanu Maji
Mr. Jogesh Ch. Roy**

....For the petitioner

Mr. Bikramaditya Ghosh

...For the Primary Board

**Mr. Hirak Barman
Mr. Sourav Sarkar**

...For the State

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

Matter relates to transfer of the petitioner who is working as primary teacher in a school in Cooch Behar. Petitioner made an offline application dated 10th November, 2024 to the Secretary, West Bengal Board of Primary Education being respondent no. 4 seeking transfer on medical ground since petitioner met an accident and suffered fracture. In support of such contention reliance is place on amended Rule 5(3) as contained in notification dated 13th September, 2021 wherein it is provided that the teacher working in primary schools can apply for transfer on medical ground in case petitioner or his/her son/daughter/spouse is suffering from

certain disease as delineated in the said provision. According to the petitioner this is not an application for transfer on general ground. Therefore, the embargo clamped by amended Rule 4(b) as contained in the aforesaid notification dated 13th September, 2021 is not attracted.

State-respondents and West Bengal Board of Primary Education are represented by learned advocates. It is submitted on behalf of West Bengal Board of Primary Education that petitioner was appointed on 22nd July, 2021. Therefore, period of five years is not complete at the time of making application for transfer on 10th November, 2024 which makes the petitioner ineligible to apply for transfer.

On consideration of respective submissions made on behalf of the parties and taking note of the relevant provisions relating to transfer as contained in notification dated 13th September, 2021 it appears that amended Rule 5(3) provides transfer on special ground which needs to be considered by the authority separately and while taking decision on such transfer application embargo contemplated under Rule 4(b) ought not frustrate such transfer application. If application for transfer on special ground as provided under Rule 5(3) is considered on the anvil of amended Rule 4(b) on applying embargo provided therein the very

purpose of extending benefit of transfer on special ground will be defeated.

In view of aforesaid finding Secretary, West Bengal Board of Primary Education being respondent no. 4 is directed to decide transfer application of the petitioner dated 10th November, 2024 by 4 (four) weeks after receiving transfer application and medical report from the authority of District Primary School Council, Cooch Behar. Chairman, Cooch Behar District Primary School Council being respondent no. 6 is directed to obtain medical report on medical verification of the petitioner from the concerned medical officer by fortnight from the date of communication of the order and if medical report justifies transfer of the petitioner same shall be forwarded along with transfer application to the respondent no. 4 by seven days thereafter.

The decision to be taken by the respondent no. 4 shall be communicated to the petitioner by 1 (one) week thereafter.

Writ petition stands disposed of.

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.)