

Item-
2. 25-06-2025

FMA 518 of 2025
CAN 1 of 2025

sg

Ct. 8

Madhumita Sarkar
Vs.
The State of West Bengal & Ors.

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

...for the appellant

Mr. Sunit Kr. Roy

...for the SCC

Mr. Shamim-ul Bari
Mr. Srikanta Pal

...for the State

1. The affidavit of service filed in Court today is taken on record.
2. In spite of service upon the respondent nos. 7 and 8, the said respondents are not represented.
3. The petitioner is aggrieved by the order passed by the learned Single Judge on 14th January, 2025 rejecting the prayer of the writ petitioner for transfer on the grounds stated in the said application.
4. The learned Single Judge was of the view that in order to find out possibility of giving direction upon the concerned respondent authorities to consider the petitioner's application for transfer, this Court is required to rely upon amended Rule 4(a) to Rule 4(e) as mentioned in notification dated 8th September, 2021. The learned Single Judge was of the view that Rule 4(a) could not be applicable in the instant case as it is not one of the

specified diseases covered under the said sub-Rule. Insofar as the rest of the Rules are concerned, it may not be applicable to the writ petitioner. The writ petitioner is undergoing IVF treatment for conceiving for the second time and it does not attract the amended Rule 4(a).

5. The learned Counsel appearing for the petitioner has submitted that the learned Single Judge has overlooked one of the grounds stated in the said Rule, namely, Rule 4(e), which provides that the authorities concerned may consider the application for transfer on 'Any Other Reasons'. It is submitted that 'Any Other Reasons' is not independent of the ground stated in the Rule 4(a) to Rule 4(d) and in this regard, the learned Counsel has placed a coordinate Bench judgment of this Court in ***MAT 1065 of 2024 (Dipti Biswas vs. The State of West Bengal & Others)*** decided on 9th July, 2024. The learned Counsel has relied upon the following paragraphs of the said judgment:

“Clause (e) of sub-rule (3) of Rule 5 of the said Rules is an omnibus ground intended to be incorporated as the authority while legislating cannot conceive of all the situations. The expression “the applicant may seek transfer on the following grounds” has to be understood in a pragmatic manner and to be construed as the grounds, which are expressly provided including the ground, which may be found valid on special facts.

The purpose of incorporating clause (e) therein would be totally frustrated if the application for transfer is decided on the grounds enumerated

under clause (a) to (d). The judicial experience gained in dealing with the case exposes other grounds than the grounds incorporated in clause (a) to (d) and one of such example can be given inconvenience faced by a teacher in attending the school. The authorities have also taken a conscious decision treating the said incidents as a ground covered under clause (e) thereof; provided the authorities are satisfied that such transfer is warranted.”

6. The learned Counsel for the respondent has submitted that the application was not in proper form and even if a view is taken that the application of the writ petitioner is required to be considered under Rule 4(e), the first duty of the writ petitioner is to file an appropriate application and it should be processed in accordance with the procedure prescribed under West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 as amended on 8th September, 2021.
7. The learned Single Judge appears to have not considered section 4(e) as it is not reflected from the said order that any submission was made with regard to non-consideration of the said application on such ground. The impugned order is restricted to Rule 4(a). Moreover, as laid down in **Dipti Biswas** (supra), the coordinate Bench has interpreted the said expression ‘Any Other Reasons’ has to be considered on special facts and circumstances of each case and it cannot be at the discretion of the

authority concerned to consider such application if he does not conform to any of the grounds mentioned in Rule 4(a) to Rule 4(e). This discretion needs to be applied on consideration of relevant facts and circumstances as mentioned in the said application. Each fact has to be addressed independently and it is needless to mention that the authorities must decide the said application judiciously and not arbitrarily. Moreover, the Court shall not decide the matter when an expert authority is empowered and authorizes to consider such application and the jurisdiction of the Court is limited to find out whether such exercise of jurisdiction is proper. In the instant case, the application was not decided by the authorities concerned.

8. Accordingly, we allow the appeal by setting aside the order passed by the learned Single Judge.
9. In the event any application is filed in accordance with the procedure prescribed under the said Rule, the school authority shall process the said application and forward the same to the appropriate authorities for consideration in accordance with the said Rules.
10. It is needless to mention that the school authorities shall process the application at the earliest and forward the said to the appropriate authorities for their consideration. The authorities are also directed to decide the said issue as expeditiously as possible.

11. With the aforesaid directions, the appeal and the application are, accordingly, disposed of.
12. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Smita Das De, J.)