

S/L 2
26.02.2025
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 26816 of 2024

Barnali Mondal
Vs.
The State of West Bengal & Ors.

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

...for the Petitioner.

Mr. Ratul Biswas

...for the DPSC, Birbhum.

Mr. Bhaskar Prasad Vaisya
Mr. Gourav Das

...for the DPSC, 24-Parganas (South).

Mr. Ratul Biswas
Mr. Kaushik Chowhdury

...for the WBBPE.

The petitioner is an Assistant Teacher at Amdahara Primary School, a school under Bolpur Intensive Circle of Birbhum District Primary School Council.

The petitioner is praying transfer to any school at her home district, 24-Parganas (South) on the ground that she is suffering from serious type of gynecological disorder.

The authorities have objected to the said prayer of the petitioner on the ground that in terms of Rule 4(b) of the West Bengal Primary Education (Transfer of Teachers including Head Teacher), Rules, 2002 (hereinafter referred to as ‘**the said Rules of 2002**’) a teacher, to be eligible for transfer, is required to complete five years’ continuous service in one posting but the petitioner lacks the said requirement inasmuch as she has joined the service in the year 2021.

The petitioner contends that since she has prayed for transfer on the medical ground, i.e., she is suffering from serious type of gynecological disorder, the restriction contemplated under the aforesaid Rule is not applicable to her.

Be that as it may, Rule 3A(f) of the said Rules of 2002 prescribes that if the prayer for transfer is on medical ground, the Council is obliged to arrange for the medical examination of the petitioner by the Chief Medical Officer of Health of the District.

This Court vide order dated November 18, 2024 had directed such medical examination of the petitioner, the said medical examination was conducted and a report thereof is filed, the report speaks as follows:-

- ‘1. Mrs. Barnali Mondal is clinically stable at present on medication from gynecologist point of view.*
- 2. She is clinically stable from physician point of view.*
- 3. She is clinically stable from general surgical point of view.*
- 4. She is clinically stable from orthopaedics point of view.’*

Mr. Lahiri, learned advocate for the petitioner submits that the physical condition of the petitioner has improved due to continuous medication, therefore, the bona fide of the prayer of the petitioner cannot be doubted.

Mr. Ratul Biswas, learned advocate appears on behalf of the DPSC, Birbhum and also on behalf of the West Bengal Board of Primary Education and submits that it is not the illness, but the gravity of it, which is relevant in deciding the prayer of a teacher for transfer on medical ground.

Heard learned advocate for the parties; perused the materials on record.

This Court is flooded with applications for transfer of the teachers out of which, a large number is on medical ground.

It is rightly submitted by Mr. Biswas that it is not the disease of a teacher, but the gravity of it is the relevant factor in considering the prayer of a teacher for transfer on medical ground. Rule 3A(f) of the said Rules of 2002 has been designed to ascertain the same but unfortunately, it is noticed that due care and caution have not been taken in conducting such medical examination and issuance of certificate thereof, instead the said certificates are being issued casually.

This Court feels that some directions need be passed to give effect to the legislative intent in framing Rule 3A(f) of the said Rules of 2002, accordingly all District Primary School Councils, henceforth, on receipt of the applications for transfer

on medical ground, shall arrange for medical examination of the applicant by the Chief Medical Officers of Health of the said Districts and on the date of such examination, shall depute a person from the Council.

The said Chief Medical Officers of Health shall take due care and caution in ascertaining the gravity and extent of the illness of the teacher and shall issue the certificate, keeping in mind that the Court, on the basis of such certificate, shall consider the prayer of the teacher for transfer.

In the present case, the petitioner has been found to be 'clinically fit', therefore, her illness is not of that gravity for which she is unable to perform her duties at her present school.

Mr. Lahiri though has contended that the petitioner has made the application for transfer bona fide, but the report of her medical examination does not indicate so.

Summing up the discussion made above, the prayer of the petitioner is refused. WPA 26816 of 2024 is dismissed with a costs of **Rs.10,000/- (Rupees Ten Thousand only)** to be paid by the petitioner to the credit of Birbhum District Primary School Council. The costs shall be exploited by the Council for betterment of any school in need under its jurisdiction.

The learned Registrar General of this Court shall communicate this order to the Chief Medical Officers of Health of all the Districts of the State.

The West Bengal Board of Primary Education shall upload this order in its official website for circulation to all the District Primary School Councils.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance of all requisite formalities.

(Biswajit Basu, J.)