

Court No. 17

WPA 16680 of 2021

27.04.2022

(AD 2)

(S. Banerjee)

Snigdha Datta (Basu)

Vs.

The State of West Bengal & Ors.

Ms. Snigdha Datta (Basu)

... the petitioner (in-person)

The matter is again taken up at 2 p.m.

In the morning I granted some time to the petitioner to make up her mind after going through the letter of the Superintendent, District Hospital, Howrah dated 11.04.2022. Now she submits that after completing her examination on the last occasion dated 25.08.2021 (as appears from page 28 of the writ application), the doctors of the Medical Board themselves advised to avoid journey for the problems she has been suffering from. The petitioner has stated in paragraph 8 of the writ application that she has been suffering from the problems since 2015 and facing difficulties in attending her school. The writ application was filed on 01.10.2021.

That her doctors advised her to avoid journey and stress, is getting support from the medical certificate which is annexed to the writ application wherein, it is true, that the Medical Board advised her to avoid journey. The petitioner has submitted in paragraph 7 of the writ application that the distance of the school from her residence is 142 kilometers. She resides in a village

named Chandul under Police Station – Burdwan (Sadar) in the district of Burdwan and her school is in Uluberia, Horwah. To be specific, in a place named Joypur in Uluberia. Nobody has denied till date that the distance is not 142 kilometers or it is below 25 kilometers. The court can take judicial note of the physical geography of the State, namely West Bengal, and the court after taking judicial note of the two addresses, i.e., the residential address of the petitioner and the address of the school, can say that the distance will never be less than 25 kilometers. A candidate can apply for transfer if such distance is above 25 kilometers. Here the petitioner has stated that the distance is 142 kilometers, meaning thereby the to and fro journey which she used to undergo is 284 kilometers. For an easy comparison it can be stated that the distance of Digha from Kolkata is about 181 kilometers (via Kolaghat, i.e., the shortest route). Therefore, she undertakes a journey of more than such distance. To understand it quickly, not up to Digha, but may be a distance up to Talsari. A lot of persons of this State know both the places, i.e., Digha and Talsari (Talsari is in Odisha).

Letter of the Superintendent, District Hospital, Horwah produced before me today has bypassed the main issue. When the petitioner was examined by the Medical Board of his own hospital in the month of August, 2021 and when they had clearly advised the petitioner to avoid journey after examination by the

Medical Board, which the Superintendent in his letter dated 11.04.2022 has admitted by writing that she was examined (clinically), laboratory report and radiological findings were seen by the Medical Board, I do not think any further medical examination is required. She was sent for a such medical examination as the school did not issue her the no-objection certificate as her tenure has not crossed five years. In such a situation when the Medical Board in their report dated 25.08.2021 advised her to avoid journey, it is immaterial whether the petitioner is short of some months service from five years as on date. The petitioner has not been transferred till date and that is why I am considering the present tenure of her service, it is slightly below five years. However, when advise is to avoid journey after medical test by not an individual doctor but a Medical Board the service period cannot stand in the way for transfer.

The school, I am told, returned her application on another ground, i.e., - single teacher in the subject of Sanskrit. An embargo and other adverse conditions which were imposed upon a single teacher (who has applied for transfer) by a Government Order dated 22.09.2021 is not also applicable in the case of the petitioner. Her last application was filed on 11.09.2021 which appears from page 41 (Annexure P-11) of the writ application. As the petitioner applied for transfer before the said Government Order dated 22.09.2021 and as the said Government Order does not have any

retrospective effect, this Government Order or any other subsequent rule not having any retrospective effect cannot be made applicable to her application for transfer. Her case was required to be considered under the unamended General Transfer Rules of 2015. Therefore, the ground taken by the school in returning her application as 'single teacher' is quashed and set aside. It cannot be a ground for rejecting the application of the petitioner. Non-completion of five years service cannot also be a ground for the reason stated hereinabove read with the advise of the doctors of the Medical Board and that reason given by her present school is also quashed and set aside.

Therefore, this court declares that there is no impediment for the petitioner for getting a transfer to a school nearer to her residence.

The school is directed to issue no-objection certificate in favour of the petitioner by 29th April, 2022 which should be a physical copy duly signed and sealed by the Teacher-in-Charge of the school.

As she cannot avail of the utsasree portal for her less than 5 (five) years' service life in the present school which "less than 5 (five) years service life" impediment has been quashed and set aside by this court as held above the petitioner shall fill written application for transfer. The petitioner is directed to submit a handwritten or typed application for her transfer along with a copy of this order to the District Inspector of

Schools by 5th May, 2022 and the District Inspector of Schools shall forward the same to the School Service Commission by 12th May, 2022. As the petitioner filed the application for transfer on 11th September, 2021, i.e., more than seven months back, the petitioner is granted liberty to select vacancy in other schools nearer to her residence including the vacancies in schools which she has already selected, if those are not filled up in the meantime. But she will only select vacancies in three schools and not more than that. The names and addresses of the schools with the Block and Police Station under which such schools are situated, are to be clearly mentioned in the application to be filed by the petitioner in the office of the District Inspector of Schools.

The West Bengal Central School Service Commission, being the respondent no. 2, is directed to give an opportunity of hearing to the petitioner after receiving the papers from the office of the concerned District Inspector of Schools (which the District Inspector will send by 12th May, 2022) and such hearing is to be given by the Chairman of the Commission to the petitioner by 19th May, 2022 and the date, place and time of the hearing is to be intimated by his office to the petitioner in writing or in her email address. The email address disclosed by the petitioner is – snigdhadatta1987@gmail.com

The Commission is directed to issue recommendation letter for transfer by 26th May, 2022

and the President of the West Bengal Board of Secondary Education should issue the appointment letter for the school selected by the petitioner and recommended by the Commission by 9th June, 2022. The school authority, where the petitioner will go for joining, shall allow the petitioner to join the school without any hindrance of any kind whatsoever. The present school of the petitioner, namely Joypur Surangamayee Girls' High School (HS), shall transfer the Service Book complete in all respect and all other papers relating to the petitioner for service to the school where the petitioner will join, within a period of 30 days from the date of communication to be made by the petitioner to Joypur Surangamayee Girls' High School (HS). The school shall also transfer the money accumulated in the Provident Fund Account of the petitioner to the school where the petitioner would join, by two months from the date of the intimation as indicated above.

The Chairman of the Commission should take steps for immediate recommendation of a teacher having the qualification equivalent to the petitioner to Joypur Surangamayee Girls' High School (HS) immediately after consultation with the concerned District Inspector of Schools.

It is found that the school has submitted one report dated 23.12.2021 in the course of this proceeding. Therefore, it is evident that the school

received a copy of the writ application. Nobody appeared for the school today.

Before parting with this matter, it is observed that a lady teacher with specific advice of the doctors of a Medical Board of a Government Hospital to avoid journey, cannot be compelled to attend the school which is at a distance of 142 kilometers. To and fro journey is 284 kilometers. Even if the petitioner arranges an accommodation nearer to the school, it cannot be said that she will never come to her in-laws' house or her father's residence from the rented house in school area. At the same time going against the advice of the doctors of the Medical Board means taking risk of her life.

The matter is not disposed of, it will appear in the list on 15th June, 2022. The matter is marked as 'heard in part'.

The petitioner is directed to communicate this order to the school by tomorrow 12 noon.

(Abhijit Gangopadhyay, J.)