

16.12.2021

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WP. ST. 99 of 2021

Dr. Shantanu Kar

Vs.

The State of West Bengal & ors.

Mr. Debabrata Karan

Mr. Sankhasuvra Roy

Mr. Debopriyo Karan

.... For the petitioner

Mr. Raja Saha

Mr. Sayan Ganguly

... For the State

The instant writ petition has been filed challenging the order dated 17th November, 2021 passed by the West Bengal Administrative Tribunal in O.A. No.789 of 2021 whereby and whereunder the prayer for the petitioner to participate in the selection process pertaining to the Assistant Superintendent (non-Medical) under the West Bengal Health and Family Welfare Department, Government of West Bengal, upon relaxation of age bar was rejected.

Indubitably, the petitioner along with four candidates were permitted to join for the post of District Leprosy Consultant under Joint Director of Health Services in the year 2014 and since then the petitioner is working on a contractual basis without any interruption. Subsequently, an advertisement was published on 20th of December, 2019 for appointment to the post of Homeopathic Medical Officers under the West Bengal Homeopathic Health Service, but the

petitioner could not offer his candidature in the said selection process. Thereafter, the petitioner filed an application before the Tribunal being O.A. No.11 of 2020 seeking a direction upon the authorities to permit the petitioner to appear in the examination upon relaxation of the age bar. The said application was dismissed by the Tribunal as a result whereof the petitioner could not appear in the said selection process. Another advertisement was published on e-Portal on 2.11.2021 for filling up the fortythree vacant posts of Assistant Superintendent (non-Medical) under the Health and Family Welfare Department, Government of West Bengal, indicating the time-line within which the application is required to be made.

Since the petitioner did not qualify the eligibility criterion having surpassed the age limit indicated therein, he could not apply in pursuance of the said advertisement rather moved the Tribunal with an application being O.A. No.789 of 2021 with substantive prayer for permission to participate in the said selection process upon relaxation of age bar. The Tribunal upon hearing the petitioner and the State held that since the petitioner is over-aged and the maximum relaxation prescribed in the said advertisement is 10 years, the petitioner is not entitled to relief as prayed therein.

Learned Advocate for the petitioner put much emphasis on the Larger Bench judgement of this Court

rendered in *Gobinda Chandra Mondal Vs. Principal, Rabindra Mahavidyalaya*, reported in 2013(1) CHN (CAL) 9 for the proposition of law that even if the rules are silent, there is no impediment to permit the candidate to participate in the selection process upon relaxation of age bar.

It is further submitted that the Supreme Court in *Satya Prakash and others Vs. State of Bihar and others*, reported in (2010) 4 S.C.C. 179 have laid down the similar principles of law and permitted the applicant therein to participate in the selection process after having given the relaxation as to the age bar.

The State opposes the instant application. It is submitted that the aforesaid two judgements as relied upon by the petitioner are of no help to him for the reason that the advertisement for filling up the post pertains to a different cadre than the post at which the petitioner is contractually employed.

It is further submitted that there is no provision for relaxation of the age bar except that in case of the reserved category it can be relaxed upto 10 years. Even apart, it is submitted that the petitioner has crossed the outer limit which has not been provided there and in absence of any express provision the authority cannot overlook the provision or norms applicable thereto.

It is no doubt that the petitioner is rendering his service as Leprosy Consultant under the Health and

Family Welfare Department, Government of West Bengal since 14.3.2014 on a contractual basis. The petitioner is rendering his service uninterruptedly but such appointment was purely on contractual basis without following the procedure and the norm applicable thereto. The embargo created by the Constitution Bench of the Supreme Court in *State of Karnataka Vs. Umadevi (3)*, reported in (2006) 4 S.C.C. 1 is attracted. Precisely for such reason there is no prayer made by the petitioner for regularisation of such service. The applicant prayed for permission to participate in the selection process upon relaxation of age. The Larger Bench in case of *Gobinda Chandra Mondal* (supra) was considering a reference pertaining to as to whether a temporary/casual employee can be allowed to participate in the selection process after condoning his age bar as prescribed in deviation of the Recruitment Rules. The paragraph 3 of the said judgement contains the recapitulation of the facts involved therein and can be observed that the temporary/casual employee engaged by the department applied for a regularisation as well as permission to participate in the selection process for regular appointment to the said post they were holding. The Larger Bench ultimately concludes that the temporary/casual employees engaged in the substantive post may offer their candidatures to such post and the authority

must allow them upon relaxation of bar. It is further observed that in the event the applicants therein are not at all qualified their case cannot be considered for relaxation of bar. It is apposite and profitable to quote the relevant observations of the Larger Bench reproduced in paragraph 25 thereof as under :-

“25.If the appointment is made without undertaking selection procedure under Rule on ad hoc or temporary basis engaging the candidates having requisite qualification namely age and education at the time of appointment against substantive post the candidates in those cases shall be allowed to compete and/or participate in the selection process along with other eligible candidates at the time of regular recruitment process condoning the age as they have acquired right to be considered. Of course, their services must be continuously and without any break in the vacancy of substantive post at the time when the regularization is demanded and selection process undertaken. But in case where the appointees are not qualified at all and they have been engaged for rendering services as on ad hoc basis or temporary measure their case cannot be considered under any circumstances either against substantive post or the post yet to be created.”

In *Satya Prakash and others* (supra), the Apex Court was considering the case of regularisation of service to the substantive post of a casual or daily-rated workers and ultimately after taking into account the

Constitution Bench rendered in case of *Uma Devi (3)* (*supra*) held that their services are not entitled to be regularised. However, the Apex Court permitted those applicants to offer their candidatures for the recruitment process and the authority was directed to permit their candidatures in the recruitment process upon relaxation of age bar.

The moot question which was involved in *Satya Prakash and others (supra)*, the regularisation of service rendered by the daily-rated workers/casual workers which was held against them in view of the pronouncement of the judgement in *Uma Devi (3)* (*supra*). However, the Court in exercise of power conferred under Article 142 of the Constitution of India directed the authority to permit them to participate in the selection process upon relaxation of bar. It is beyond doubt that the law declared by the Supreme Court is binding on all the Courts of the country including the High Courts. So far as the orders passed in exercise of power under Article 142 of the Constitution of India is concerned, such power is exercised to mitigate the circumstances and the special facts involved therein to render justice which does not partake the character of the law declared by the Supreme Court.

The aforesaid judgements are applicable in a case where the casual/temporary or daily-rated workers

were employed at the substantive post and were rendering their services for a considerable period of time uninterruptedly and therefore, they were permitted to participate with the selection process initiated for such substantive post by the authority after relaxation of the age bar. Even the Constitution Bench in *Uma Devi (3) (supra)* highlighted such aspect and passed a direction that the petitioners therein may be permitted to participate in the selection process undertaken for such substantive post upon relaxation of age barrier and some weightage should be given by the authority in this regard.

In the instant case, the petitioner was employed as Leprosy Consultant purely on contractual basis and the advertisement was published for filling up the post of Assistant Superintendent (non-Medical) which is completely different and distinct from each other. Had it been a case of the post of Leprosy Consultant or Leprosy Doctor is sought to be filled up and the petitioner is working and rendering service in such post the position would have been different. If the advertisement for filling up the post which is unconnected and unrelated to the service rendered by the petitioner as contractual basis is said to be undertaken, the petitioner cannot be treated at par with the persons whose grievances were considered by the

Larger Bench as well as the Supreme Court in *Satya Prakash and others (supra)*.

We, thus, do not find any infirmity and illegality in the said order.

Accordingly, the writ petition is dismissed. There shall be no order as to costs.

(Harish Tandon , J.)

(Rabindranath Samanta, J.)