

11.01.2021
Item No. 10
Ct. No. 04
PG

M.A.T. 1929 of 2019
I.A. No. CAN 1 of 2019(Old No. CAN 12629 of 2019)
With
I.A.No. CAN 2 of 2019(Old No. CAN 12630 of 2019)
(Via Video Conference)

Birendra Prasad Singh & Anr.
Vs.
Eastern Coalfields & Ors.

Ms. Madhu Priya
Mr. Arindom Chatterjee.....for appellants

Mr. Bijoy Kumar.....for respondents

Ms. Priya, learned advocate appears on behalf of appellants, who are father and son. Her clients are aggrieved by order dated 5th November, 2019, on which their writ petition was disposed of. She submits, her clients suffered from permanent disability, of being unable to see. She refers to order dated 2nd July, 2018 disposing of earlier writ petition of her clients [W.P. 1579(W) of 2018)]. Following from said order is reproduced below:

“.....The case of the petitioners is that the petitioner No. 1 was an employee of the Company and was suffering from diminishing vision. In June, 2016 he made an application to the authorities for being declared medically unfit and for appointment of his son in his place in the Company. The respondents did not act with promptitude and after about a year called the petitioner No. 1 to appear before the Medical Board.

The Court directed the respondent Company to clarify certain points in the report

which do not appear to have been seriously done by them. There is hardly any explanation for the very unusual delay in calling the petitioner No. 1 for medical examination when the Company had a regular hospital with Ophthalmology department. The feeble effort made by the respondents to give some information about the movement of the file from one authority to another certainly leaves a very big question mark about the sincerity with which the respondents acted in this respect. The decision of the Apex Medical Board was under active consideration of the Appellate Medical Board. Hardly any justification is there for not taking the medical examination of the petitioner No. 1 within a year's time."

She submits, impugned order should be set aside since both her clients have been wrongly deprived of relief. She relies on judgment of Supreme Court in **S. Krishna Sradha vs. The State of Andhra Pradesh & Ors.** reported in **A.I.R. 2020 SC 47**. Paragraph 3 from Manupatra print is reproduced below:

"3. At the outset, it is required to be noted that in the present case, in spite of submitting the necessary material in support of the claim of the Appellant for reservation in the sports and game category for admission into MBBS Course, she was denied due priority in admission into MBBS Course. Therefore, the Appellant immediately approached the High Court seeking admission in the reserved quota of sports and games category. However, it was found that at the time the petition was heard, the Academic Session for the year in question already commenced from 01.09.2015 and as per the decision of this Court the last date for admission would be 30.09.2015, the High Court considering the decision of this Court in the case Jasmine Kaur (supra) observed that no direction can be issued to the Appellant for grant of admission for the Academic Session 2015-16. However, relying upon the decision of this Court in the case of Jasmine Kaur (Supra), the High Court granted compensation of Rs. 5 lakhs. It is required to be

noted that the High Court came to a categorical and unequivocal conclusion that the Appellant was entitled to get priority. It was also found that the Appellant was more meritorious than others on the basis of the marks obtained. However, the High Court denied the admission solely on the ground that time limit has expired. The High Court has relied upon the decision of this Court in the case of Jasmine Kaur (Supra). In the case of Asha (Supra) this Court held that in rarest of rare cases, when the Court returns the finding that (i) no fault is attributable to the candidate; (ii) the candidate has pursued her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of Rules and Regulations, an exception may be made to 30th September cut-off date and in an exceptional case the Court can direct for admission even in a case where cut-off date as directed by this Court had expired. As observed hereinabove, the contrary view is taken subsequently, in the case of Jasmine Kaur (Supra) and therefore, the matter is referred to a larger Bench to consider the aforesaid issue.”.

Mr. Kumar, learned advocate appears on behalf of respondents and also relies on said order dated 2nd July, 2018. The following therefrom is reproduced below:

“The petitioners should have approached this Court long before when the petitioner No. 1 found that he had not been referred to the appropriate Medical Board or the Apex Medical Board has not published its decision. The date of his retirement was very much known to him. He has approached this Court only a fortnight before his date of retirement. The essential pre-requisite for appointing a dependent of a worker is that he has been permanently disabled and the employee concerned must be declared so disabled before his retirement.”

It appears, appellant no. 1 asserted that he had been permanently disabled. As a consequence

appellant no. 2 had moved the writ Court earlier for direction upon respondents to, as a consequence, grant him employment. Submission of appellants is that the employer referred appellant no. 1 to Apex Medical Board only after appellant no. 2 had earlier moved the writ Court. If the employer had acted, when approached by appellants, appellants then would have had time to seek remedy on the relief, denied because of tardy action on part of the employer. In this context **S. Krishna Sradha** (supra) is relied upon by appellants.

We notice from said order dated 2nd July, 2018, there were laches on both sides. While the employer responded with delay, in referring appellant no. 1 to Apex Medical Board, the writ petition of appellant no. 2 was brought just before scheduled retirement of appellant no. 1. However, laches on the part of parties cannot alter the fact that even on delayed reference to the Apex Medical Board, finding was returned that appellant no. 1 was fit. This finding was confirmed by the Appellate Medical Board. Concurrent findings of being fit stared in the face of appellant no.1 as going against his contention that he was suffering from permanent disability. Hence, he achieved age of superannuation when was subsisting concurrent findings of him being fit. In the

circumstances, we are in agreement with view expressed in impugned order as is reproduced below:

“...As the petitioner has already retired the prayer of the petitioner for cancellation/withdrawal of the decision of the Appellate Medical Board will not serve any purpose at this stage.

The petitioner will be at liberty to initiate appropriate proceeding against the respondents for the damages suffered by them on account of the delay in communicating the decision of the Apex Medical Board, if so advised.”

The applications and the appeal are being dealt with together. Mr. Kumar waives service of notice of appeal. All formalities are dispensed with.

In view of what we have said above, we do not find merit in this appeal and the same is dismissed. The connected applications are accordingly disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)