

22.07.2022

WPST 26 of 2022

Court : 04
Item : 06
Matter : WPST
Status : OP
Transcriber: nandy

The Secretary & Controller of Examinations,
West Bengal Health Recruitment Board
Vs.
Soumitra Acharyya & Ors.

Ms. Chaitali Bhattacharya, Advocate
Mr. Mrinal Kanti Ghosh, Advocate

.....for the Petitioner

Mr. Biswarup Nandy, Advocate
Mr. Rajesh Kumar Shah, Advocate

.....for the Respondent

The instant writ-petition is filed assailing an interim order dated February 10, 2021 passed by the West Bengal Administrative Tribunal in OA 87 of 2021. It is not in dispute that the petitioner was working in the organization on contractual basis and on an earlier occasion participated in the selection process taking benefit of an order of the Tribunal whereby and whereunder he was permitted to participate therein upon relaxation of age bar. Unfortunately, the respondent could not emerge successfully therefrom.

The tribunal application was filed seeking an order that he may be permitted to participate in the ensuing selection process upon relaxation of age bar. It appears that he is working in the said organization for a pretty long time and while passing an interim order, the Tribunal permitted him to appear in the selection process. The Tribunal was conscious of the situation that such participation would not create any special equity in the respondent. The Tribunal further directed the authority not to publish the result and to

keep it in a sealed cover so that at the time of final decision, an appropriate order may be passed.

It is argued that the judgment of the Special Bench in case of ***Gobinda Chandra Mondal Vs. Principal, Rabindra Mahavidyalaya*** reported in ***2013 (1) CHN (CAL) 9*** has its application to the facts of the present case wherein the Special Bench has held that there is no fetter on the part of the Court in passing a direction upon the authority to permit the casual/temporary employees upon relaxation of age. It is submitted that the said Special Bench did not take care of the judgment of the Supreme Court in case of ***Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors.*** reported in ***(2006) 2 SCC 482*** wherein the Apex Court has held that if a person is working on contractual basis, he cannot seek an entitlement of relaxation of upper age limit.

After hearing the respective Counsel, we feel that there is no conclusive finding returned in the impugned order by the Tribunal. The findings are relatable to an interim order which is prima facie in nature and cannot have any impact at the time of final disposal of the proceeding. Mere participation shall not create any special equity into the respondent and the issue whether the respondent is entitled to a relaxation of the upper age limit, shall be decided upon disclosure of the facts by the respective parties.

For abundant precaution, we once again reiterate that the findings recorded in the impugned order is tentative in nature and shall not have any impact at the time of final disposal of the proceeding.

With these observations, the writ-petition being **WPST 26 of 2022** is **disposed of**. No order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)