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21.09.2022
(PP)
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 8180 of 2022

Pratap Baidya
Vs.
The Chairman, Kolkata Port Trust & Ors.

Mr. Satyajit Mandal,
Mr. Amar Nath Sen,
Mr. Malay Dhar,
Mr. Souvik Naskar

.... For the petitioner.

Mr. Kallol Basu,
Mr. Brotindra Mullick,
Ms. Sudipta Bera,
Mr. Nilanjan Pal

... For the respondent/KoPT.

In this writ petition, a challenge has been made to an order dated April 27, 2021 (Impugned order) passed by the Deputy COA – II, For Financial Adviser & Chief Accounts Officer, Syama Prasad Mookherjee Port, Kolkata.

The writ petitioner's case of being considered for family pension on the ground of being a physically handicapped person was rejected by the impugned order. It was held that since the writ petitioner had good mental health and may earn his living in a suitable profession as opined by the Competent Medical Board, the writ petitioner was not entitled to his claim as a handicapped son. The writ petitioner's father was an ex-employee of Calcutta Port Trust/ Syama Prasad Mookherjee Port, Kolkata. After his death, the writ petitioner's mother

received family pension till her death on December 25, 2019. After her death, the writ petitioner being a handicapped person applied for family pension on January 22, 2020. Necessary document, including a Disability Certificate from the Competent Authority, was also submitted along with such application.

From the Disability Certificate dated December 1, 2009 issued by the Superintendent, Sub-Divisional Hospital, Diamond Harbour, it categorically appears that the petitioner suffers from “Paraplegia” and was 100% handicapped person. Furthermore, it also clarifies the position that the petitioner cannot travel without any assistance of an escort.

Mr. Dhar, learned counsel, appearing on behalf of the writ petitioner states that the impugned order suffers from complete non-application of mind because the petitioner’s contention is that he is 100% physically handicapped due to “Paraplegia” and, therefore, the petitioner has never agitated that he did not have good mental health. The petitioner’s contention is that he is entitled to family pension since he is 100% physically handicapped.

Attention of this Court is also drawn to the certificate of the Medical Board issued on January 11, 2021 by the Office of the Medical Superintendent-cum-Vice Principal, Diamond Harbour Government Medical

College & Hospital for supporting the contention that the writ petitioner has 100% physical disability because of the condition of “Paraplegia”.

He also refers to the definition of a “person with disability” as stated in Section 2(s) of the Rights of Persons with Disabilities Act, 2016 in support of his contention that a person with long term physical disability will also be considered as a disabled person. Therefore, the authorities could not have rejected his prayer for family pension on the ground he has a good mental health.

Mr. Bose, learned counsel, appearing on behalf of the respondents submits upon instructions that 8 cases are being processed for family pension by the Port Authorities since 2016 in the handicapped category.

Such instructions as handed over by Mr. Bose in Court today is retained with the records.

Considering the rival submissions of the parties and the materials placed on record, this Court sets aside and quashes the impugned order dated April 27, 2021 since the physical condition of the petitioner’s “Paraplegia” rendering the petitioner as 100% physically handicapped has not been considered before passing of the impugned order.

In the circumstances, the respondent no.3 is

directed to consider the prayer of the writ petitioner for family pension within 6 weeks from date. A reasoned order is to be passed upon giving a personal hearing to the writ petitioner or his delegated representative. Let such reasoned order be communicated within 2 weeks of passing of the same.

The reasoned order is to be passed upon consideration of the writ petition and the supplementary affidavit filed by the writ petitioner as representations and considering the certificate of disability annexed in the supplementary affidavit by the writ petitioner.

With the directions aforesaid, the writ petition, being **WPA 8180 of 2022**, is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)