

Ct. 05
Item No.16
02.08.2022
(suvendu)

WPA 10036 of 2022

Kaustav Chandra Das & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Kaustav Chandra Das
..... petitioner no.1 in person

Mr. Anirban Ray, Ld. GP
Mr. Debashish Ghosh
Mr. Varun Kothari
Mr. Debraj Sahu
Ms. Piyali Sengupta

.....for the State

The petitioners pray for a mandamus commanding the private respondent no. 6 or any other competent authority to extend the tenure for review of the Disability Certificates of the petitioners for at least ten years.

The petitioner no. 1 appears in-person and submits that the petitioner no. 2, being the son of the petitioner no. 1, has been granted a Certificate of Disability for a period of one year. Counsel invites the Court to extend the period of review for at least ten years on the plea that the petitioner's son is due to take a Board examination next year.

The learned Government Pleader places a few provisions of the relevant statute and submits

that there is a provision for appeal under Section 59 of the 2016 Act. It is further submitted that the petitioners have not shown that the decision of the Certifying Authority is bad requiring interference of the writ court.

Although Section 59 of The Rights of Persons with Disabilities Act, 2016 provides for appeal against a decision of the Certifying Authority, the petitioners submit that there is presently no Appellate Authority to which the petitioners can go to. Hence, the point of the petitioners having to exhaust the statutory remedy before approaching this Court is decided in favour of the petitioners.

Rule 18 of The Rights of Persons with Disabilities Rules, 2017 provides for issue of Certificate of Disability. Sub-rule (3)(i) of Rule 18 casts an obligation on the Medical Authority which is the Certifying Authority to issue a permanent Certificate of Disability in cases where there are no chances of variation of disability over time in the degree of disability.

The Certifying Authority was constituted by an Order dated 29.08.2018 of the Health and Family Welfare Department (PHP Branch) of the Government of West Bengal. The Certifying Authority in Serial No. 2 of the categories of

disabilities, which is applicable in the present case, is a specialized Board of three Members including the Chairperson of the Board-Medical Superintendent or the Medical Superintendent – Cum- Vice Principal/Director.

Sub-rule (3) of Rule 18 makes it clear that permanent Disability Certificate can only be issued by the Board subject to there being no chance of variation of disability over time in the degree of disability. This question hence can only be considered and decided by the specialized Board as constituted for assessing the duration of the Certificate to be granted in cases of visual impairment. The writ court certainly cannot substitute the view of the constituted Certifying Authority since the writ court is not equipped with the necessary expertise to come to any such conclusion.

Although the petitioners have challenged the decision of the Certifying Authority of issuing a Certificate of one year on the ground of mala fide and bias, the case made out is more on the degree of the disability of the second petitioner and not on the particularities of the decision. The prayers in the writ petition also seek a review and are not in the form of any challenge to the decision. In any event, the validity of the Certificate already issued

is till 20.04.2023. Therefore, the petitioners have adequate time at their disposal of taking necessary steps for extension of tenure of the Certificates.

Considering the above reasons, WPA 10036 of 2022 is disposed of with a direction on the constituted Certifying Authority being the respondent no. 5 to consider extension of tenure of the Certificate of Disability in respect of the second petitioner within a period of four weeks from the date of communication of this order on the said respondent. A copy of the decision of the respondent no.5 shall be made available to the petitioners within a week from the date of taking decision in the matter.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)