

November 23, 2022
AD-10
Court No.1
SG

MAT 1255 of 2022
with
CAN 1 of 2022

Kaustav Chandra Das
vs.
The State of West Bengal and others

Mr. Durga Prasad Dutta, Advocate
... for the appellant

Mr. Anirban Ray, Id. GP
Mr. Debasish Ghosh,
Mr. Varun Kothari, Advocates
... for the State

Ms. Priti Jain, Advocate
... for the respondent No.7

This intra-court appeal is at the instance of the writ petitioner No.1 challenging the order of learned Single Judge dated 02.08.2022 whereby WPA 10036 of 2022 has been disposed of with certain directions.

The appellant and proforma respondent No.8 had approached the writ Court with the plea that the proforma respondent is the son of the appellant and they are suffering from congenital eye problem in both the eyes medically known as “Nystagmus” which causes visual acuity 6/60 even after correction of the use of glasses. The appellant and proforma respondent No.8 were issued the disability certificate dated 21.04.2022 mentioning the said disease but the period of the disability certificate was only one year.

In these circumstances, the appellant had prayed for a direction to the concerned respondent to extend the

tenure for review of the disability certificate for at least 10 years taking into account the incurable nature of the physiological defects in the eyes of the appellant

Learned Single Judge in the impugned order has taken the view that the issue relating to extension of review of the tenure can only be considered and decided by the specialised board constituted for assessing the duration of the certificate and the writ Court cannot substitute the view of the constituted certifying authority as the writ Court is not equipped with the necessary expertise to come to any such conclusion. The view so taken by learned Single Judge does not suffer from any error.

Learned counsel for the appellant has referred to Rule 18(3)(i) of the Right of Persons with Disabilities Rules, 2017 which provides for issuance of permanent certificate of disability by the medical authority in case where there are no chance of variation of disability over time in the degree of disability.

Learned counsel for the appellant has submitted that the disability which the appellant and the proforma respondent No.8 are suffering is of permanent nature, therefore the disability certificate be reviewed and that the direction for review has been issued only in respect of proforma respondent No.8 and not for the appellant. His further submission is that the medicine for dilation of eyes used during the examination is harmful in such a

disease. The appellant will suffer further harm if the said medicine is used by the authority while assessing permanent nature of disability.

By the impugned order learned Single Judge has issued a direction to the constituted authority, respondent No.5 to consider the extension of tenure of certificate of disability in respect of proforma respondent No.8 only.

Learned counsel for the State has not disputed that the appellant also stands on the same footing, therefore he has also entitled for the same.

Since the issue relating to extension of the tenure of the disability certificate or grant of permanent disability certificate is to be considered by the competent authority/expert, we dispose of the present appeal by directing that the competent authority will consider the issue of extension of tenure of certificate of disability of the appellant also on the same terms as contained in the order of learned Single Judge in respect of proforma respondent No.8. While using the medicine for dilation at the time of eye examination, the concerned authority will duly consider the apprehension of the appellant about the damage being caused by such medicine.

Accordingly, the appeal is disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

