

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13624 OF 2022

(An application under Articles 226 and 227 of the Constitution of India)

Rabindra Kumar Sahu

....

Petitioner

-versus-

State of Odisha and others

....

Opposite Parties

Appeared in these cases:

For Petitioner

: Mr. Kunal Kumar Swain,
Mr. K. Swain and Mr. J.R. Khuntia,
Advocates

For Opposite Parties

: Mr. R.N. Acharya,
Standing Counsel for School
& Mass Education Department

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

Date of Hearing : 22.07.2022 | Date of Judgment:04.08.2022

SASHIKANTA MISHRA, J.

1. Pursuant to an advertisement issued in the year 2011 for appointment to the post of Siksha Sahayak, Petitioner has applied for the same against S.E.B.C. Physical Handicapped (VI) category. He had enclosed a physical handicapped certificate issued by the Medical Board of Anandapur Sub-Divisional

Hospital dated 12.12.2011 along with his certificates. He was selected for the post of Siksha Sahayak and thereafter was again examined by the District Medical Board and Appellate Medical Board of SCBMCH, Cuttack. The District Medical Board found his disability as 40% while the Appellate Medical Board, i.e. SCBMCH, found his disability to be more than 40%. After issuance of certificate by the Appellate Medical Board, the Petitioner was engaged as Siksha Sahayak as per order dated 28.02.2013 of the Chief Executive Officer, Zilla Parishad-cum-Collector, Keonjhar. He joined in the post on 01.03.2013. Upon completion of three years of satisfactory service as Siksha Sahayak, he became a Junior Teacher as per the order dated 21.12.2016 of the District Project Coordinator, RTSSA, Keonjhar with effect from 01.03.2016. Further, on completion of 6 years of service both in the capacity of Siksha Sahayak and Junior Teacher, he became a regular teacher w.e.f. 01.03.2019, as per the order dated 26.07.2019 of the Block Education Officer, Ghasipura (Opposite Party No.3). While the Petitioner was continuing as such, by letter dated 10.02.2021, Opposite Party No.3 called upon him to submit all educational certificates, copy of first

engagement order and the original physical handicapped certificate for verification. Petitioner appeared on the same date, i.e. 10.02.2021 and produced all the required documents before Opposite Party No.3. Again the District Project Coordinator vide order dated 19.08.2021 directed the Opposite Party No.3 to ask the Petitioner to produce the original Physical Handicapped certificate submitted at the time of his engagement by 23.08.2021. The Petitioner produced the original Physical handicapped certificate in the office of the District Project Coordinator, which was duly received by the Office Assistant on 25.08.2021. Again Opposite Party No.3 as per the letter dated 04.09.2021 directed the Petitioner to submit the very same certificates on 04.09.2021. The Petitioner produced the said certificates before Opposite party No.3 on 06.09.2021 which were verified by the latter. Again, the Director, Elementary Education (Opposite Party No.2) vide letter dated 28.04.2022 directed the Opposite Party No.3 to refer the Physical Handicapped Certificate of the Petitioner to the State Medical Board for re-verification of the genuineness of the same and furnish a detailed report to Opposite Party No.3 vide letter dated 30.04.2022 and requested the Superintendent of SCBMCH,

Cuttack to verify the genuineness of the Physical Handicapped Certificate and submit a report. While the matter stood thus and without waiting for the report of SCBMCH, Cuttack (Appellate Medical Board), Opposite Party No.3 directed the Petitioner to appear before the Appellate Medical Board of SCBMCH, Cuttack on 26.05.2022 at 9.30 A.M.. The said letter is enclosed herewith as Annexure-13 to the writ petition and is impugned therein.

2. It is alleged by one Bijay Kumar Palai that the Petitioner had produced a fake and forged disability certificate at the time of his engagement as Siksha Sahayak. It is further stated that the said Bijay Kumar Palai is inimical to the Petitioner and as a co-villager has made false allegation against the Petitioner at the instance of some political persons. In the meantime by letter dated 09.09.2021, the Superintendent of Sub-Divisional Hospital, Anandapur intimated Opposite Party No.3 that the Disability Certificate issued in favour of the Petitioner on 12.12.2011 is genuine. Challenging the above referred action of the Opposite Party-Authorities in asking him to prove his disability time and again, the Petitioner has approached this Court seeking the

following relief:

“Under the above circumstances, it is humbly prayed that the writ petition may be allowed;

(A) A writ of mandamus or an appropriate writ may be issued quashing the impugned letter dated 24.05.2022 issued by the Block Education Officer, Ghasipura under Annexure-13 directing the petitioner to appear before Appellate Medical Board in SCB Medical College and Hospital, Cuttack on 26.05.2022 or on any other date in the department of Ophthalmology of SCB Medical College & Hospital, Cuttack for further examination for the purpose of ascertaining his visual disability may be quashed and the petitioner may not be sent for further examination by the Appellate Medical Board in SCB Medical College and Hospital Cuttack, on 26.05.2022 or on any other date;

(B) And any other order/orders or direction/directions may be issued so as to give complete relief to the petitioner;

And for this act of kindness, the petitioner shall as in duty bound remain ever pray.”

3. No counter affidavit has been filed by the Opposite Parties. Learned Standing Counsel appearing for the School and Mass Education Department made oral submission basing on the relevant documents already on record.

4. Heard Mr. K.K. Swain, learned counsel for the Petitioner and Mr. R.N. Acharya, learned Standing Counsel for the School

and Mass Education Department.

5. It is vehemently argued by Mr.K.K. Swain that the Petitioner having been engaged after due verification of all his certificates including the Disability/Physical Handicapped Certificate at the relevant time, it is not open to the Authorities to call into question the genuineness thereof after a lapse of 8-9 years and that too at the instance of an outsider. In any case, the Petitioner's disability is clearly proved by the certificates issued by the Medical Board of Sub-Divisional Hospital, Anandapur, District Medical Board and also by the Appellate Medical Board. Therefore, there is no doubt as regards the disability of the Petitioner. Even the Superintendent of Sub-Divisional Hospital, Anandapur in his letter dated 09.09.2021 has categorically mentioned that the certificate dated 12.12.2011 is genuine. Therefore, it is entirely unjustified on the part of the Authorities to call upon the Petitioner time and again to prove his disability.

To fortify his contention, Mr. Swain has relied upon two decisions rendered by this Court in the case of ***Kamalakanta Sahu vs. State of Odisha & Ors***, reported in 2022 (I) OLR-955

and *Santosh Kumar Padhy Vs. State of Orissa* in W.P.C.(OAC) No.304 of 2018, rendered on 05.04.2022.

6. Mr. R.N. Acharya, learned Standing Counsel appearing for the School and Mass Education Department has submitted that if a complaint is received regarding the genuineness of the certificate furnished by the candidate at the time of his engagement, it is open to the employer to verify its veracity. To such extent, therefore, the Authorities cannot be faulted with for having called upon the Petitioner to prove the genuineness of his claim of disability. It is further contended that if the Petitioner is really disabled, he should have no objection in appearing before the Appellate Medical Board, whereby his claim of disability shall be automatically proved.

7. The facts of the case as averred in the writ petition are not disputed. The Petitioner was issued with a certificate by the Sub-Divisional Medical Hospital, Anandapur on 12.12.2011 showing him as having visual disability to the extent of 45% with a rider that the condition is likely to improve. The District Medical Board after examining the Petitioner issued a certificate indicating 40% physical disability (visually handicapped). The Appellate Medical

Board of SCBMCH, Cuttack after examining the Petitioner found him to be disabled more than 40%. Much later, that is by letter dated 09.09.2021, the certificate issued by the Medical Board, Anandapur (SDH) was certified as genuine. In none of the letters issued to the Petitioner from time to time, it is stated that the certificates issued by the District Medical Board and the Appellate Medical Board in the year 2000 are forged or fake. Petitioner has in the meantime been regularized in service as Junior Teacher and has spent more than 8 years by now. The question is, is it open to the employer, in this case the Govt., to question the genuineness of the certificate furnished by the Petitioner at this belated stage for having given him appointment basing on the same, as stated herein above. Petitioner's disability was certified at all levels, i.e. the Sub-Divisional Medical Board, District Medical Board and the Appellate Medical Board and only because some outsider having no business whatsoever with the government raises an allegation of forged certificate of the Petitioner does not mean that the Government would review its order and reconsider its decision or call upon its own employee to prove his bonafides time and again.. In the instant case, the outsider, who can at best be treated

as a busy body or interloper having no nexus whatsoever with the government makes a claim with impunity and what is more disturbing is that, cognizance of the same was taken by the concerned authorities without even questioning the locus standi of the said person to make a complaint.

8. It seems anybody can question the decision of the government at any stage with impunity and force the government to question its own decision taken in the past and reopen the issue. In the process, the right to livelihood of a person which is included within the right of life under Article 21 of the Constitution of India has been attempted to be trampled solely at the instance of a busy body. By lending support to such unconscionable action of the concerned functionaries, the Government has unwittingly become responsible for the sheer illegality committed vis-à-vis the petitioner.

9. Be that as it may, law is well settled that having once accepted the certificate furnished by a candidate and given him appointment, it is no longer open to the authorities/employer to turn around and question the same. Reference may be had to the case of *Union Of India Vs. Miss Pritilata Nanda* reported in

2010 (11) SCC 674. The Petitioner is on even better footing, inasmuch as, not only that the candidature of the Petitioner was considered and he was engaged and regularized in his post but also he was allowed to continue for as long as 9 years. The ratio of the above case was followed by this Court in the case of ***Kamalakanta Sahu*** (supra) and ***Santosh Kumar Padhy*** (supra).

10. It is also highly significant to note that the original Physical Handicapped certificate has been certified to be genuine by the Superintendent of Sub-Divisional Hospital, Anandapur. The same, however, appears to have escaped the notice of the concerned Authorities. As such, asking the Petitioner to submit himself to medical examination yet again before the Appellate Medical Board is nothing but adding insult to injury. This Court is fully conscious of the ignominy caused to the Petitioner in the process by the concerned Authorities, who are none other than functionaries of the government, which is expected to be a model employer. Sadly, the breadth of vision and maturity expected from them is found woefully lacking in the instant case.

11. For the forgoing reasons, therefore, this Court has no hesitation whatsoever in holding that the action of the Opposite

Party-Authorities in asking the Petitioner to appear before the Appellate Medical Board at this belated stage to prove his disability, which has already been proved multiple times, cannot be sustained in the eye of law and therefore warrants interference. In the result, the writ petition is allowed. The impugned order dated 24.03.2022 directing the Petitioner to appear before the Appellate Medical Board, i.e. SCBMCH, Cuttack vide Annexure-13 is hereby quashed. There shall be no order as to costs.

(Sashikanta Mishra)
Judge

Orissa High Court, Cuttack.
The 4th August, 2022/U.K. Sahoo, Secretary