

23 13.9.2023

Ct-08

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MAT 204 of 2019
with
I.A No. CAN 2 of 2019(Old CAN No.10202 of 2019)

Subhas Maity
Vs.
The State of West Bengal & Ors.

Mr. Debabrata Karan
Ms. Sabita Khutia(Bhuniya)
Mr. Debopriyo Karan
... For the Appellant

Mr. Bhaskar ProsadVaisya, Ld. AGP
Mr. Ranjan Saha
... For the State

Mr. Subir Sanyal
Mr. Ratul Biswas
... For the Howrah District
Primary School Council

1. The affidavit filed on behalf of the Commissioner of School Education disclosed that the disability certificate was produced on 11th March, 2015. However, the Commissioner seems to have rejected the representation on the ground that the disability certificate of the petitioner issued by the Uleberia Sub-Div. Hospital was produced on 30th March, 2017. The said certificate was issued by the Committee consisting of the Chairman and the members of the Medical Board, as it appears from the disability certificate itself.

2. We have not come across any provision nor any provision was shown which would show that the said disability certificate is not valid.

Although there cannot be any doubt that the disability certificate issued by the Handicapped Boards on 29th October, 2009 could not have been considered as a valid disability certificate, it is beyond any doubt that he was declared disabled on 25th February, 2015.

3. In the first round of litigation Justice Debangsu Basak on 1st December, 2015 directed the Commissioner of School Education to decide the objection with regard to the candidature of the writ petitioner on consideration of the documents and in the event the petitioner is able to establish that he is a physically handicapped person then the Commissioner was directed to approve the appointment of the writ petitioner and shall issue necessary direction to the District Primary School Council. This order is not under challenge.

4. In view of that fact that the Commissioner has overlooked the fact that the disability certificate was issued on 25th February, 2015 and it was on record, the Commissioner could not have rejected the candidature of the writ petitioner on the ground that the certificate was produced after the panel was exhausted. It appears from paragraph 10 of the affidavit filed by the Commissioner of School Education that the Chairman, District Primary School Council, has informed that life of the panel

had expired on 31st October, 2015 after one year from the date of approval/publication of the concerned panel within which time the appellant had produced the disability certificate.

5. Under such circumstances, we set aside the order passed by the Commissioner and we direct the Commissioner to act on the basis of the order passed by Justice Debangsu Basak passed on 1st December, 2015 within four weeks from date.

6. The appeal succeeds.

7. In view of the aforesaid order MAT 204 of 2019 stands disposed of.

8. In view of disposal of the appeal CAN 10202 of 2019 stands disposed of.

9. However, there shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Siddhartha Roy Chowdhury, J.)

(Soumen Sen, J.)

