

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

WPA 15493 of 2011
IA No. CAN 1 of 2018 (Old No. CAN 372/2018)

Nisith Ranjan Guin
-vs-
The State of West Bengal & Ors.

For the Petitioner	: Mr. Sudipta Dasgupta, Adv. Mr. Arka Nandi, Adv. Ms. Dipa Acharya, Adv. Mr. S. Sutradhar, Adv. Mr. S. Nayek, Adv. Ms. S. Ghosh, Adv.
For the State	: Mr. Santanu Kumar Mitra, Adv. Mr. Subhabrata Das, Adv.
For the WBCSSC	: Dr. S.K. Patra, Adv. Ms. Supriya Dubey, Adv.
Heard On	: 27.03.2023
Judgment On	: 27.03.2023

Saugata Bhattacharyya, J.:

Petitioner participated in the selection process for being appointed as an Assistant Teacher in English under Honours (PG) category in a school under southern region of West Bengal Central School Service Commission and the selection process which was conducted by the Commission was 10th Regional Level Selection Test, Assistant Teacher-2009 (for short “10th

RLST (AT)-2009"). Petitioner participated in the selection process as differently abled candidate claiming benefit of reservation which was available to differently abled candidate on the strength of the disability certificate issued by the Superintendent, District Hospital, Howrah, dated 17th June, 2000 whereby it was certified that petitioner was suffering 55% disability. Such disability certificate dated 17th June, 2000 is at pages 15 and 16 of the writ petition. It has been submitted by Mr. Dasgupta, learned advocate representing the petitioner that petitioner was selected for the post of assistant teacher in English. Since the petitioner was selected by the Commission he was allowed to participate as differently abled candidate in the counselling process and petitioner by submitting a declaration dated 19th May, 2011 selected Manmathapur High School, District- South 24 Parganas, for being recommended in the post of assistant teacher in the said school.

However, after participation in the counselling process the concerned authority of the Commission doubted on the issue whether the petitioner would be treated as differently abled candidate considering the nature of disability which he was suffering and forwarded the issue to the Superintendent, Kolkata Medical College and Hospital vide memo dated 7th June, 2011 for identification on extent of disability which petitioner was suffering. Such memo dated 7th June, 2011 is annexed at page 9 of the affidavit used on behalf of Commission being affirmed on 24th March, 2023 which has been filed in Court today and the same is taken on record.

Dr. Patra, learned counsel representing the Commission submits that it was within the domain of the Commission in case any doubt arises relating to the extent of disability of a candidate claiming the benefit being a physically handicapped person, to refer the matter to Kolkata Medical College and Hospital, Kolkata, if the petitioner is the resident of district- Hooghly or Howrah. In this regard an order of Director of Health Services

and Ex-officio Secretary, Department of Health and Family Welfare, Government of West Bengal dated 17th June, 2010 is relied upon which is annexed to the said affidavit of the Commission and according to the Commission such order of Director of Health Services is applicable in case of selection of assistant teacher by the Commission. Therefore, it has been contended on behalf of the Commission that rightly Commission referred the issue to Kolkata Medical College and Hospital for identification of disability of the petitioner since he is resident of District-Howrah.

It appears from the relevant paragraph of the said affidavit of the Commission that after the matter was referred to the Kolkata Medical College and Hospital the Medical Superintendent -cum- Vice Principal of Kolkata Medical College and Hospital vide memo dated 26th July, 2011 intimated the Commission that the extent of disability of the petitioner was 20% but the disability of the petitioner was sub-categorised as Hearing Impairment instead of Orthopaedically handicapped. Since such sub-categorisation was not tallying with the disability certificate issued by Howrah District Hospital wherein it was certified that petitioner was suffering from 55% disability which was sub-categorised as Orthopaedically handicapped the Commission vide letter dated 1st August, 2011 sought confirmation of sub- categorisation of disability as made by the Kolkata Medical College and Hospital and in response thereto Medical Superintendent –cum- Vice Principal, Medical College and Hospital, Kolkata, vide memo dated 19th August, 2011 informed the Commission that petitioner was suffering from 20% Orthopaedic disability.

Since on verification the Commission found the petitioner was suffering from 20% Orthopaedic disability he was not considered as an eligible differently abled candidate in terms of the relevant provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short “Act of 1995”).

Placing reliance on such identification made by Kolkata Medical College and Hospital relating to disability of the petitioner on being referred by the Commission the candidature of the petitioner was cancelled being differently abled candidate as a result whereof petitioner was not offered appointment based on his participation as disable candidate in 10th RLST (AT)-2009 which triggered the present writ petition.

While considering the issue involved in this writ petition and the situation which was subsisting in view of two different disability certificates issued by to different Governments hospitals namely District hospital Howrah and Kolkata Medical College and Hospital, Kolkata, this Court thought it fit to obtain a report from IPGME & R – SSKM Hospital, Kolkata on disability of the petitioner in order to find out the extent of disability which petitioner is suffering and whether petitioner would be treated as physically disabled candidate in terms of section 2(t) of the said Act of 1995. Needless to mention herein that District Hospital, Howrah, issued disability certificate declaring that petitioner was suffering from 55% Orthopaedic disability whereas Medical College and Hospital, Kolkata, declared the disability of the petitioner 20% under the same sub-category. This Court vide order dated 3rd January, 2023 directed the Special Medical Board of SSKM Hospital to verify the disability of the petitioner and Medical Superintendent –cum- Vice Principal of the said hospital to furnish a report. Ultimately, Medical Superintendent-cum-Vice Principal, IPGME&R – SSKM Hospital, Kolkata, vide letter dated 10th February, 2023 addressed to the Registrar General, High Court, Calcutta, forwarded the report of the Medical Board signed on 6th February, 2023 by Head of the Department, Department of Orthopaedic; Head of Department, Department of ENT; Associate Professor, Department of PMR and Audiologist & Speech Pathologist, Department of ENT. From the said report which is part of the record dated 6th February, 2023 petitioner was found to be suffering from

Orthopaedically permanent Physical Impairment (PPI) and the extent of such impairment is 44% and it was also reported that petitioner was having 1% hearing disability.

In view of difference of opinion relating to the extent of disability as emanates from different certificates one issued by the District Hospital Howrah and another issued by Kolkata Medical College and Hospital, Kolkata, the option which was left open to this Court is to obtain a report from a medical Board of IPGME&R-SSKM Hospital in order to ascertain the disability which petitioner is suffering. From the report dated 6th February, 2023 of IPGME&R-SSKM Hospital it appears that petitioner is not only suffering 44% orthopaedic disability but that disability is permanent in nature.

In view of Orthopaedically Permanent Physical Impairment (PPI) as found by the aforesaid medical Board the contention of the Commission that with the passage of time percentage of disability of the petitioner might have been enhanced since petitioner was examined by the Medical College Hospital, Kolkata in the year 2011 pales into insignificance.

In view of identification of disability by the Medical Board of IPGME&R-SSKM Hospital pursuant to the order passed by this Court on 3rd January, 2023 there is no impediment to proceed on the basis of the report submitted by medical Board of IPGME&R-SSKM Hospital in order to decide the claim of the petitioner for being appointed as an assistant teacher in English in a Government aided recognised school in southern region under the Commission.

In order to find out eligibility of the petitioner to be considered as differently abled candidate in terms of section 2(t) of the said Act of 1995 this Court is required to take into consideration the definition of disability

subscribed in the said Act and it is found that the benchmark is 40% minimum disability which was required to consider a person as differently abled. In the present case placing reliance on the report of the Medical Board of IPGME&R-SSKM Hospital it appears that petitioner is suffering from 44% Orthopaedically Permanent Physical Impairment therefore the definition clause i.e., section 2(t) of the Act of 1995 applies in the case of the petitioner. Accordingly, it is found by this Court that the disability of the petitioner was above 40% therefore petitioner ought to have been considered as differently abled candidate at the material point of time when he participated in the selection process i.e, 10th RLST (AT)-2009. Therefore the cancellation of candidature of the petitioner as differently abled candidate at the instance of the Commission is set aside and Commission is directed to treat the petitioner as differently abled (PH category) candidate and recommend the name of the petitioner to a Government aided recognised school in southern region within a period of 8 weeks from the date of communication of this order for being appointed as an assistant teacher in English under Honours PG category. Since the petitioner participated in the selection process i.e., 10th RLST (AT)-2009 recruitment procedure which was prevalent at that point of time would apply in case of the petitioner and on the recommendation to be made by the Commission the concerned school authority shall issue appointment letter in favour of the petitioner within seven days from the date of receipt of the recommendation memo. On receipt of such appointment letter petitioner shall join the post of assistant teacher within seven days thereafter.

Since the decision of the Commission cancelling the candidature as differently abled candidate is set aside by this Court this Court directs the respondent authorities including State respondents to grant notional service benefits to the petitioner on being appointed as an assistant teacher with effect from 12th September, 2011 being the date when the present writ petition was instituted.

With the above directions the writ petition is allowed. However, there shall be no order as to costs. Applications, if pending, also stand disposed of.

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

(Saugata Bhattacharyya, J.)