

21.12.2023
Item No. ml.111
Crt.No.22
b.r.

WPA 25080 of 2015

Arun Kumar Dinda
-vs-
The State of West Bengal & Ors.

Mr. Anindya Bose
Mr. Mridul Biswas
..... for the petitioner.

Mr. Supriyo Chattopadhyay
Mr. Suman Dey
.... For the State.

Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
....WBCSSC.

Affidavit of service filed in Court is taken on record.

The petitioner was an aspirant and participated for the post of **Assistant Teacher** in the **9th Regional Level Selection Test (AT)-2008** (for short, the 9th RLST) for recommendation as an **Assistant Teacher (pass)** for the subject **Geography**. The petitioner participated under the **PH Handicapped Category (for short, PH Category)**.

A series of writ litigations were filed in 2010. In those batch of writ litigations, the main controversy was related to the power and authority of the **West Bengal Central School Service Commission (for short, the Central Commission)** and the **Regional School Service Commission (for short, the Regional**

Commission) to have the disability status of the successful candidates who appeared in the said **9th RLST** from the reserved category of disabled candidates determined by an independent Medical Board. Under the judgement and order dated **October 8, 2013, annexure p-6 at page-39** to the writ petition, directions were made upon the Council relating to the recommendation of those writ petitioners in the manner and mode as directed therein.

Mr. Anindya Bose, learned counsel appearing for the writ petitioner submits that this petitioner fell under **Category-D** as categorised in the said judgement of the Co-ordinate Bench dated **October 8, 2013** and the direction was given how the recommendation of the said category of writ petitioners would be assessed.

Learned counsel for the petitioner then refers to a notice issued by the **Appellate Medical Board** of the State at **page 131** to the writ petition and submits that under the said notice, the petitioner was asked to appear before the Appellate Medical Board on **June 24, 2015** at the time and place mentioned therein for the purpose of assessing the disabilities of the petitioner. He then refers to the communication impugned dated **August 26, 2015, annexure p-10 at page-132** to the writ petition wherefrom it appears that despite the said notice dated **May 28, 2015**, as the petitioner did not

appear before the Appellate Medical Board, the Regional Commission **cancelled** the process for **recommendation** of the petitioner.

Mr. Anindya Bose, learned counsel for the petitioner further submits that, since the entire process commenced before the Appellate Medical Board in terms of the notice dated **May 28, 2015, at page-131** to the writ petition was totally in **violation** of the said judgement of the Co-ordinate Bench dated **October 8, 2013**, the petitioner did not appear before the Appellate Medical Board, otherwise it would have been construed that the petitioner had accepted the said direction of the Appellate Medical Board which was in violation of the said Co-ordinate Bench judgement dated October 8, 2013.

The petitioner immediately on or about **September 14, 2015** filed the instant writ petition challenging the said notice dated **May 28, 2015** and the said impugned decision dated **August 26, 2015**.

Learned counsel for the petitioner then relied upon **orders dated September 22, 2023, October 6, 2023 and November 29, 2023, passed by the Hon'ble Division Bench, *inter alia*, in FMA 1398 of 2022** and referring thereto he submits that under the same circumstance, the Hon'ble Division Bench allowed the appellants therein to participate in the medical

examination before the Appellate Medical Board and directed the Council to take steps accordingly. Learned counsel then submits that this petitioner is also similarly placed a candidate and hence, this writ petitioner shall also be allowed to participate in medical process before the Appellate Medical Board.

Ms. Supriya Dubey, learned counsel appearing for the respondent nos. 2 to 6 led by Dr. Sutanu Kumar Patra, learned counsel, submits that the relevant panel for **9th RLST** stood **expired** on **July 19, 2010**. She refers to a notice issued by the Regional Commission dated **May 15, 2015, annexure p-9 at page 125** to the writ petition and submits that even previously notice was also issued upon the petitioner to appear before the Appellate Medical Board, the petitioner did not appear. She then refers to a letter written on behalf of the petitioner dated **May 26, 2015** through his learned advocate at **page 126** to the writ petition wherefrom it appears that the petitioner had already raised an objection taking the plea of the said judgement of the Co-ordinate Bench dated October 8, 2013. Even thereafter the said notice dated **May 28, 2015** was issued by the Appellate Medical Board asking the petitioner to appear before it **annexure p-10 at page 131** to the writ petition and he again failed to appear before the Appellate Medical Board and the impugned

decision was communicated to him through the communication dated August 26, 2015. She submits that the issue relating to a panel which had expired in 2010 cannot be re-opened in this facts and circumstance. Hence, the writ petition should be dismissed.

Mr. Suman Dey, learned State Counsel, appears for the respondent no.1. He adopts the entire submission of Ms. Dubey, learned counsel for the Council with a rider of renewal of prayer for dismissal of the writ petition.

After considering the rival contentions of the parties and upon perusal of the materials on record, it appears that initially the first notice dated **May 15, 2015, annexure p-9 at page-125** to the writ petition was objected to on behalf of the petitioner in writing on May 26, 2015. The second notice dated May 28, 2015 was issued then, **annexure p-10 at page 131** to the writ petition. Again the petitioner chose not to appear before the Appellate Medical Board and the impugned decision for cancellation for recommendation was taken by the Regional School Service Commission dated August 26, 2015. One glaring and most material fact is that the panel for **9th RLST** stood **expired on July 19, 2010.**

It is true that the writ petition was filed in 2015 and is finally taken up for hearing today in 2023. Even then this Court is of the considered view that, a panel which had expired on **July 19, 2010**, if any relief is granted in this writ petition the same would amount to give a fresh life to an expired panel which is not permitted in law and equity.

From the orders passed by the Hon'ble Division Bench, ***In the matter of : Tarun Mondal -vs- The State of West Bengal & Ors.*** as referred to above, it appears to this Court that the Appellate Medical Board was not at all constituted at the relevant point of time, hence, the candidates before the Hon'ble Appellate Court could not get an opportunity even to present themselves before the Appellate Medical Board. This is a glaring distinguishing fact, which is not there in the instant case. In the instant case, the Medical Appellate Tribunal itself has repeatedly issued notice asking the petitioner to present himself before it and the petitioner chose not to do so. Hence, the ratio and direction of the Hon'ble Division Bench made, *inter alia*, in ***FMA 1398 of 2022, In the matter of: Tarun Mondal -vs- State of West Bengal and others*** shall not apply in the facts situation of this case.

Inasmuch as this Court in exercising its power under Article 226 of the Constitution of India exercises

its equitable jurisdiction also, which much depends on facts. An equity is not warranted to be exercised to give a fresh life to an expired panel which had long expired on **July 19, 2010**. If such an expired panel is now interfered with, it will have a massive cascading effect on the successful candidates also, who have already been employed since 2010.

In view of the said forgoing reasons and discussions, this Court is of the considered view that, this writ petition is devoid of any merit.

Accordingly, this writ petition, **WPA 25080 of 2015** stands **dismissed**, without any order as to costs.

(Aniruddha Roy, J.)