

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

and

The Hon'ble Justice Shampa Dutt (Paul)

FMA 423 of 2024

with

CAN 1 of 2024

Arun Kumar Dinda

Vs

The State of West Bengal & Ors.

For the Appellant

: Mr. Anindya Bose,
Mr. Mridul Biswas.

For the State

: Mr. Supriyo Chattopadhyay,
Mr. Suman Dey.

For the WBCSSC

: Dr. Sutanu Kumar Patra,
Ms. Supriya Dubey.

Hearing concluded on

: 30.07.2024

Judgment on

: 02.08.2024

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred being aggrieved by the judgment and order dated 21/12/2023 passed in WPA 25080 of 2015 thereby dismissing the Writ Petition on merit.
2. **On hearing the parties and from the materials on record, the following is evident:-**
 - i) The Appellant/Writ Petitioner participated for the post of Assistant Teacher (pass) for the Geography subject, under the physically handicapped category in the 9th Regional Level Selection Test (AT) - 2008 (RLST).
 - ii) The decision of the authority to assess the disability status of the successful candidates by an independent Medical board was challenged.
 - iii) On 8th October, 2013, WP 21469 (W) OF 2010 was disposed of by the High Court along with other writ petitions with similar prayer, dispensing with the requirement of a report of the Special Medical Board and related directions.
 - iv) By issuing a memo dated 15.05.2015, as well as memo dated 28.05.2015, the commission asked the applicant to appear before the Appellate Medical Board and the applicant through his learned advocate raised an objection with regard to appearance before the Appellate Medical Board on 26.05.2015.

- v) Memo no. 536-RSSC (SR) dated 26.08.2015 was issued by West Bengal Regional School Service Commission cancelling the candidature of the Petitioner.
 - vi) The Petitioner/Appellant's Case is that, vide a memo dated 29.08.2014, the Superintendent Cum Vice Principal, Medical Hospital, Paschim Midnapur informed the Secretary in charge of Regional Commission that the disability certificate in favor of the petitioner was issued vide memo no. 322 dated 06.05.2008.
3. It is thus the case of the Appellant that the said conduct of the concerned authorities is contrary to the judgment and order dated 8th October, 2013, as the commission was trying to re-examine the disability of the petitioner.
 4. The Writ Petition in this case was then filed, challenging the notice dated May 28, 2015 and the impugned decision dated August 26, 2015, cancelling the process of recommendation of the petitioner on the ground that it was in violation of the order dated 8th October, 2013.
 5. One of the contentions of the Respondents is that the panel for the 9th RLST expired on July 19, 2010, which the learned single judge considered and vide the order under challenge held as follows:-

"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.”

6. Admittedly, the notice dated May 15th, 2015 and the impugned decision dated August 26, 2015, was challenged in the writ petition in this case filed in 2015 and the same has been disposed of by the order under appeal on 21.12.2023.

7. There are now two questions before this court:-

- a. First, if the panel in respect of the 9th RLST expired on July 19, 2010, then why and for which post was notice dated 28th May, 2015 issued to the petitioner?
- b. If it is accepted, that the petitioner was being recommended as per the order dated 8th October 2013 in WP 21469 (w) of 2010 disposed of along with other writs, wherein the appellant was classified as “Category (D)” the commission was directed to proceed with the process of recommending candidature of petitioners without insisting on reporting to the Special Medical Board in the writ petition clubbed as (A) and (D), then why was the appellant required by the notice dated 15.05.2015, (under challenge) directed to appear before the Appellate Medical Board?

8. To answer the said questions, it is seen that, it is the case of the appellant that, in spite of the Medical Superintendent cum Vice Principal, Medical College Hospital Paschim Midnapur vide memo dated 29.08.2014 intimating the Secretary-in Charge of Regional Commission that the

petitioner's/ appellant's disability certificate was issued by the office of the Medical Superintendent cum Vice Principal, Medical College Hospital Paschim Midnapur vide no. 322 dated 06.05.2008, the Petitioner/ Appellant was asked to appear before the Appellate Medical Board, in violation of the order dated 8th October, 2013.

- 9. Paragraph 37 of the judgment dated 8th October, 2013 in WP 21469 (W) of 2010 becomes relevant at this stage and is thus reproduced here for convenience.**

*"I make it clear, however, in all these cases, it shall be open to the **Commission to verify with the issuing authority** as to whether the certificates of the individual candidates are genuine or fabricated, and if such certificates are found to be forged or fabricated, invalidate their candidature. **The Commission shall also be at liberty to take up the issue of individual candidates with the Appellate Medical Board, if they find the certificate to be genuine, but assessment made in the certificate to be doubtful. In such a situation, the validity of candidature of individual candidates shall be guided by the finding of Appellate Medical Board.**"*

- 10.** It was thus on the basis of this direction, that the respondents issued the notice dated 15th May, 2015 and as the Appellant failed to comply with the said notice, (where assessment made in the certificate was found to be doubtful), the candidature of the appellant for recommendation was cancelled by the memo dated 28/8/2015 (also under challenge) as the appellant has evaded the examination to be conducted by the Appellate Medical Board.

11. In view of the aforesaid, the appeal fails and is thus dismissed along with all connected applications.
12. No order as to costs.
13. Interim order, if any, stands vacated.
14. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.
15. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

I agree,

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)