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13.03.2024
Ct. No. 11
Jayanta

WP.ST 47 of 2024

Krishnendu Saha & Anr,
Vs
The State of West Bengal & Ors.

Mr. Masud Karim
Mr. Safiul Alam
..... For the Petitioners.

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Tuli Sinha
..... For the State/respondents.

Affidavit-of-service filed by the appellants be kept on record.

This instant writ petition was preferred challenging the order dated 11th March, 2024 passed by the learned Tribunal in O. A. 58 of 2024. By the order impugned, the learned Tribunal disposed of the original application making following observation:

“ that the applicants are well over 40 (forty) years aged and thus, not entitled to apply for such post. However, the reliefs sought for as prayers in this application does not mention anything about age relaxation”.

Mr. Karim, learned advocate representing the petitioners submits that a selection process has been initiated by the respondents to fill up the post of 33 (thirty three) Homeopathic lecturers under West Bengal Homoeopathic Education Service in 4(four) Government-run Homoeopathic Medical Colleges and Hospitals in West Bengal. Accordingly, by an advertisement published in the official website of the West

Bengal Health Recruitment Board on 16.10.2023, applications were invited from the eligible candidates for the post. In terms of the advertisement, the candidates intending to offer their candidatures for the post were required to register and/or submit such applications through *online* mode. The petitioners made effort to register and/or submit their applications but in vain. Mr. Karim contends that since the link was not opened to enable the petitioners to submit duly filled-in online applications, the petitioners, though eligible for the post, could not offer their candidatures for the posts. He submits that the interview, which is a part of the selection process, is being conducted up to 14th March, 2024. It is urged by him that the petitioners may be allowed to participate in the interview and their participation in the interview would be subject to the result of the original application awaiting final adjudication before the learned Tribunal.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State vehemently opposes such contentions canvassed by Mr. Karim. He submits that the petitioners are not eligible to apply for the post since they have already crossed the upper age limit and there is no clause for relaxation of age in the advertisement.

In response, Mr. Karim submits that the petitioners are entitled to enjoy the benefits of age-relaxation on the basis of the order passed by a coordinate bench of this Hon'ble Court in WPST 246 of 2011 which was preferred in connection with a selection process initiated for filling up the same posts in 2008.

Indisputably, the petitioner has crossed the upper age limit and there was no clause of age-relaxation in the advertisement empowering the selection committee to extend the benefits of age-relaxation to any candidate and as such, the petitioners did not get any access in the website of the Board to register and/or submit their applications. The pivotal issue in the original application is as to whether the petitioners would be entitled to avail of the benefits of age-relaxation in terms of the judgments passed by a coordinate Bench of this Hon'ble Court as well as by the Hon'ble Apex Court in connection with the selection process initiated in 2008.

Having heard the learned advocates appearing for the respective parties and upon consideration of the materials on record, we do not find any cogent materials to infer that the petitioners have been able to make out a strong *prima facie* case to get at this interim stage a mandatory direction upon the respondents to allow the petitioners to participate in the interview unless the issue towards their entitlement of the benefits of age-relaxation is finally decided by the learned Tribunal.

In view thereof, the petitioner's prayer for interim relief is refused. We have been informed that both the petitioners have crossed the age of 50 years and as such, in our opinion, the issue raised by the petitioners before the learned Tribunal should be decided expeditiously. Accordingly, we direct the learned Tribunal to dispose of the original application on merits without being influenced by any of the observation made in the order dated 11th March, 2024 on the returnable date or as

expeditiously as possible thereafter without granting any unnecessary adjournments to either of the parties preferably within a period of four weeks thereafter.

Mr. Mukherjee, prays for leave to file reply to the original application on behalf of the State. Let such reply be filed within four weeks. Rejoinder, if any, be filed within two weeks thereafter.

With these observations and order, this writ petition is, thus, disposed of, however, without any order as to the costs.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)