

ML 119
13.06.2024
Ct. No. 18
adeb

W.P.A. 18105 of 2022

**Biswapriya Mukherjee
Vs.
The State of West Bengal & Ors.**

Mr. Asok Kumar Ganguly
...for the petitioner

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

Affidavit-of-serviced filed on behalf of the petitioner is taken on record.

The petitioner participated in the selection process called 8th Regional Level Selection Test, 2007 and was selected under Physically Handicapped (differently abled) Category and was recommended by the concerned authorities of the West Bengal Regional School Service Commission(Eastern Region) for the post of assistant teacher under pass category in a Government aided school. Subsequently, as it has been submitted that the Secretary, West Bengal Regional School Service Commission, (Eastern Region) by issuing memo dated 4th September, 2009 found the petitioner was not suffering from disability of 40% or more based on the report of the Special Medical Board constituted by the Medical Superintendent-cum-Vice Principal, Medical College Hospital, Kolkata as a result whereof the candidature of the petitioner under PH category was cancelled. The cancellation of candidature of the petitioner under PH category was questioned by the petitioner by filing writ petition. The writ petition of the petitioner along with

similar other writ petitions were disposed of by a coordinate Bench vide order dated 12th September, 2014 whereby leave was granted to the authorities to constitute Appellate Medical Board to find out the extent of disability of the candidates who were recommended under PH category. Petitioner was one of such candidates.

By presenting this writ petition petitioner has prayed for cancellation of the memo dated 4th September, 2009 by which candidature of the petitioner was cancelled and by another prayer necessary direction has been sought for to constitute Appellate Medical Board for examining the petitioner to find out the extent of disability which petitioner was suffering at the material point of time.

West Bengal Central School Service commission is represented by Dr. Sutanu Kumar Patra, learned counsel who has opposed the prayer of the petitioner on the ground that thrice petitioner was asked to appear before the Appellate Medical Board first on 29th April, 2015 and subsequently on 27th May, 2015 and lastly on 24th June, 2015. The copies of notices dated 7th April, 2015 and 13th May, 2015 issued by the Chairman, West Bengal Regional School Service Commission (Eastern Region) and the notice dated 28th May, 2015 issued by the Chairman, Appellate Medical Board are placed before this Court and the same are taken on record.

It needs to be recorded herein that out of these three notices which are relied upon on behalf of the Commission the last notice dated 28th May, 2015 issued by the Chairman, Appellate Medical Board is appended to this writ petition at page 46.

It is also submitted on behalf of the Commission that the writ petition is not maintainable on the ground of delay since petitioner was on the last occasion asked

to appear before the Appellate Medical Board on 24th June, 2015 and the present writ petition has been instituted in the year 2022.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials available on record it appears that though the petitioner was selected in 8th Regional Level Selection Test, 2007 under PH category and recommendation was issued in his favour vide memo dated 31st July, 2009 for his appointment in the post of assistant teacher but subsequently based on the report of the Special Medical Board constituted by the Medical Superintendent-cum-Vice Principal, Medical College Hospital, Kolkata it was found that the extent of disability of the petitioner was less than 40% which led the concerned authority of the School Service Commission to issue memo dated 4th September, 2009 cancelling the candidature of the petitioner. Such cancellation of the candidature of the petitioner triggered the writ petition which was disposed of with other similar writ petition by a coordinate Bench vide order dated 12th September, 2014.

For better understanding of the issue involved in this writ petition this Court finds it apt to quote the relevant part of the order of the coordinate Bench dated 12th September, 2014 below:-

“In this batch of writ petitions also, in the cases of the petitioners, the same course ought to be followed. The petitioners shall be permitted to continue with their work. It shall however be open to the Commission, if they find the physical disability level of the petitioners to be doubtful and disentitling them for reservation under the 1995 Act, to refer their cases to the Appellate Medical Board. If the Appellate Medical Board finds such candidates to be ineligible for obtaining appointment through the reserved category as physically handicapped candidates, on the basis of the decision of the Appellate Medical Board, the Commission shall be at liberty

invalidate their candidature. In such circumstances, their appointment shall stand revoked. The appointment letters originally issued in favour of the petitioners shall revive if such appointment has been stalled because of the re-verification process of the Special Medical Board, and the school authorities shall permit the petitioners to discharge their function provided there is no eventual adverse finding by the Appellate Medical Board.

In course of hearing, on behalf of the Commission it was submitted that they were facing difficulty as the Appellate Medical Board is not in existence at present, whereas on behalf of the State it is submitted that they are yet to receive any requisition for re-verifying the physical disability status of candidates who have already been issued certificates by the authority under the 1995 Act. This Court accordingly directs the State to constitute the Appellate Medical Board as early as possible, in the event the same has not already been constituted.”

In view of the observations and directions as contained in the order dated 12th September, 2014 the concerned authority of the Commission found it necessary to send the case of the petitioner to the Appellate Medical Board for identification of the extent of disability of the petitioner.

Thrice notices were issued requesting the petitioner to appear before the Appellate Medical Board but the petitioner did not turn up. The last notice dated 28th May, 2015 is annexed to this writ petition whereby petitioner was asked to appear before the Appellate Medical Board on 24th June, 2015. Such repeated absence of the petitioner for examination of extent of disability before the Appellate Medical Board goes to show that petitioner was not willing to have his disability rechecked by the Appellate Medical Board which supports the case of the Commission.

Another aspect has not escaped the notice of this Court that petitioner was lastly called by the Appellate

Medical Board to appear on 24th June, 2015 and on receipt of such notice petitioner chose not to appear before the Appellate Medical Board and contemporaneously did not take appropriate steps in order to vindicate his grievance.

The present writ petition has been instituted on 8th August, 2022 which is precisely 7 (seven) years after the date fixed for verifying the disability of the petitioner by the Appellate Medical Board. Though there is no statutory period of limitation in instituting the writ petition but the Hon'ble Apex Court has succinctly decided that normally the litigant is required to approach the Court within reasonable time i.e. 3 (three) years. In the present case petitioner has approached the Court precisely after 7 (seven) years. The 8th Regional Level Selection Test, 2007 was concluded long time back and the panel prepared thereunder also expired. The post against which petitioner was recommended vide memo dated 31st July, 2009 is presumed to have been filled up by appointing other candidate leading to accrual of third party interest.

In view of aforesaid discussion, this Court is not inclined to interfere with the present writ petition and accordingly the same stands dismissed.

However, there shall be no order as to costs.

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

(Saugata Bhattacharyya, J.)