

**17.02.2025**  
**sayandeep**  
**Sl. No. 39**  
**Ct. No. 08**

**FMA 1077 of 2024**  
**With**  
**CAN 1 of 2024**

Biswapriya Mukherjee  
Vs.  
The State of West Bengal & ors.

Mr. Piyush Chaturbedi, Sr. Advocate  
Mr. Asoke Kr. Ganguly  
... for the appellant

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

Mr. Pantu Deb Roy  
Mr. Pannalal Bandyopadhyay  
....for the State

The stale claim is sought to be resurrected at the behest of the writ petitioner/appellant in relation to the process of recruitment initiated in the year 2007 and entitlement to be appointed to the post of Assistant Teacher under physically handicapped category.

Pursuant to the advertisement, the petitioner/appellant offered his candidature under the physically handicapped category and also enclosed the certificate issued by the Suri Sadar Hospital, Birbhum indicating that the percentage of disability is more than 40%. Undisputedly, the petitioner/appellant was selected for appointment under the aforesaid category and even joined the post on the basis thereof. Subsequently, the authority found that the percentage of disability as shown in the said certificate is improper and, therefore, constituted a Medical Board for ascertainment of the extent of disability. The Special Medical Board found the disability level below the benchmark and opined the cancellation of the recommendation.

The batch of writ petitions were filed before this Court including the writ petitioner which were disposed of by a common Judgment dated 12.09.2014 holding that the moment the authority have doubted the extent of disability of the individual candidate, the statutory Rules provides for the constitution of the Appellate Medical Board to decide such dispute and proceed to set aside the decision of the authority with the specific direction that the candidates who have been issued with the disability certificate and the doubt has been raised may appear before the Appellate Medical Board to be constituted in this regard. Simultaneously, a direction was passed to restore the order of appointment pending the adjudication whether the percentage of disability as opined by the doctor of the said Hospital is correct or not.

Pursuant to the said order, the appellate medical Board was constituted and in fact the petitioner was intimated to appear before the Appellate Medical Board on 29.04.2015. Admittedly, the petitioner did not appear before the Appellate Board and further date was fixed on 27.05.2015. Even on the said date, the writ petitioner/appellant could not appear before the Appellate Medical Board and in order to give another chance the Appellate Medical Board fixed 24.06.2015. Accordingly to the petitioner, he appeared in the second half of the said date though he was intimated to appear in the first half for the reason beyond his control and immediately such fact was intimated to the concerned authority. There appears to be a complete silence thereafter as the another representation appears to have been filed in the year 2017 yet no attempt was made to move the Court with an appropriate relief and the demand justice appears to have been submitted in the year 2022 after a gap of five years.

A plea is sought to be taken by the appellant that the moment the concerned authority was intimated of

the difficulty faced by the appellant in not appearing on the date of the examination by the Appellate Medical Board, it is the duty of the concerned authority to fix another date and not to treat the matter to have been finally closed. It is further submitted that the authority did not permit the writ petitioner/appellant to resume the duty despite the order passed by the Single Bench on 12.09.2014 and, therefore, the authorities themselves have acted contrary to the order of this Court. Lastly, it is submitted that because of the intervening pandemic, the writ petitioner/appellant could not approach the Court and, therefore, the delay and laches cannot be attributable to his conduct.

The reason for recording the aforesaid incidents emanating from the record is that the trial Court dismissed the writ petition on the score of delay and laches. We are conscious that there is no period of limitation provided under the Limitation Act for filing an application under Article 226 of the Constitution of India. We are further conscious that the infringement of fundamental right manifest from the conduct of the authority shall not disentitle the individual citizen to protect such right even after an enormous delay. However, the Courts have imposed self-restraint in entertaining the writ petitions if the applicant did not assert the right promptly and slept over it for a considerable period of time. The delay and laches attributable to the conduct of the litigant has to be considered on the basis of a given facts and should not be applied as an absolute rule of prohibition or a fetter in extending the reliefs by the Court of law. The litigant who slept over his right by sleeping in slumber cannot be permitted to invoke the jurisdiction enshrined under Article 226 of the Constitution of India after an inordinate delay having caused in this regard nor a fence sitter should be encouraged to file the litigation after the issue has been decided by the Court.

Reverting to the instant case admittedly the Judgment dated 12.09.2014 passed by the Single Bench has clinched an issue where the authorities were directed to constitute an Appellate Medical Board so that the candidates who approached the Court by filing the writ petitions may undergo an examination in order to verify the percentage of disability despite the same having ascertained by concerned Government Hospitals. It is not a case of any doubt over the genuinity of the certificate issued by an authority but it was a case of the ascertainment of the percentage of disability and its extent as the authorities are of the view that such percentage may not has been ascribed as per the standard norms. The contention of the appellant that the authority did not find such certificate issued by the Government Hospital to be fake and/or fabricated does not germane as the authority never took a stand that the said certificate is fabricated and/or manufactured but intended to ascertain the extent of disability as indicated in this certificate by constituting an Appellate Medical Board. The order passed by the Single Bench on 12.09.2014 has not been challenged by the appellant nor he appeared before the Appellate Medical Board on three occasions. We can very well appreciate that on the last occasion there may be a difficulty on the part of the appellant but on other two occasions, the petitioner did not appear. There is a complete avoidance perceived from the conduct of the petitioner to appear before the Appellate Medical Board and after a passage of time when the approach is made to this Court, there has been an inordinate delay in ascertaining the right and, therefore, we do not find any infirmity and/or illegality in the order of the single Bench in dismissing the writ petition in this regard.

The appeal and connected application are dismissed without any order as to costs.

Urgent Photostat certified copy if applied for, be given within three days from date.

**(Harish Tandon, J.)**

**(Partha Sarathi Chatterjee, J.)**