

WPA 21601 of 2011

6.5.2025

Asim Kumar Datta-vs- State of West Bengal & Ors.

Ct25,sl.339
sk

Mr. Ekramul Bari
Sk. Intiajuddin
Mr. Alauddin Ahmed
....for the petitioner.

Ms. Kakali Samajpaty
Mr. Subhranil Ray
Ms. Sabina Khatoon
...for the State.

1. The petitioner is aggrieved, that in spite of his possessing valid physical disablement certificate duly verified by the respondent at the time of his entry in school, he has been allegedly unauthorizedly and illegally referred to the Special Medical Board, for verification of genuineness of his physical disability.
2. Mr. Bari, learned advocate representing the petitioner has submitted that the Secretary, West Bengal Regional School Service Commission, Northern Region, Malda has passed the order dated December 3, 2011 only unjustifiably and illegally in so far as the said authority without having challenged the disability certificate of the petitioner could not have referred the writ petitioner for the second time for verification of genuineness of his physical disability.

3. On such score, he has stated that the said impugned order dated December 3, 2011 is liable to be set aside.

4. In support of his contention, Mr. Bari has referred to an order of this Court dated October 8, 2013 in WPA 6003 of 2010.

5. It is worth noting that the Court has recorded in the said order as follows:-

“But as I have indicated in the earlier part of this judgment, I find the intension of the Commission in these proceedings to be bona fide. They have also been able to establish that prima facie they have reason to doubt the disability level of different candidates coming with certificates under the 1995 Act. This is a cause for concern, which needs to be addressed to. Under the law, however, the issue has to be raised before the Appellate Medical Board under the 1999 Rules in cases the Commission has doubt over the assessment of the disability level of individual candidates. In cases where the commission has reason to believe that the certificate of a candidate itself is forged or fabricated, it would be open to the Commission to verify authenticity of such certificates by making communication with the issuing authority. If such authority confirms the doubt of the Commission and declares the certificate of a candidate to be fabricated or forged, it would be open to the Commission to invalidate the candidature of such person, and withdraw the recommendation, upon giving opportunity of hearing to such candidate. But in the former class of cases, the procedure mandated by the 1999 Rules would have to be taken recourse to. Unless the Commission choose to institute a civil suit, for a declaration that the certificate of a candidate is invalid on the ground of

carrying false assessment of his or her disability status, and obtains a decree to that effect. The course would always remain open for the Commission to undertake”.

6. The Court has held there that in case the respondent has no reason to doubt the disability level of the concerned person as per the certificate issued to him by the competent Medical Board and having no reason to believe that the certificate of the person itself is forged or fabricated, any order to refer the said person for medical test for assessment of disability of him for the second time could not be in conformity with law.

7. Submission of Mr. Bari is acceptable. The petitioner has submitted a disability certificate. That has been accepted without raising any question or doubt as regards its genuinity or authenticity of the declarations made therein by the issuing authority. Competence of the authority issuing such disability certificate to the writ petitioner is also unchallenged. Therefore, a disability certificate granted by a competent authority would be sufficient in certifying the nature and extent of disability suffered by the petitioner. The respondent's action should be

reasonable and justified. In view of the facts as mentioned above, the petitioner being referred for ascertaining genuineness of his disability by the respondent.

The West Bengal Regional School Service Commission, Northern Region, Malda appears to be an unreasonable and arbitrary action. The question remains as to whether a person can be referred twice for ascertainment of his disability, the result of the first assessment, not being doubled or challenged.

8. In this case, none has represented the respondent authority when the matter is called on, in spite of service of notice. Hence, the same is decided in absence of the respondents.

9. Considering as above stated and following the ratio of the order of this Court as referred to by the petitioner, the Court finds no reasonable ground to differ from the ratio as decided therein. It is found that unless and until the genuineness of the disability certificate of the petitioner, submitted by him is challenged by the respondent authority, there would not be any

sufficient, justified or lawful grounds for the same not to accept the said certificate and to refer the petitioner for verification of genuineness of physical disability for the second time by the Special Medical Board.

10. For the reasons as above, the Court finds that the impugned order dated December 3, 2011 of the Secretary of the West Bengal Regional School Service Commission, Northern Region, Malda cannot sustain.

11. Hence, the instant writ petition being WPA 21601 of 2011 is allowed and disposed of with the following directions:-

- i) The impugned order dated December 3, 2011 is set aside;
- ii) The respondent cannot lawfully refer the writ petitioner for verification of genuineness of his physical disability to the Special Medical Board after accepting the physical disablement certificate of the writ petitioner to be a valid piece of document;

- iii) The respondent shall act upon the disability certificate submitted by the writ petitioner.

12. With the above observations and directions the writ petition being WPA 21601 of 2011 is disposed of.

13. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.

14. Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)