
(2018) 09 CAL CK 0080
In the Calcutta High Court
Case No : Writ Petition No. 26906 (W) of 2013

Moslem Molla

APPELLANT

Vs

State of West Bengal & Ors

RESPONDENT

Date of Decision : 28-09-2018

Acts Referred:

West Bengal School Service Commission (selection of persons for appointment to the post of Teachers) Rules 2007 — Rule 3

West Bengal Persons with Disabilities (equal opportunities, protection of rights and full participation) Rules 1999 — Section 5(2), 7

Citation : (2018) 09 CAL CK 0080

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Ashok Kumar Ganguly, Kanak Kiran Bandopadhyay

Final Decision : Disposed Off

Judgement

Amrita Sinha, J.

The petitioner is a physically handicapped person (hearing impaired). The Superintendent, Suri Sadar Hospital and the Chairman, Handicapped Board,

Suri Sadar Hospital, Birbhum issued the disability certificate in his favour indicating his percentage of disability as 50%. The certificate was issued on

24th August, 2006 and the same was valid for a period of ten years.

Pursuant to an advertisement published by the Central School Service Commission for conducting 8th regional level selection test 2007 for

appointment of assistant teachers in recognized non-government schools/ Madrasah the petitioner applied for the same. As per the direction of the

School Service Commission the petitioner appeared for the personality test on 1st July, 2008. The petitioner produced all his testimonials including his

disability certificate at the time of interview. Being successful in the personality test the petitioner was directed to appear for counselling on 27th

August, 2008 for being recommended to the school to be selected by the petitioner. The petitioner attended the counselling session and proposed for

being appointed in the Golsi Kalimata Devi High School, District Burdwan.

Vide a letter dated 23rd March, 2009 issued by the Chairman, West Bengal Regional School Service Commission, Eastern Region, Burdwan the

petitioner was requested to appear before the Central Medical Board, Medical College Hospital, Kolkata 700 073 on 27th March, 2009 at 10:30 a.m.

for verification of genuineness of the physical disability of the candidates empanelled under the (PH category) for the post of Assistant Teachers. The

petitioner was directed to carry with him the original "physically handicapped" certificate that had been issued in his favour. The petitioner

appeared before the Central Medical Board, Medical College Hospital on the scheduled date.

Vide a memo dated 31st July, 2009 the West Bengal Regional School Service Commission (Eastern Region) recommended the name of the petitioner

in the school which the petitioner had proposed at the time of counselling. In the said memo of recommendation it was specifically mentioned that the

recommendation letter was being issued on condition that if the candidate was found not to be a "Physically Handicapped" on further examination

by the Department of Health and Family Welfare of the State of West Bengal as his/her case has already been referred to the said Department of

Health and Family Welfare for such examination, his/her recommendation shall be withdrawn and his/her candidature shall be cancelled.

The Secretary, Golsi Kalimata Devi High School vide a letter dated 10th August, 2009 issued a letter of appointment in favour of the petitioner. The

petitioner was requested to join the school within 15 days from the date of receipt of the letter. A special condition was attached to the said

appointment letter. The condition stated that if the candidate is found not to be a physically handicapped candidate on further examination by the

Department of Health and Family Welfare, State of West Bengal as his case has already been referred to the said Department of Health and Family

Welfare for such examination his appointment shall be withdrawn and his candidature shall be cancelled. The petitioner accepted the letter of

appointment and joined the said school on 14th August, 2009. Vide a letter dated 4th September, 2009 the Secretary, West Bengal Regional School

Service Commission, Eastern Region, Burdwan informed the Secretary of the school regarding withdrawal of the recommendation issued in favour of

the petitioner under the PH category due to cancellation of his candidature as a Physically Handicapped. It was categorically mentioned that the

degree of disability of the petitioner was found less than 40% from the report of the Special Medical Board constituted by the Medical Superintendent

cum Vice-Principal, Medical College Hospital Kolkata.

Consequent upon an order of the Hon'ble High Court Calcutta for the purpose of verification of genuineness of physical disability the candidature

of the petitioner as a Physically Handicapped was cancelled in exercise of Rule 3 of the West Bengal School Service Commission (selection of

persons for appointment to the post of Teachers) Rules 2007. Pursuant to the said letter issued by the West Bengal Regional School Service

Commission, Eastern Region the school authority cancelled the appointment of the petitioner vide their letter dated 9th September, 2009. The petitioner

filed the instant writ petition praying for setting aside the order passed by the West Bengal Regional School Service Commission, Eastern Region with

a further prayer for reinstatement in service along with all consequential benefits.

The main thrust of the submission of the petitioner is that no opportunity of hearing was given to him prior to withdrawal of recommendation and

cancellation of his appointment. He alleged that there has been gross violation of the principles of natural justice. He further submits that the disability

certificate had been issued in his favour by a competent authority and the same not being cancelled and/or varied the same is valid till date. No

question challenging the authenticity of the said disability certificate had been made by the authorities till date. He further submits that there is no

scope for further medical test after selection as well as recommendation and issuance of the appointment letter.

It has been strenuously contended by the petitioner that the disability certificate had been issued by the competent authority strictly in accordance with

the provisions of the Person with Disabilities Act, 1995 read with the Person with Disabilities Rules, 1996. According to him there is no scope for

reassessment of the percentage of disability of a candidate in whose favour a

valid disability certificate had been issued by the competent authority following the provisions of the Act or the Rules.

The petitioner after obtaining leave from the Court has filed a supplementary affidavit annexing a memo dated 23rd June, 2014 issued by the

Superintendent, Suri Sadar Hospital Birbhum which contains a list of physically handicapped candidates whose certificates have been authenticated by

the Superintendent, Suri Sadar Hospital, Birbhum. The name of the petitioner appears in the list at serial no. 8 and the percentage of disability is

mentioned as 50%. A further letter dated 7th April, 2015 issued in favour of the petitioner by the Chairman, West Bengal Regional School Service

Commission, Suri Burdwan has also been annexed with the said supplementary affidavit. Vide the said letter the petitioner had been informed about

the constitution of an Appellate Medical Board for examining his disability status on 29th April, 2015 in the office of the State Commissioner for

Persons with Disabilities. The petitioner had been requested to appear before the Appellate Medical Board with original disability certificate issued by

the medical board and other relevant documents in support of his disability. Since the aforesaid letter was issued during the pendency of the writ

petition the petitioner was advised not to appear before the Appellate Medical Board. The petitioner informed his decision not to appear before the

Appellate Medical Board by a letter dated 24th April, 2015 written by his learned Advocate.

The petitioner contended that as per the provisions of the West Bengal Persons with Disabilities (equal opportunities, protection of rights and full

participation) Rules 1999 disability certificate shall be issued by a medical board which shall consist of not less than two members out of which one

shall act as the Chairperson and another shall be a specialist for assessment on the particular kind of disability as the case may be. He submits that the

medical board validly constituted as per the aforesaid rules issued the disability certificate in favour of the petitioner on 24th August, 2016 and as per

the provision of Rule 5 (2) the medical board had specifically indicated that the said disability certificate was valid for a period of ten years. The

identity card indicating his percentage of disability had also been issued by the competent authority. It has been submitted that the Appellate Medical

Board which is appointed as per Rule 7 of the said rules are to adjudicate the

disputes regarding the recognition of any person as a person with disability under the Act or any dispute regarding the percentage of any disability as certified by the medical board. He submits that the disability certificate issued by the competent authority in favour of the petitioner has not been disputed by any authority and accordingly there is no provision and/or scope to reassess the percentage of physical disability of the petitioner.

On the ground of delay the petitioner submits that though the impugned order of withdrawal of recommendation and cancellation of the letter of

appointment had been issued in the year 2009 but due to acute financial crisis it was not possible for him to approach this Hon'ble Court prior to

2012. He submits that the petitioner has got enough merits in his case and the writ petition ought not to be dismissed on the sole ground of delay.

The petitioner has relied upon an unreported judgement and order passed by the Hon'ble Division Bench of this Court on 5th July, 2012 in MAT

No. 1884 of 2011 with CAN No. 2928 of 2012 (Swastika Mandol vs. State of West Bengal & Ors.) wherein the Hon'ble Court set aside the

order of cancellation of the appointment of the appellant/petitioner on the ground that her disability certificate should not be relied upon in view of the

subsequent opinion expressed by the subsequently constituted medical boards and more particularly when the said medical boards examined the

physical condition of the appellant/petitioner after lapse of a considerable period and the said medical board also did not declare the findings of the

medical board constituted by the Ghatal Sub-Divisional Hospital as erroneous.

The petitioner further relies upon an unreported judgment and order dated 4th July, 2014 passed in WP No. 17572 (W) of 2014 (Benay Kumar Dey

vs. State & Ors.) whereby this Hon'ble Court set aside the impugned notice issued by the Burdwan Medical College at the instance of the

respondent School Service Commission and directed the respondent School Service Commission to issue order of recommendation in favour of the

petitioner on the basis of the option exercised by him in course of his counselling. The Court further directed the school to act on such

recommendation without insisting on reporting to the medical board further.

The petitioner also relied upon an unreported judgment and order dated 29th August, 2014 passed in WP No. 12201 (W) of 2014 (Munnalal Sau vs.

The State of West Bengal & Ors.) whereby this Hon'ble Court set aside the

memo directing the re-examination of the physical disability of the petitioner and further directing the School Service Commission to issue order or recommendation in favour of the petitioner on the basis of the option exercised by him in course of his counselling. At the time of disposal of the said writ petition the Court took into consideration the order dated 8th October, 2013 passed in WP No. 6003 (W) of 2010 (Bidyut Kar vs. State of West Bengal & Ors.).

In spite of repeated directions the respondents chose not to file any opposition in the instant case. At the time of hearing of this case the learned Advocate appearing on behalf of the School Service Commission hand up a bunch of papers containing the necessary instructions of his clients. On perusal of the said papers it reveals that pursuant to the letter dated 23rd March, 2009 issued by the Chairman, West Bengal Regional School Service Commission (Eastern Region) Burdwan the petitioner appeared before the Central Medical Board, Medical College Hospital Kolkata for verification of genuineness of his physical disability. The Medical Superintendent cum Vice-Principal of the Kolkata Medical College Hospital had prepared a list indicating the percentage of disability in respect of the candidates who appeared before the authority.

The name of the petitioner figured at serial No. 16 and the percentage of disability was mentioned as 28.29% and the remark of the said Superintendent cum Vice-Principal indicated that the petitioner was not a physically handicapped candidate. It was also revealed that vide a notice dated 28th May, 2015 the Chairman of the Appellate Medical Board again requested the petitioner to appear before the Appellate Medical Board on 24th June, 2015 along with the original disability certificate issued by the medical board. As the instant writ petition challenging the authority of the respondents to reassess the disability of the petitioner was under challenge and pending for disposal before the Court accordingly the petitioner refrained from appearing before the Appellate Medical Board. The learned Advocate appearing for the Commission relies upon the order passed in the case of Bidyut Kar (supra) wherein the Honâ??ble Court had been pleased to give liberty to the Commission to verify the genuineness of the certificates issued by the competent authority and to further take up the issue of the notified candidates with the Appellate Medical Board with regard

to the assessment of the percentage of disability.

It appears from records that though the petitioner appeared before the Central Medical Board, Medical College Hospital and his percentage of

disability was assessed at 28.29% even then the petitioner was given a further opportunity to appear before the Appellate Medical Board constituted

under Rule 7 of the West Bengal Persons with Disabilities (equal opportunities, protection of rights and full participation) Rules 1999 as there was a

dispute regarding the percentage of disability of the petitioner. The dispute arose because the Medical Board Sadar Hospital, Suri Birbhum assessed

the percentage of disability of the petitioner as 50% whereas the Central Medical Board, Medical College Hospital assessed the percentage of

physical disability of the petitioner as 28.29%. Accordingly the case of the petitioner had been rightly referred to the Appellate Medical Board and the

petitioner was directed to appear before the Appellate Medical Board on 29th April, 2015 and again on 24th June, 2015.

It is not clear to the Court as to what prompted the petitioner not to appear before the Appellate Medical Board for assessment of his percentage of

disability. There was no restraint order on the Appellate Medical Board to verify the percentage of disability of the petitioner during the pendency of

the writ petition. Had the petitioner appeared before the Appellate Medical Board and if the percentage of disability had been assessed at more than

40% then the petitioner may have joined in his service by this time. The petitioner himself did not avail of the opportunity given to him for the reasons

best known to him. As per the provisions of the Persons with Disabilities Act, 1995 a person is recognized as a "person with disability" only if the

percentage of disability is more than 40%. Accordingly for obtaining the benefit under the Persons with Disabilities Act, 1995 the petitioner is liable to

prove that his physical disability is more than 40%. As a dispute has already cropped up as regards the percentage of physical disability, the petitioner

is liable to appear before the Appellate Medical Board for proper assessment of his percentage of disability.

The Persons with Disabilities Act, 1995 being a beneficial legislation ought not to be misused and the persons who are genuinely disabled should get

the benefit of reservation. In the absence of proper checks there are chances that the reservation may be availed of by undeserving candidates. The

provisions of the Act will be frustrated if proper candidates are not able to avail the benefits which are meant for them. In view of the discussions made herein above the petitioner is directed to appear before the Appellate Medical Board for assessment of the percentage of his disability. The Chairman, West Bengal Regional School Service Commission (Eastern Region) Burdwan is directed to take up the matter with the Appellate Medical Board to fix up a date for assessment of the percentage of disability of the petitioner. The State respondent is directed to ensure that the disability status of the petitioner is assessed within a period of eight weeks from the date of communication of this order. The petitioner is directed to make himself available before the Appellate Medical Board on the date fixed. If the percentage of disability of the petitioner is assessed at more than 40% then the Commission will take immediate steps to recall the order of withdrawal of recommendation and cancellation of candidature of the petitioner and the school will take necessary steps to reinstate the petitioner in service immediately. Liberty is given to the petitioner to initiate appropriate proceedings for obtaining consequential benefits in case of reinstatement if the situation so arise. WP No. 26906 (W) of 2013 is disposed of with the above observations. There will, however, be no order as to costs. Urgent certified photo copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.