
(2010) 11 AHC CK 0315
In the Allahabad High Court
Case No : Misc. Single No. 6456 of 2010

Neetu Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Citation : (2010) 11 AHC CK 0315

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Judgement

Anil Kumar, J.—Sri Rakesh Srivastava, learned Standing Counsel on behalf of the respondent Nos. 1, 3, 4, 5 & 7, Sri J.P. Maurya, learned Counsel for the respondent No. 2 and Sri R.K. Kushwaha who put in appearance on behalf of respondent No. 6 prays for and are granted four weeks" time to file counter affidavit.

2. Two weeks" thereafter time is granted to the petitioner"s counsel to file rejoinder affidavit.

3. Learned Counsel for the petitioner for the purpose of interim relief submits that the controversy which is involved in the present case is squarely covered by a decision of a Division Bench of this Court at Allahabad passed in Special Appeal No. 811 of 2010 (Ravindra Kumar Sharma and Ors. v. State of U.P. and others) wherein this Court has disposed of the Special Appeal with the following directions:

We may clarify that the process adopted by the State Government for physical verification is for the limited purpose to ascertain the genuineness of the candidates and the certificates, which have been so issued. In our opinion, the candidates cannot be subjected to a further medical examination for the purpose of issuance of a certificate. There is a presumption of validity of a certificate issued in accordance with the Rules, 1996 so long as nothing to the contrary is detected and established.

There cannot be a permission in law to make a fishing and roving enquiry for subjecting a candidate to repetitive medical tests unless there is any genuine suspected or detected fraud or misrepresentation perceived by the authority. There may be cases of gross irregularities in certification against the norms prescribed for assessing physical disability, but it has to be on the basis of a bona fide approach and not an attempt to simply re-open the medical certification that has been carried out as envisaged under the Rules.

If however, upon a physical verification, the authorities come to the conclusion that the candidate has not been genuinely issued a certificate of disability or otherwise or that he does not suffer from any disability so certified, which entitles him to such a certificate, then and in that event only, a candidate can be subjected to a fresh Medical Board and not otherwise. The appellants, therefore, cannot resist the physical verification as directed by the respondents and, we accordingly, hold that the direction dated 15th July, 2010 would be construed as indicated hereinabove.

The respondents would, therefore, initially limit the enquiry of physical verification to the extent indicated above, and in case, any error or fraud or misrepresentation or gross irregularity is detected, then the candidates could be subjected to a fresh Medical Board or any other enquiry, as may be permissible under the rules. To that extent, the communication dated 15th of July, 2010 read with the Government Order dated 3rd of November, 2009 stands explained and the judgment and order of the learned Single Judge dated 31st of August, 2010, stands modified, accordingly.

4. Learned Counsel for the petitioner submits that the controversy which is involved in the present case is squarely covered by the aforesaid judgment and requests that the same protection may also be given to the present petitioner.

5. For the foregoing reasons, the respondent No. 7 (Principal, D.I.E.T., Lakhimpur Kheri) who has issued the impugned show-cause-notice dated 01.10.2010 (Annexure No. 2 to the writ petition) is directed to proceed in the matter in question in accordance to the judgment and order dated 09.09.2010 passed by a Division Bench of this Court at Allahabad in Special Appeal No. 811 of 2010 (Ravindra Kumar Sharma and Ors. v. State of U.P. and others).

List after six weeks.