
(2012) 12 CAL CK 0013
In the Calcutta High Court
Case No : Writ Petition No. 17638 (W) of 2012

Papu Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Citation : (2013) 2 CHN 573

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Praqtik Dhar, Sulagna Mukherjee and Samir Haider, for the Appellant; Sadananda Ganguly for the State, Abhijit Gangopadhyay and Supriya Dubey for the Council, for the Respondent

Final Decision : Disposed Off

Judgement

Soumitra Pal, J.—Affidavit of service, filed today, be kept on record. In the writ petition, the petitioner has challenged the Memo dated 28th February, 2011, issued by the, Assistant Secretary, West Bengal Regional School Service Commission (Southern Region), the respondent No. 6, whereby it has been held that he cannot be called a physically disabled candidate within the meaning of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and he could not be recommended to a post reserved for a physically handicapped candidate and therefore, directing his candidature for the subject of Bengali (Pass) relating to 10th RLST-2009 (AT) be cancelled and his name from the panel deleted.

2. I find from the facts that during an operation of congenital cataract the petitioner, when only a few months old, had lost complete vision in his left eye and he had a very low vision in his right eye. With such low vision he unable to read and write properly. He was admitted to Blind Boys' Academy at Narendrapur. All along the petitioner pursued his studies through Braille and amanuensis. Following the said method, in the year 2004 the petitioner successfully completed the Secondary Examination. Thereafter, he got admitted

in 10+2 course in the Ramakrishna Mission Residential College at Narendrapur and subsequently appeared in the Higher Secondary Examination as a blind student with amanuensis. During this time, the petitioner was referred to the Medical Board for determining whether he was disabled. After necessary examination, finding the petitioner disabled, on 12th September, 2001 disability certificate was issued by the Sub-Divisional Hospital, Uluberia, Howrah certifying that he was having 70% visual disability. Thereafter, on the basis of the said certificate, the petitioner was admitted to the Jadavpur University as a visually handicapped student and permission was issued to use amanuensis in his degree course examinations. Subsequently, the petitioner also completed his Masters Degree from the said University as a physically challenged candidate using scribe in the examinations.

3. Thereafter, the petitioner appeared in the 10th RLST-2009 (AT) (Regional Level Selection Test-2009-Assistant Teacher) in the visually handicapped category. He was allowed to appear in the said examination with amanuensis. In the said examination the petitioner was successful as his name appeared on the panel of successful candidates. On 29th April, 2010, a call letter was issued requesting the petitioner to appear before the Personality Test Board No. 2 constituted by the Commission for personality test on 24th May, 2010, at the office of the West Bengal Regional School Service Commission, Southern Region. Thereafter, by Memo dated 15th June, 2010 the petitioner was requested to be present for counselling organised by the West Bengal Regional School Service Commission (Southern Region) for the purpose of recommendation of candidates to the posts of Assistant Teacher in Bengali (Pass) in the schools. Such recommendation was to have been made on the basis of the option to be exercised by the empanelled candidates in the relevant subject, medium and the category of vacancy against which they have been empanelled in accordance with their rank on the panel and on the basis of availability of vacancies of similar nature at the time of their turn during counselling. The petitioner opted for Deulgram H.M.B.K. High School. That after the interview and counselling, the petitioner was referred to a Medical Board for verification of his disability certificate. During examination of the eyes of the petitioner the Medical Board advised him to have an operation in the right eye. Pursuant to such advice the petitioner on 29th October, 2010 underwent a successful operation at Sankar Netralaya, Mukundapur, Kolkata and got back vision in his right eye to some extent.

4. Consequently, the School Service Commission by the impugned Memo dated 28th February, 2011 intimated the petitioner that as he had regained his sight and as his physical disability is less than 40%, he cannot be called a physically disabled candidate as per the provisions of the Act and accordingly his name had been deleted from the panel. Aggrieved the petitioner had filed a representation dated 6th April, 2011 before the Chairman of the Central School Service Commission, a representation dated 20th April, 2011 to the Commissioner (Disabilities) and a representation dated 11th May, 2011 to the Chairman,

Regional School Service Commission, Southern Region to reconsider the matter but without any result.

5. It is submitted by Mr. Dhar, learned advocate for the petitioner, as the petitioner all along had studied in Braille and is conversant with Braille, though he has regained vision in his right eye to some extent, as he is still unable to read and write like a normal human being, if the impugned Memo dated 28th February, 2011 is given effect to, his future prospect shall be shattered. Submission has been made that considering the plight of the petitioner as the Commissioner (Disabilities), the respondent No. 8, by Memo dated 26th July, 2011 had requested the Principal Secretary to the Government of West Bengal, School Education Department, the respondent No. 1 to intervene in the matter, appropriate order may be passed.

6. Admittedly, I find that the petitioner had all along pursued his studies as a blind student with 70% visual disability using Braille system. Though recent surgery has reduced his disability to less than 40% and technically the petitioner is not within the ambit of the term disabled, as he cannot read and write like a normal human being, he is still a visually challenged person. It is beyond doubt that the candidate, that is the petitioner, has in the best years of his life braved all odds to pursue his studies, and despite the handicap done his Masters, and successfully cleared the SSC Examination. It is a happy development that he has got back his vision partially. But it is also an irony of fate that this deprives him of the job on the basis of examination which he has successfully cleared. By depriving him of the job, as sought to be done by the impugned memo, the society will once again condemn him to another kind of darkness, because unable to read and write like a normal human person, and only able to do so on Braille like the visually handicapped, he continues to suffer great inadequacies. He remains challenged. In fact by getting back some vision though he will be able to perform certain basic human functions like a normal person, so far his ability regarding education and literacy is concerned his condition remains that of a visually challenged. Under the circumstances the question is whether he will be able to compete with a normal candidate in an examination of this nature. The answer will be in the negative. The respondent No. 8 in his memo dated 24th May, 2011 has rightly observed that "Though educated, he has become illiterate now in the world of "Able" persons". Therefore, he should not be penalised for no fault of his own as correctly stated by the respondent No. 8 in his memo dated 26th July, 2011. Hence, in view of the peculiar facts and circumstances of the case and for the ends of justice, the Principal Secretary, School Education Department, the respondent No. 2 is directed to consider the case of the petitioner sympathetically in the light of the Memo dated 26th July, 2011 issued by the respondent No. 8, and he shall pass a reasoned order within four weeks from the date of presentation of a copy of the certified copy of this order before him after giving an opportunity of hearing to the petitioner and to the Assistant Secretary, West Bengal Regional School Service Commission, Southern Region, the respondent No. 6.

7. The writ petition is disposed of. There will be no order as to costs. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.