
(2018) 09 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 22610 (W) Of 2011

Prabhat Mukhopadhyay

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 11-09-2018

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2, 69
Person with Disability (Equal Opportunities, Protection of Rights and Full Participation) Rules 1996 — Rule 4
West Bengal Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules 1999 — Rule 7

Citation : (2018) 09 CAL CK 0018

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Piyush Chaturvedi , Amit Kumar Ghosh, Tapan Kumar Mukherjee, Somnath Naskar, Kanak Kiran Bandyopadhyay

Final Decision : Disposed Off

Judgement

Amrita Sinha, J.

The petitioner is a physically handicapped (hearing impaired) candidate. He applied for the post of Assistant Teacher, Work Education in the regional level selection test undertaken by the West Bengal Regional School Service Commission in the year 2010. The petitioner being successful in the selection test was empanelled for counselling. The petitioner attended the counselling session on 9th July, 2011 and opted to be recommended for the post of Work Education subject teacher at Palita High School, Bolpur, Birbhum. The Chairman, West Bengal Regional School Service Commission (Eastern region) sought the assistance of the District Inspector of School (SE)

Burdwan for verification of the physical disability of the physically handicapped candidates empanelled for appointment to the post of Assistant

Teacher. A list of physically handicapped candidates had been forwarded along with the said request. The medical superintendent cum Vice-President

Burdwan Medical College and Hospital requested the Chairman, West Bengal Regional School Service Commission (Eastern region) to request the

physically handicapped candidates to attend before the Medical Board of the Eye, ENT and Outpatient Department of the said Medical College. The

petitioner being one of the enlisted candidates appeared before the Medical Board on the scheduled date and time and he claims that he was examined

on two days i.e, 20th September and 21st September, 2011 but thereafter referred to the SSKM Hospital at Kolkata for further examination. The

petitioner has annexed a photocopy of the audiometry report and photocopy of the report of the audiogram conducted at the Burdwan Medical College

and Hospital, ENT Department.

As per the advice of Burdwan Medical College the petitioner appeared before the Outpatient Department, SSKM Hospital on 21st October, 2011

where he was advised to undergo tympanometry test. No report of the tympanometry test at SSKM Hospital has been annexed to the writ petition.

The petitioner states that though he appeared before the SSKM Hospital and medical examination was conducted to test his hearing disability but the

authorities did not issue any disability certificate and/or any report in his favour indicating the percentage of disability.

The petitioner relies upon the disability certificate issued by the Sadar Hospital Suri, Birbhum dated 15th November, 2007 wherein the percentage of

hearing/speaking disability is mentioned as 45%. The petitioner has also annexed a copy of his identity card wherein the percentage of hearing

disability has been mentioned as 45%. The petitioner avers that the respondent authorities have neither disbelieved the authenticity of the certificate

issued by the Sadar Hospital Suri nor have they challenged the contents thereof. He submits that there is no provision for assessment of physical

disability once a disability certificate indicating his percentage of disability had been issued in his favour by the competent authority. He further claims

that the respondent authorities ought to appoint him in the said post relying upon the disability certificate issued by the Sadar Hospital Suri, Birbhum

being the competent authority. The petitioner prays for a direction upon the respondent authorities to forthwith recommend his name and issue

appointment letter in his favour in the post of Assistant Teacher, Work Education.

The petitioner relies upon an unreported judgment and order dated 8th October, 2013 passed in WP No. 6003 (W) of 2010 Bidyut Kar vs. State of

West Bengal & Ors. wherein a similar issue was taken into consideration by this Court. In the said petition the main controversy related to the

jurisdiction of the West Bengal Central School Service Commission and Regional School Service Commission constituted under the West Bengal

School Service Commission Act, 1997 to have the disability status of the successful candidates who appeared in the regional level selection tests from

the reserved category of disabled candidate to be determined by an independent medical board. At the time of dealing with the said case this Court

dealt with and referred to various other judgments passed by the Single as well as the Division Bench on the self-same proposition and held that "it

shall be open to the Commission to verify with the issuing authority as to whether the certificates of the individual candidates are genuine or fabricated

and if such certificates are found to be forged and fabricated invalidate their candidature. The Commission shall also be at liberty to take up the issue

of individual certificates with the appellate Medical Board if they find the certificate to be genuine, but assessment made in the certificate to be

doubtful. In such a situation, the validity of candidature of individual candidates shall be guided by the finding of the appellate Medical Board."

The Assistant Secretary of the West Bengal Central School Service Commission had affirmed an affidavit-in-opposition indicting that the petitioner

along with 36 other physically handicapped candidates were sent to the Burdwan Medical College and Hospital for verification of their physical

disability. A large number of candidates especially of the hearing impaired category were detected in the last few years as not genuinely physically

handicapped. To root out all illegalities in the process of issuance of the disability certificates the Directorate of Health Service, Government of West

Bengal passed an order on 11th June, 2010 to the effect that the physically challenged persons selected in the category of Assistant Teacher by the

West Bengal Central School Service Commission may be sent to the medical boards constituted at the Government Hospitals having jurisdictions of

districts to verify the genuineness of their disabilities. The names of the hospitals in respect of each of the district had been indicated in the said order.

It is mentioned in the said affidavit that though it appears that the petitioner visited the SSKM Hospital on 21st October, 2011 but there is nothing on

record to suggest that the petitioner acted as per the advice of the hospital authorities. It is also not clear whether the petitioner underwent the

tympanometry test which he was directed to undergo for determination of the percentage of his disability.

Vide order dated 11th March, 2015 this Court while hearing the writ petition directed the learned Advocate appearing for the State to obtain

instructions from the Medical Superintendent, SSKM Hospital regarding the ultimate result of the examination of the petitioner's health and further

as to whether the petitioner is 40% physically disabled or not. This Court again vide order dated 19th April, 2017 directed the learned advocate of the

State respondent to file the audiometry report of the petitioner given by the SSKM Hospital. At the time of hearing of this case the learned advocate

appearing for the State respondents handed up a letter dated 23rd. March, 2015 issued by the Medical Superintendent cum Vice-Principal, SSKM

Hospitals wherein it had been indicated that on scrutiny it appears that no medical document issued from the SSKM Hospital could be found in respect

of the petitioner other than one ENT OPD ticket dated 21st October, 2011 accordingly no medical opinion from any doctor of the Hospital based on

any medical records can be provided. The learned advocates appearing for all the respondent authorities submit that in the absence of proper

verification of the disability certificate of the petitioner no further steps could be taken for proceeding with the appointment of the petitioner as

Assistance Teacher in the school in question.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 was implemented to give effect to the

proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific region. As per Section 2 t of the said Act

â??person with disabilityâ? means a person suffering from not less than 40% of any disability as certified by a medical authority. As per Section 2 i of

the said Act â??disabilityâ? means i) blindness; ii) low vision; iii) leprosy â??cured and iv) hearing impairment. As per Section 2 l of the said Act

“hearing impairment” means loss of 60% decibels or more in the better ear in the conversational range of frequencies.

As per the aforesaid provisions a person suffering from hearing impairment with more than 40% disability can only be considered as a “person with

disability.” A person with disability is entitled to obtain a disability certificate in his favour issued by the competent authority. The procedure for grant

of such certificate is contained in The Person with Disability (Equal Opportunities, Protection of Rights and Full Participation) Rules 1996 and the

West Bengal Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules 1999. As per Rule 4 of the 1996 Rules

the disability certificate will be issued by the medical authority after satisfying himself on receipt of an application from or on behalf of the applicant. A

copy of the disability certificate issued by the medical authority other than the Chief Medical Officer shall be simultaneously sent by such medical

authority to the Chief Medical Officer of the district. As per Rule 4 of the 1999 Rules a 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. As per Rule 7 of the 1999 Rules the State Government shall appoint an appellate medical board to

adjudicate any dispute regarding recognizing any person as “a person with disability” under the Act or any dispute regarding the percentage of

any disability as certified by a medical authority.

As per provisions of Section 69 of the Act of 1995 whoever, fraudulently avails or attempts to avail any benefit meant for persons with disabilities shall

be punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs.20,000/- or with both. From a bare

perusal of the documents placed before this Court it appears that though the petitioner was holding a disability certificate indicating his percentage of

disability issued by the Sadar Hospital, Suri, Birbhum but the petitioner was directed to appear before the medical board for verification of the

percentage of disability mentioned in his disability certificate. The said action of the respondent does not appear to be arbitrary or illegal as the same is

to identify the proper person. The petitioner at the initial stage subjected himself to be tested by the Burdwan Medical College and Hospital and also

appeared before the ENT Outpatient Department of SSKM Hospital but backed out of undergoing the tympanometry test as advised by the SSKM

Hospital.

In the absence of any report annexed by the petitioner and relying upon the information provided by the SSKM Hospitals it seems that the petitioner

did not undergo the test as advised. Had the petitioner indeed been hearing impaired to the extent of 40% and above he would surely have undergone

the tympanometry test at the SSKM Hospitals then the records of the hospital would have suggested that the test was conducted on him and further

steps could have been taken as per the report of the tympanometry test. For the reasons best known to the petitioner he avoided the tympanometry

test as advised by the hospital. The action of the petitioner in not undergoing the tympanometry test as per the advice of the SSKM Hospital raises

serious doubts with regards to the genuineness of the percentage of disability as mentioned in his disability certificate. The petitioner may have feared

to undergo the tympanometry test lest the percentage of his disability falls below 40%.

As per the Act a person to be recognised as a "person with disability" must be suffering from more than 40% of the disability. Accordingly, the

percentage of disability has to be correctly assessed and mentioned in the disability certificate for the purpose of availing the reservation policy of the

Government. The Act being a beneficial legislation ought not to be misused by dishonest and unscrupulous persons who procure disability certificates

by illegal means. The benefit of the legislation ought to reach the persons who are genuinely disabled and are entitled to be supported by way of

reservation. The petitioner ought not to have avoided the tympanometry test and should have undergone the said test to verify his percentage of

disability to avail the benefit of reservation.

This Court in the matter of Bidyut Kar vs. State of West Bengal & Ors. (supra) have permitted the Commission to verify the genuineness of the

certificates issued by the issuing authority and to further take up the issue of the notified candidates with the appellate medical board with regard to

assessment of the percentage of disability. In the instant case it appears that the authorities with the view to determine and verify the percentage of

disability of the petitioner directed him to appear before the SSKM Hospital but

the petitioner shied away from the tympanometry test.

In view of the above the instant writ petition is disposed of directing the respondent authorities to proceed with the appointment of the petitioner in the

post of Assistant Teacher only after proper verification of the percentage of disability of the petitioner. The School Service Commission will be at

liberty to take up the issue with the appellate medical board if required. WP No. 22610 (W) of 2011 is disposed of accordingly. 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.