

(2010) 09 AHC CK 0611

In the Allahabad High Court

Case No : Special Appeal Defective No. 811 of 2010

Ravindra Kumar Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996 — Rule 4(2)

Citation : (2011) 1 UPLBEC 116

Hon'ble Judges : Ferdino Inacio Rebello, C.J;A.P. Sahi, J

Bench : Division Bench

Judgement

Ferdino Inacio Rebello, C.J. and A.P. Sahi, J.—The Appellants claim that they belong to the Physically Handicapped Category of candidates, and are duly selected for being admitted to the Special B.T.C. Training Course of the years 2007 and 2008 respectively. They contend that they had been selected in their respective categories upon having fulfilled all necessary formalities including the submission of the Physical Disability Certificates, which were duly verified by an authorized Medical Board under the Persons with Disabilities Rules, 1996 (hereinafter referred to as "the Rules, 1996").

2. The Appellant-Petitioners, in the writ petition giving rise to this appeal, challenged a communication dated 15th of July, 2010 of the Director, State Council for Education Research and Training pursuant to a Government Order dated 3rd November, 2009, which makes a provision for the constitution of fresh Medical Board in order to verify and assess the disability of the Appellants afresh. The ground taken is that the Persons with Disabilities Rules, 1996 envisages the issuance of disability certificates by a Medical Board to be constituted by the State Government, which had already been done and the Appellants, therefore, could not have been subjected to a fresh verification by some other Medical Board under a Government Order subsequently issued much after their appointments.

3. The learned Single Judge dismissed the writ petition holding that the Rules, 1996 only allow the issuance of a medical certificate, which enables the physically disabled person to be eligible to apply for facilities, concessions and benefits admissible for admission/appointment. The learned Single Judge, however, held that the said medical certificate is not an absolute proof and it does not prevent the State Government from verifying the correctness or otherwise of such certificates or the nature of disability of the candidates seeking admission/appointment. It was held that the suitability of a candidate and the genuineness of the certificate can always be subjected to a scrutiny by the State Government and accordingly, the Government Order dated 3rd of November, 2009 fully authorizes the authority to carry out such an exercise.

4. Sri Shashi Nandan, learned Senior Counsel appearing for the Appellants submits that the aforesaid conclusion drawn by the learned Single Judge is erroneous inasmuch as the Appellants cannot be subjected to any further medical enquiry before a fresh Medical Board as the same would be contrary to the Rules, 1996 and in the absence of any such valid authorization, the entire exercise undertaken by the Respondents is erroneous. He, therefore, submits that the Government Order and the directions issued on 15th of July, 2010 are beyond the jurisdiction of the State Government as well as the Director and hence, the appeal deserves to be allowed for the reliefs claimed.

5. Learned Standing Counsel, on the other hand, defends the action of the State Government and it is submitted that the action so undertaken by the State Government is only to verify the genuineness of the claim or the Appellants and that the Appellants do not have any such vested legal right to object to such action being taken by the Respondents. Me submits that any fraud or misrepresentation has to be rectified in matters relating to such admission/appointment and not only does the Government enjoy the power to carry out such an exercise, the authority issuing the certificate itself has made it clear that the certificates shall be subject to the verification to be made by the employer. Learned Standing Counsel, therefore, submits that there is no estoppel or bar against the State Government from proceeding to undertake such an exercise, hence the argument advanced on behalf of the Appellants, is without any substance.

6. Having considered the rival submissions, it is evident that the Director has proceeded to call upon the Principals of all the Training Institutes throughout the State of Uttar Pradesh to intimate all candidates of the physically handicapped category that a physical verification in respect of such candidates shall be carried out by a Medical Board, which has been nominated by the State Government and the same would be conducted from 26th of July, 2010 onwards. The said direction has been issued for a physical verification in order to ascertain the genuineness of the candidates as also the contents of the certificates, which have been taken aid of to avail admission and appointment by the Appellants. Sub-rule (2) of Rule 4 of the Rules, 1996 indicates that the State Government can

constitute a Medical Board and the said Medical Board is authorized to issue a medical certificate for the purposes of certifying the disability. The Appellants contend that they are in possession of such certificates, which are valid and, therefore, there is no occasion to subject them to further medical examination by another Medical Board under the Government Order dated 3rd of November, 2009.

7. 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.

8. 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.

9. 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.

10. The Appellants, therefore, cannot resist the physical verification as directed by the Respondents and, we accordingly, hold that the direction dated 15th of July, 2010 would be construed as indicated hereinabove.

11. 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.

12. The appeal stands disposed of subject to the observations made hereinabove. No order as to costs.