

(2003) 09 CAL CK 0003
In the Calcutta High Court
Case No : C.O.S.T. No. 12 of 2001

Shankari Haldar and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-09-2003

Acts Referred:

Citation : (2004) 4 CHN 183

Hon'ble Judges : Sailendra Prasad Talukdar, J; Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Kajal Kumar Bera, D. Mukherjee and D. Chatterjee, for the Appellant; S. Roychowdhury, for the Respondent

Judgement

1. Heard Counsel for the parties.
2. This writ application has been filed challenging the order dated 14th May, 2001 passed by the West Bengal State Administrative Tribunal dismissing the application filed by the petitioner, inter alia, on the ground that the Tribunal has no jurisdiction to entertain the said petition.
3. The facts shortly put are this that the petitioners who are working as Special Attendants Aaya, wanted absorption of their services by the State Government. From the order dated 24th April, 2000 passed by the Secretary, Government of West Bengal, Department of Health & Family Welfare it appears that 50% of the vacancies occurring in a year in a particular hospital in Group "D" category of staff are to be filled up by special attendants. The petitioners are claiming absorption in view of such circumstances. Therefore, they are claiming absorption in State services.
4. When the writ petition was first moved an order dated 13th December, 1999 was passed relying on the aforesaid circular, directing the petitioners to make an application to the Chief Medical Officer of Health, South 24-Parganas with a prayer for absorption and the Court directed the said Officer to consider the same and pass a reasoned order. Pursuant to such direction the Chief Medical

Officer of Health, South 24-Parganas considered the petitioner's prayer and passed a written order, inter alia, to the effect that out of eight persons seven have become age Barred and the other one was not eligible as she has not put in 240 days of service in each year. In view of such order of the Chief Medical Officer of Health dated 29th December, 2000 the matter was again moved before the Tribunal and the Tribunal passed the impugned order on 14th May, 2001 holding that it has no jurisdiction.

5. We are of the view that the Tribunal's order on the question of jurisdiction is erroneous. The petitioners were claiming for their absorption in State services on the basis of the Circular issued by the Secretary, Department of Health & Family Welfare, Government of West Bengal. On the basis of such petition the matter was sent by the Tribunal previously to the C.M.O.H. concerned for consideration and the matter was considered and, thereafter, order was passed. The said order passed by the Governmental authority has been challenged before the Supreme Court. In the context of these facts we are of the view that the decision of the Tribunal to the effect that it has no jurisdiction to entertain the same is not maintainable. In taking this view we are supported by a decision of learned Single Judge of this Court in the case of A.T.N. Samsuzzaman v. State of West Bengal & Ors., reported in 1999 WBLR (Cal) 247.

6. We now send the matter back to the Tribunal on remand. But there is a considerable delay in the matter. The petitioners are also advanced in age. So further delay will not be in the interest of either the petitioner or the respondent. Apart from this the petitioners are also poorly paid workers and it will not be for the ends of justice to go to the Tribunal once again where it may take years for the matter to be decided.

7. Having regard to these facts and for the ends of justice as aforesaid, we give liberty to the petitioners to make a direct representation to the Director of Health Services through C.M.O.H., South 24-Parganas. Such representation should be made along with a copy of this order within a period of two months from date. If such representation is made, the Director of Health Services should consider the same within two months thereafter and after condoning the age bar. It is expected that the Director of Health Services will pass a reasoned order and in the spirit of the directions given by this Court considering the fact that the petitioners are working for a long time.

8. With the above observation, this writ application is disposed of.

9. There will be no order as to costs.