

21.05.2024
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WPST 108 of 2024
Sudarsan Guria
– *Versus* –
The State of West Bengal & Others

Mr. Rahul Kumar Singh
... for the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Ms. Tuli Sinha
... for the State.

Ms. Krishna Yadav
... for the PSC.

Affidavit-of-service filed by the petitioner be kept on record. Let the certified copy of the order impugned, as produced by Mr. Singh, learned advocate appearing for the petitioner, be kept on record. The present writ petition has been preferred challenging an order dated 13th May, 2024 passed by the learned Tribunal in the original application, being O.A. 242 of 2024.

Mr. Singh submits that in course of hearing before the learned Tribunal on 13th May, 2024, an interim order was prayed for but such prayer was not considered and aggrieved thereby, the petitioner has approached this Court.

He submits that upon emerging to be successful in a selection process initiated *vide* advertisement no. 24/2018, the petitioner was appointed provisionally to the post of Lecturer in Electrical Engineering at Mathabhanga Government Polytechnic, Coochbehar *vide* memo dated 26th October, 2021 and he is working in the said post till

date. After such appointment, the respondent no.2 issued a memo dated 25th April, 2024 terminating the petitioner's provisional appointment and stating that the said memo should be treated as one month's notice of termination. The period of one month would expire on 24th May, 2024 and the next date of hearing has been fixed before the learned Tribunal on 10th June, 2024. In the said conspectus, if the petitioner is denied an interim protection, he would suffer irreparable loss.

He argues that the petitioner is orthopaedically challenged and he participated in the selection process on the basis of a certificate issued by the competent authority as detailed under clause 9 of the advertisement being the Medical Board of Haldia Sub-Divisional Hospital wherein it was certified that the petitioner's percentage of disability was 40%. Subsequent thereto, the same Medical Board reviewed and certified on 13th March, 2019 that at the said relevant point of time he was suffering from 50% disability and lastly, a certificate has been issued by the competent authority of the Nandigram Super Specialty Hospital indicating that the petitioner was suffering from 40% disability and such certification would be valid till 16th April, 2029.

According to Mr. Singh, the petitioner fulfilled the prescribed disability percentage at the time of appointment. After joining, the petitioner was again asked to appear before a Medical Board. The said Board issued a certificate incorporating a remark that the petitioner was

'unfit on account of below 40% disability'. The said certificate was issued sitting in appeal over the earlier medical certificates, issued by the competent authority. The procedure adopted is alien to the provisions of the statute.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State respondents submits that in the appointment letter itself it was specified that the petitioner has to appear before a competent Medical Board and upon examination he was found to be unfit and accordingly, the order of termination was issued. Needless to observe, in the event the petitioner finally succeeds in the writ petition, he would become entitled to all consequential reliefs. In view thereof, no interference is called for at this stage.

It appears that at the time of selection, the petitioner fulfilled all the eligibility criteria and was having a valid medical disability certificate issued by the competent Medical Board. The Central Medical Board issued a certificate on 13th May, 2024 without taking into consideration the earlier certificates issued by the competent Medical Boards.

From the impugned notice it appears that the petitioner's termination would be effective from 25th May, 2024 and *prima facie*, in our opinion, the grant of the interim order, as prayed for, will not cause a greater loss and prejudice to the respondents than the loss and

prejudice, the absence thereof, is likely to be caused to the petitioner.

In view thereof, there shall be an interim order restraining the respondents from interfering with the service of the petitioner in the post of Lecturer in Electrical Engineering at Mathabhanga Government Polytechnic, Coochbehar till the disposal of the original application.

The learned Tribunal is directed to dispose of the original application, as expeditiously as possible, without granting any unnecessary adjournment to either of the parties and without being influenced by the observations made in this order.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)