

WPA 19792 of 2011

Saktipada Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Prahlad Chandra Ghosh
Mr. Subir Hazra
... for the Petitioner.

Mr. Milan Kumar Maity
... for the State.

Mr. Saibal Acharyya
... for School Authority

1. Mr.Ghosh learned advocate for the writ petitioner has informed that as per previous direction of this court, notice has already been served upon the respondent/West Bengal Regional School Service Commission. He filed the affidavit of service in court. The same is taken on record.
2. None appears for the said respondent/West Bengal Regional School Service Commission. The writ petitioner, the school authority and the State are represented today. Hence, the instant writ petitioner is taken up for hearing in absence of the respondent/West Bengal Regional School Service Commission.
3. An order of the Secretary of the respondent No.3/West Bengal Regional School Service Commission, Northern Region dated **November 14, 2011**, is under challenge in this writ petition, on the allegation of the same having been passed by the respondent, without authority and jurisdiction.
4. Mr. Ghosh learned advocate for the writ petitioner submits that the petitioner has been declared as 40% hearing disabled and has been issued a Disability

Certificate to that effect dated **March 10, 2005**, by the Medical Board. In 2009 the petitioner appeared for the recruitment examination held by the said respondent/SSC and qualified therein. The respondent/SSC recommended his name for appointment as an assistant teacher for Political Science subject in physically handicapped category, vide a letter dated **August 1, 2009**. He has been issued an appointment letter on **August 11, 2009** and he joined in the school on **August 18, 2009**.

5. Mr. Ghosh learned advocate has submitted further that since the date of joining, the writ petitioner has been discharging duties in the said school to the fullest satisfaction of all concerned and maintaining an unblemished service record. To the petitioner's dismay a letter has been received by him from the Secretary, dated West Bengal Regional School Service Commission, Northern Region dated **May 10, 2010**. Vide the same the writ petitioner has been directed to appear for examination before the Medical Board, afresh. Being aggrieved by the same, the writ petitioner has filed the instant case.
6. Mr. Ghosh has submitted that the writ petitioner has been recommended, appointed and served as a physically handicapped category candidate for a considerable long period of time, maintaining good service record. Necessary examination as regards the genuineness of the certificate has already been done at the time of induction of the petitioner in the service. He says that there is no scope for his physical examination for the second time, to ascertain the disability of the petitioner, which has already been certified by the duly constituted board of doctors, vide the certificate dated **March 10, 2005**. He says that the letter of the respondent dated **May 10, 2010**, is without jurisdiction and not maintainable. A judgment of this Court dated October 8, 2013 in *Bidyut Kar vs*

State of West Bengal [in W.P.No. 6003 (w) of 2010], has been relied on by Mr.Ghosh learned advocate.

7. Mr. Acharya learned advocate for the school authority has largely supported the writ petitioner's stand as above. He has submitted further that the School Service Commission is a statutory body authorised to select eligible candidates by way of recruitment test and to recommend their names to the schools, for appointing them as the assistant teachers according to their qualification and category. That, after recommending a successful candidate for appointment, the Commission becomes *functus officio* and loses its authority and power under the law to issue any other direction with respect to him. In this way, he says, that the respondent SSC has acted unauthorizedly and beyond scope of its power under the law, by issuing the impugned letter dated **November 14, 2011**. He submits that the said order of the SSC is not sustainable for the reason as stated.
8. Mr. Milan Kumar Maity has represented the State and adopts the submission made on behalf of the writ petitioner and the respondent school authority.
9. Records have revealed that the writ petitioner has been recommended vide letter dated **August 1, 2009**, by the respondent SSC as a physically handicapped category candidate, to be the assistant teacher of the school, on the basis of the Disability Certificate dated **March 10, 2005**. It has been mentioned in the said recommendation letter that if the candidate is found not to be a physically handicapped candidate on further examination by the Department of Health of the State of West Bengal. As his case has already been referred to the said Department, for such further examination, his recommendation shall be withdrawn and his candidature shall be cancelled.
10. Consequently, the petitioner was appointed after due verification of his credentials and has been serving in the

school from **August 18, 2009**. The petitioner is aggrieved with the condition imposed in the recommendation letter as mentioned above, that conditional recommendation is bad in law. His further grievance is that after having been appointed as an assistant teacher he acquires right to the post and any action detrimental to his such interest should have abide by the principles of natural justice, which has not been complied with in his case. Hence, the impugned action in its entirety is bad in law. Also, that the letter dated **May 10, 2010**, of the Secretary, West Bengal Regional School Service Commission, Northern Region, vide which he has been directed to appear for the physical disability test, is beyond jurisdiction as the said respondent has become functus officio, the moment it has recommended the petitioner's name for appointment. As a consequence, the impugned order dated **November 14, 2011**, of withdrawal and cancellation of recommendation of the writ petitioner, is bad in law and liable to be quashed.

11. The impugned order of the respondent dated **November 14, 2011**, is principally based on the clinical examination report dated **May 28, 2010**, which is neither an examination by any Medical Board nor has it specified in any way as to the reasons why the Disability Certificate dated **March 10, 2005**, earlier produced by the petitioner at the time of his appointment, should not be taken into consideration.
12. In the clinical examination report dated **May 28, 2010**, the petitioner has been diagnosed with *Chronic Suppurative Otitis Media* [CSOM], in his left ear, which to say in most simplified manner, results into loss of hearing due to a perforated eardrum. The doctor only opines "*Ref to V.S. for N.A.*", that is referred to vascular surgeon for necessary action. No further steps have ever been taken. The said clinical examination report dated **May 28, 2010**, is not even an examination by any

Medical Board. Therefore, the Court is of the opinion that no steps have been taken by the respondent to ascertain the petitioner's disability. Most significantly, neither in the said clinical examination report dated **May 28, 2010**, nor the impugned order dated **November 11, 2011**, no reason has been shown as to why the petitioner's Disability Certificate was not acceptable to the said respondent, though acknowledged and acted upon at the time of appointment, by recommending his name as a physically handicapped candidate.

13. Records have further revealed that the impugned order dated **November 11, 2011**, has been issued against the writ petitioner without even supplying to him the copy of the said clinical examination report dated **May 28, 2010**. Thus, the writ petitioner has been deprived of any knowledge or opportunity to controvert in any way, the correctness of the report, which has ultimately been relied on as the foundation of the decision and order by the respondent to cancel appointment of the writ petitioner. More so, he has been deprived of any reason being known as to why the Disability Certificate produced by him, was not acceptable to the respondent authorities. Thus, there has been gross defiance of the principles of natural justice in case of the present petitioner which jeopardies his rights and interests.
14. Verification of genuineness of the declarations made by a candidate and medical examinations are generally the condition precedent for an appointment in the government job. These procedural formalities are generally complied with by the appointing body [here it is the concerned school] and not by the statutory body for recommending for appointment of a candidate. The "West Bengal Board of Secondary Education (Requirement of Verification of Antecedents and Examination of Medical Fitness for Appointment) Rules, 2018" prescribe that before a teacher or non-teaching staff member is formally

appointed, the “appointing authority” must obtain a medical certificate of fitness from a duly authorised medical officer; that no appointment letter is to be issued until this medical certificate (and police verification) is obtained; also that the certificate is obtained by the appointing authority on the basis of rules issued under the relevant education department, not by the Commission itself. These rules make medical fitness a condition precedent to final issuance of appointment letters for teachers and non-teaching staff recruited with the Commission’s recommendation.

15. In the West Bengal School Service Commission Act 1997, there is no specific provision authorising the Commission to order a medical test for candidates as part of the selection or appointment process. The Act empowers the Commission to conduct selection and recommend candidates for appointment according to the manner as prescribed. Sections 8 and 9 are relevant and quoted below:

“8. Manner and scope of selection of persons and procedure for conduct of business of Commission.

(1) The manner and scope of selection of persons for appointment to the posts of Teachers shall be such as may be prescribed.

(2) The procedure for the conduct of business of the Commission shall be such as may be provided for by regulations.”

“9. Effect of recommendation of Commission.

(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, custom or usage to the contrary,

appointments to the posts of Teachers in a school shall be made by the managing committee, by whatever name called, or by the ad hoc committee, or by the administrator, if any (where there is no managing committee), of that school on the recommendation of the Regional Commission having jurisdiction.

(2) Any appointment of a Teacher made on or after the commencement of this Act in contravention of the provisions of this Act shall be invalid and shall have no effect and the Teacher so appointed shall not be a Teacher within the meaning of clause (p) of section 2.”

16. Section 9 of the said Act does not address does **not address medical tests** or medical fitness.
17. All as above categorically show that after recommending name of a successful candidate for appointment, the respondent Commission actually becomes *functus officio* and ceases to have any power or authorization under the statute to deal with the said recommended person. Once a statutory authority has exercised its power and completed its statutory function, it becomes powerless to revisit, review, or alter that decision — unless the statute expressly provides for the same. The Act does not generally give the Commission power to cancel appointment after recommendation, or review its own recommendation (unless specifically provided in rules), or power to medically examine candidates itself. Its primary statutory role is selection and recommendation. Once the recommendation is validly made in accordance with the Act and Rules, the Commission ordinarily becomes *functus officio* in respect of that candidate. The Commission has no continuing supervisory control over

the candidate. It cannot assume continuing control unless expressly authorized by the law. The only exceptional circumstance is commission of fraud or misrepresentation which may vitiate and nullify all. However, that is not a case with respect to the present writ petitioner. No allegation of fraud or misrepresentation can be seen to have been made against the present petitioner and / or no allegation is made about the Disability Certificate produced by him to be a forged one.

18. Therefore, on the basis of the entire discussion as above, the Court finds that the impugned order dated **November 11, 2011**, is a result of arbitrary exercise of power by the said respondent authority, only unauthorizedly and illegally.
19. In the judgment of *Bidyut Kar (supra)*, this Court had occasion to consider the question regarding authority of the School Service Commission to undergo a fresh process for assessment of the level or degree of disability of the petitioners there. The petitioner's main contention was that, the disability certificates issued to them under the provisions of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" should prevail for determining whether a candidate is physically disabled or not and the decision of the Commission to require them to undergo an independent test for determining the extent of their disability, was without jurisdiction or power. The Court in the said judgment has found and ordered in favour of the writ petitioners that, withdrawal of their appointment should be revoked and their appointment should be restored. The ratio decided by this Court in the said judgment also stands squarely applicable in case of the present petitioner as the disputed question of law involved in the present case is same.

20. On the discussions as made above, the Court finds that the impugned order dated November 14, 2011 of the Secretary, West Bengal Regional School Service Commission, Northern Region, Malda thereby withdrawing and cancelling recommendation for the present petitioner is illegal and not sustainable due to the same having been issued by the said respondent authority without jurisdiction, power and authorization under the law and in arbitrary exercise of power not vested in it by the law. Hence, the present writ petition should succeed.
21. The writ petition No. WPA 19792 of 2011 is allowed.
22. The impugned order dated November 14, 2011 passed by the Secretary, West Bengal Regional School Service Commission, Northern Region, Malda thereby withdrawing and cancelling recommendation of the present petitioner is hereby set aside. The petitioner's service is restored as if there was no break in service from the date of his appointment however with notional effect only – if not the petitioner has been in employment during pendency of this writ petition, by virtue of an interim order of this Court.
23. The writ petition is allowed and disposed of along with applications pending, if any.
24. Urgent certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)