

WP(C) 2014/2012
BEFORE
THE HON'BLE MR. JUSTICE B.P. KATAKEY

Heard Mr. Hussain, learned counsel for the petitioner, Mr. Choudhury, learned standing counsel, Education Department appearing for the respondents.

As agreed to by the learned counsel for the parties this writ petition is taken up for disposal at the motion stage itself.

The petitioner who claims to be a person with disability and entitled to the benefit of the provisions of the Person with Disabilities (Equal Opportunity, Protection of Right and Full Participation) Act, 1995 (in short the 1995 Act) by the present petition has prayed for a direction to the respondent authorities to consider his case for regularization in service as assistant teacher in Indra Narayan Academy High School where the petitioner is presently serving on honorary basis since 2.1.2009.

It is contended by the learned counsel for the petitioner that as she is entitled to the benefit of 1995 Act, the authority is duty bound to grant such benefit which has not been given to her so far. It has also been submitted that since the petitioner is presently serving as honorary teacher in the said school on being invited since 2.1.2009, she is entitled to get her service regularized. The learned counsel further submits that in case the petitioner is found to be not entitled for regularization of her service the respondent authorities may be directed to consider her case for relaxation of the upper age limit in the next selection process to be initiated and also grant the benefit of the provision of the 1995 Act.

Mr. Choudhury, learned standing counsel on the other hand has submitted that the petitioner who claims to be serving on honorary basis cannot claim for regularization in service as it would amount to encouraging back door entry into service. It has also been submitted that if the petitioner is entitled to the benefit of the 1995 Act, she can apply for the post kept reserved for the persons with disability and in case she applies for the same her case would definitely be considered. Mr. Choudhury further submits that in case the petitioner files any application for relaxation of the upper age limit the same shall also be considered sympathetically.

It appears that the petitioner claims to be serving as assistant teacher on honorary basis in the said school with effect from 2.1.2009. The said school is a provincialised school and the petitioner has been engaged as honorary teacher after the provincialisation and hence there cannot be any direction to the respondents to regularize the service of the petitioner which would amount to encouraging back door entry into service. The petitioner also claims that she is entitled to the benefit of the provisions of the 1995 Act, apart from praying for condonation of the upper age limit. If the petitioner is entitled to the benefit of the provisions of the aforesaid Act she may apply for recruitment against the quota reserved for the candidates who are entitled to the benefit of the provision of the said Act and in case the petitioner applies for appointment her case would definitely be considered by the authority. The petitioner may also apply for relaxation of the upper age limit if so advised. In case such application is filed the same shall also be considered in accordance with law.

The writ petition is disposed of accordingly.